REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

DUTY FREE PHILIPPINES CORPORATION,
Petitioner,

-versus-

BUREAU OF INTERNAL REVENUE REPRESENTED BY KIM S. JACINTO-HENARES, AND/OR NESTOR S. VALEROSO, OIC-ASSISTANT COMMISSIONER, LARGE TAXPAYERS SERVICE,
Respondents.

CTA EB No. 1911
(CTA CASE No. 9355)

Present:
DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, *JJ.*

Promulgated:
JUL 05 2019
3:04 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision on October 24, 2018, is the Petition for Review for the Court *En Banc* under *Section 4(b), Rule 8*[1] *of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA), as amended,* of the Decision, in the case entitled *Duty Free Philippines Corporation vs. Bureau of Internal Revenue represented by Kim S. Jacinto-Henares,*

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[1] SEC. 4. *Where to appeal; mode of appeal.* –

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(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court *en banc* shall act on the appeal.

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and/or Nestor S. Valeroso, OIC-Assistant Commissioner, Large Taxpayers Service, docketed as CTA Case No. 9355, dated May 8, 2018,[2] and the Resolution dated July 26, 2018, 2018,[3] both rendered by the Former Second Division of this Court, the dispositive portions of which read as follows:

> CTA Case No. 9355:
> Decision dated May 8, 2018:
>
> "**WHEREFORE,** in light of the foregoing, the Petition for Review is hereby **DISMISSED** due to lack of jurisdiction. Let a copy of this decision be furnished to the Secretary of Justice.
>
> **SO ORDERED.**"
>
> CTA Case No. 9355:
> Resolution dated July 26, 2018:
>
> "**WHEREFORE**, premises considered, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit. Accordingly, the assailed decision promulgated on May 8, 2018 is hereby **AFFIRMED**.
>
> **SO ORDERED.**"

The facts of the case, as recited by the former Second Division in its Decision, read as follows:

> "Petitioner is a corporate body attached to the Department of Tourism (DOT), created and organized by Republic Act (RA) No. 9593 otherwise known as the Tourism Act of 2009. Its office address is located at EHA Building, Fiesta Mall Shopping Center, Ninoy Aquino Avenue, Parañaque City.

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[2] Penned by Associate Justice Catherine T. Manahan, concurred in by Associate Justice Juanito C. Castañeda, Jr. and former Associate Justice Caesar A. Casanova, *En Banc* Docket, pp. 41-50.
[3] *Ibid.*, pp. 51-59.

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Respondent is a government bureau under the supervision of the Department of Finance (DOF). Its principal address is located at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City, Metro Manila.

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In 2012, RA No. 10351 entitled "An Act Restructuring the Excise Tax on Alcohol and Tobacco Products by Amending Sections 141, 142, 143, 144, 145, 8, 131 and 288 of Republic Act No. 8424, otherwise known as the National Internal Revenue Code of 1997, as amended by Republic Act No. 9334, and for other purposes" took effect which, among others restructured excise taxes on alcohol and tobacco products. Thereafter, BIR assessed and collected value-added tax (VAT) on DFPC's importation of alcohol and tobacco merchandise for sale in 2014.

On November 16, 2015, petitioner filed its administrative claim for refund on the alleged erroneously or illegally assessed and collected VAT for the period January 1 to December 31, 2014 on its importation of alcohol and tobacco merchandise that were up for sale xxx.

On May 5, 2016, petitioner received respondent's letter dated April 26, 2016, wherein the latter denied said claim for refund citing Section 7 of RA No. 10351, amending Section 131(A) of the National Internal Revenue Code of 1997 (NIRC), as amended, that DFPC's importation of tobacco and alcohol products for sale is exempt only as far as the applicable duties are concerned but not from payment of VAT.

On May 20, 2016, petitioner filed the instant petition asking this Court to reverse and set-aside respondent's denial of its claim for refund and order the refund xxx representing the VAT erroneously or illegally assessed and collected from January 1, to December 31, 2014. xxx" (Citations omitted.)

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The former Second Division dismissed the Petition for Review for lack of jurisdiction, citing the Supreme Court En Banc case of *Power Sector Assets and Liabilities Management Corporation vs. Commissioner of Internal Revenue (the "PSALM Case")*,[4] which ruled that under Presidential Decree (PD) No. 242, disputes and claims solely between the BIR and another government entity, which in this case, is Duty Free Philippines Corporation (DFPC), shall be administratively settled or adjudicated by the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel, depending on the issues and government agencies involved. Thus, the jurisdiction belongs to the Secretary of Justice and the disputes should be resolved pursuant to PD 242.

DFPC filed its Motion for Reconsideration,[5] assailing that the Court has jurisdiction over its petition, which the Former Second Division denied in the assailed Resolution. Hence, DFPC filed its Petition for Review[6] on August 31, 2018.

In its Petition for Review, DFPC reiterates its notion that the Court has jurisdiction over its petition, it is entitled to refund and the facts in the *PSALM Case* are different from the instant case considering that in the *PSALM Case,* the collection of the assessed amount pertains to the execution and implementation of the Memorandum of Agreement (MOA) between the Bureau of Internal Revenue (BIR), PSALM, and National Power Corporation (NPC), and not to a valid assessment.

On the other hand, the Commissioner of Internal Revenue (CIR), in his Comment,[7] reiterates his argument that the Court has no jurisdiction over the matter.

The Court of Tax Appeals (CTA) is a court of special jurisdiction and can only take cognizance of such matters as

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[4] G.R. No. 198146 dated August 8, 2017.
[5] Division Docket, Vol. II, pp. 498-518.
[6] *En Banc* Docket, pp. 7-36.
[7] *Ibid.*, pp. 60-66.

are clearly within its jurisdiction.[8] Section 7 (a)(1) and (2) of Republic Act (RA) No. 1125, as amended by R.A. Nos. 9282 and 9503, provides:

> "SEC. 7. Jurisdiction.- The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving xxx refunds of internal revenue taxes, xxx;
>
> (2) Inaction by the Commissioner of Internal Revenue in cases involving xxx refunds of internal revenue taxes xxx"

Similarly, Section 3(a)(1) and (2) of Rule 4 of the Revised Rules of the CTA states:

> "SEC. 3. Cases within the jurisdiction of the Court in Division.- The Court in Division shall exercise:
>
> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving xxx refunds of internal revenue taxes xxx;
>
> (2) Inaction by the Commissioner of Internal

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[8] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, March 12, 2014.

> Revenue in cases involving xxx refunds of internal revenue taxes xxx"

Based on the foregoing, the Court in Division shall exercise exclusive original jurisdiction to review by appeal decisions of the CIR in cases involving refund of internal revenue taxes. However, it is crystal clear in the Supreme Court *En Banc's PSALM Case* that in disputes and claims solely between government agencies and offices, including GOCCs, the administrative procedure in Sections 2 and 3 of PD 242 should be followed. In the instant case, DFPC, is an agency attached to DOT, which is a national government agency, while respondent represents the Bureau of Internal Revenue, which is a government agency. Clearly, the petition involves a dispute solely between a government corporation and another government agency and as such, this Court is bereft of jurisdiction to take cognizance of the case.

As to DFPC's argument that the instant case has a different factual setting, a scrutiny of the factual antecedents of the *PSALM Case* reveals that the case was the result of the letter dated 14 August 2007 from the BIR, signed by the OIC Commissioner of Internal Revenue, demanding immediate payment of ₱3,813,080,472 deficiency value-added tax (VAT) for the sale of the Pantabangan-Masiway and Magat power plants.

The actual issue in *PSALM Case* was the demand for payment of deficiency value-added tax (VAT) on the sale of NPC properties while in the instant case, the refund stems from the demand for payment of VAT made by the CIR against DFPC. Thus, the facts are substantially the same which belies DFPC's argument.

More importantly, the Supreme Court is very categorical in its ruling in the *PSALM Case,* that:

> "The law is clear and covers "***all disputes, claims and controversies solely*** **between or among the departments, bureaus, offices,**

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> **agencies and instrumentalities of the National Government, including constitutional offices or agencies arising from the interpretation and application of statutes, contracts or agreements**." When the law says "all disputes, claims and controversies solely" among government agencies, the law means all, without exception. Only those cases already pending in court at the time of the effectivity of PD 242 are not covered by the law." (Emphases and italics in the original; underlining supplied.)

This Court merely applies the doctrine laid down by the Supreme Court in the said *PSALM Case* and the ruling enunciated therein precludes this Court from acquiring jurisdiction over the petition for review.

WHEREFORE, premises considered, the Petition for Review filed by Duty Free Philippines Corporation is hereby **DENIED.** The assailed Decision and Resolution dated May 8, 2018 and July 26, 2018, respectively, in CTA Case No. 9355 are hereby **AFFIRMED.**

SO ORDERED.

Cielito N. Mindaro - Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(On Official Business)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

<u>CERTIFICATION</u>

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court En Banc.

ROMAN G. DEL ROSARIO
Presiding Justice