REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

THE BUREAU OF CUSTOMS and COLLECTOR OF CUSTOMS OF THE PORT OF BATANGAS, Petitioners,	**CTA EB CASE NO. 1047** (CTA Case No. 8535)
	Present: ***Del Rosario, P.J.*** ***Castañeda, Jr.,*** ***Bautista,*** ***Uy,*** ***Casanova,*** ***Fabon-Victorino,*** ***Mindaro-Grulla,*** ***Cotangco-Manalastas,*** *and* ***Ringpis-Liban, JJ.***
- versus -	
PILIPINAS SHELL PETROLEUM CORPORATION, Respondent.	**Promulgated:** FEB 10 2014 2:59pm

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RESOLUTION

After considering the issues raised by petitioners Bureau of Customs and Collector of Customs of the Port of Batangas ("BOC and COC of Batangas") in the "Petition for Review," filed by registered mail on August 16, 2013, and the arguments proffered by respondent Pilipinas Shell Petroleum Corporation ("PSPC") in its "Comment/Opposition *Ad Cautelam* (Re: Petition for Review dated 16 August 2013)" filed on December 4, 2013, the Court *En Banc* hereby **RESOLVES** to **DENY** the "Petition for Review" its **DUE COURSE**.

In the "Petition for Review,"[1] petitioners BOC and COC of Batangas pray for the Court sitting *En Banc* to reverse and set aside the Resolutions dated January 28, 2013,[2] and June 24, 2013,[3] respectively

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[1] *Rollo*, CTA EB Case No. 1047 (CTA Case No. 8535) pp. 394-727, with Annexes.
[2] Composed of Associate Justices Juanito C. Castañeda, Jr. (with *Concurring and Dissenting Opinion*), Caesar A. Casanova (with *Concurring and Dissenting Opinion*), and Cielito N. Mindaro-Grulla; *Rollo*, pp. 431-470; *Annex "A."*

rendered by the then Second Division and the First Division of the Court; and accordingly to dismiss CTA Case No. 8535 for lack of jurisdiction.

Based on the records, the assailed Resolution dated January 28, 2013, issued by the then Second Division of the Court ruled on the Omnibus Motion jointly filed by the Commissioner of Internal Revenue, BOC and COC of Batangas, as follows:

> "We find no merit in the Omnibus Motion.
>
> Suffice it to say that for excise tax purposes, the issuance of ATRIG by the CIR on importation whether exempt or taxable is a necessary requisite administered by the CIR.
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> xxx xxx xxx
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> Accordingly, the subject letter from respondent CIR to respondent[4] COC, which concluded and ruled that Alkylate importations of petitioner[5] were subject to excise taxes on petroleum products under Section 148(e) of the 1997 NIRC, as amended, cannot be treated merely as a mere inter-government agency communication. xxx.
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> xxx xxx xxx
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> Hence, the subject letter is in the nature of a BIR Ruling, as it is a decision whereby the CIR had issued a directive that excise taxes must be collected on Alkylate importations of PSPC based on the CIR's implementation of Section 148(e) of the NIRC. Thus, it constitutes the CIR's opinion on the tax treatment on the said importation, xxx.
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> xxx xxx xxx
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> Section 7(a)(1)(2) and (4) of Republic Act No. 9282, as amended, among others, enumerates the cases over which this Court has appellate jurisdiction:
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> xxx xxx xxx

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[3] Composed of Presiding Justice Roman G. Del Rosario (with *Dissenting Opinion*), and Associate Justices Erlinda P. Uy, and Cielito N. Mindaro-Grulla; *Rollo*, pp. 472-492; *Annex "B."*
[4] Herein petitioner.
[5] Herein respondent.

Further, Section 3(a)(1)(2) and (4), Rule 4 of the Revised Rules of the Court of Tax Appeals state:

xxx xxx xxx

Based on the above-quoted provisions, this Court has jurisdiction to review by appeal not only decisions of the Commissioner of Internal Revenue in cases involving disputed assessments and refunds of internal revenue taxes, fees or other charges, penalties in relation thereto but also decisions on other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue.

xxx xxx xxx

xxx. Concomitantly, the subject letter from respondent CIR to respondent COC, should not only be treated merely as an inter-government agency communication but rather a decision on other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, which falls within this Court's jurisdiction.

Further, We agree that the imposition of excise taxes on Alkylate importation under Section 148(e) of the NIRC by respondent CIR, being an exercise of her quasi-judicial power to decide on 'other matters under the National Internal Revenue Code,' falls within this Court's jurisdiction under Section 4, second paragraph thereof, and Section 7(a)(1) of Republic Act No. 11[25], as amended by Republic Act 9282.

The instant Petition disputing respondents' authority to impose excise taxes, through the issuance of the said BIR Ruling, Customs Memorandum Circular, and demand letter, falls within the exclusive appellate jurisdiction of this Court under the second paragraph of Section 4 of the National Internal Revenue Code (NIRC), specifically under 'other matters' arising from the said law, xxx.

xxx xxx xxx

This Court does not reject the fact that when the question involves the constitutionality of a law, the issue should be brought before the regular courts, as enunciated in the *BATC Case*. When there is no issue on the constitutionality of the law itself, but the issue simply involves a question of whether an issuance is contrary to the law it seeks to implement, this Court has jurisdiction when the law being implemented by the said issuance is the 'NIRC or other laws implemented by the BIR.' xxx.

xxx xxx xxx

As to the motion to lift the suspension order, on the ground that the suspension order was not sufficiently proved, or that there was no factual and legal basis, respondents failed to persuade. xxx.

xxx xxx xxx

WHEREFORE, premises considered,

xxx xxx xxx

2. respondent's Omnibus Motion is hereby **DENIED** for lack of merit.

SO ORDERED."[6]

Aggrieved, petitioner filed a Motion for Reconsideration, which was likewise denied by the First Division of the Court in the assailed Resolution dated June 24, 2013.[7]

The Court *En Banc* duly notes that the above-mentioned Omnibus Motion is essentially a Motion to Dismiss; and an order denying a motion to dismiss is an interlocutory order which neither terminates nor finally disposes of a case, as it leaves something to be done by the court before the case is finally decided on the merits.[8] Thus, an order denying a motion to dismiss is not appealable.[9]

Stated differently, an order denying a motion to dismiss does not finally dispose of the case, and in effect, allows the case to proceed until

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[6] *Rollo*, pp. 439-458.
[7] *Supra*, note. 3.
[8] Lu Ym *v.* Nabua, G.R. No. 161309, February 23, 2005, 452 SCRA 298, 305-306; Bonifacio Construction Management Corporation *v.* Perlas-Bernabe, G.R. No. 148174, June 30, 2005, 462 SCRA 392, 396.
[9] Rayos *v.* City of Manila, G.R. No. 196063, December 14, 2011 Resolution, *citing Fil-Estate Golf and Development, Inc. v. Navarro, G.R. No. 152575, 29 June 2007, 526 SCRA 51, 55, citing Lu Ym v. Nabua, G.R. No. 161309, 23 February 2005, 452 SCRA 298.*

the final adjudication thereof by the court. As such, it is merely interlocutory in nature and thus, not appealable.[10]

In the case of *Angela Palila-Garrido v. Eliza Tortogo, et al.*,[11] the Supreme Court penned as follows:

> "The distinction between a final order and an interlocutory order is well known. The first disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing more to be done except to enforce by execution what the court has determined, but the latter does not completely dispose of the case but leaves something else to be decided upon.[12] An interlocutory order deals with preliminary matters and the trial on the merits is yet to be held and the judgment rendered.[13] The test to ascertain whether or not an order or a judgment is interlocutory or final is: does the order or judgment leave something to be done in the trial court with respect to the merits of the case? If it does, the order or judgment is interlocutory; otherwise, it is final."

Evident from records that the proceedings in CTA Case No. 8535 has yet to end; with the foregoing, the Court *En Banc* finds the case of *Silverio, Jr., v. Court of Appeals, et al.*,[14] instructive, to quote:

> "[I]t is only after a judgment has been rendered in the case that the ground for the appeal of the interlocutory order may be included in the appeal of the judgment itself. The interlocutory order generally cannot be appealed separately from the judgment. It is only when such interlocutory order was rendered without or in excess of jurisdiction or with grave abuse of discretion that certiorari under Rule 65 may be resorted to."

Considering that a resort to this forum is not the proper remedy applicable in the case at bench, the Court *En Banc* has no recourse but to dismiss the present case.

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[10] *Ibid., citing United Overseas Bank v. Ros*, G.R. No. 171532, 7 August 2007, 529 SCRA 334, 344.
[11] G.R. No. 156358, August 17, 2011, 655 SCRA 553.
[12] *Ibid., citing Tan v. Republic, G.R. No. 170740, May 25, 2007, 523 SCRA 203, 210-211.*
[13] *Ibid., citing Miranda v. Court of Appeals, G.R. No. L-33007, June 18, 1976, 71 SCRA 295.*
[14] G.R. 178933, September 16, 2009, 600 SCRA 1, citing *1 F. Regalado, REMEDIAL LAW COMPENDIUM 540 (8th revised ed.).*

WHEREFORE, the "Petition for Review" is hereby **DISMISSED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice