REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

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,
Respondent.

CTA Case No. 9355

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:

MAY 08 2018
4:30 p.m.

x- x

DECISION

MANAHAN, *J.:*

This involves the *Petition for Review*[1] filed on May 20, 2016 by petitioner Duty Free Philippines Corporation (DFPC) pursuant to Section 3(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended,[2] seeking the reversal and setting aside of respondent Bureau of Internal Revenue's (BIR) denial of its claim for refund and ordering the latter to refund the amount of Php156,485,605.17.

THE PARTIES

Petitioner is a corporate body attached to the Department of Tourism (DOT), created and organized by Republic Act (RA)

[1] Docket, CTA Case No. 9355, pp. 10-25.
[2] Rules of the Court of Tax Appeals – approved by the Supreme Court on November 22, 2005 (A.M. No. 05-11-07-CTA); Amendments to the 2005 Rules of Court of the Court of Tax Appeals – approved by the Supreme Court on September 16, 2008 (A.M. No. 05-11-07-CTA; and Additional Amendments to the 2005 Revised Rules of the Court of Tax Appeals – approved by the Supreme Court on February 10, 2009 (A.M. No. 05-11-07-CTA).

No. 9593 otherwise known as the Tourism Act of 2009.[3] Its office address is located at EHA Building, Fiesta Mall Shopping Center, Ninoy Aquino Avenue, Parañaque City.[4]

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[5]

THE FACTS

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.[6] Thereafter, BIR assessed and collected value-added tax (VAT) on DFPC's importation of alcohol and tobacco merchandise for sale in 2014.[7]

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 amounting to Php119,943,768.81 and Php36,541,836.36, respectively.[8]

On May 5, 2016,[9] 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.[10]

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[3] Docket, Joint Stipulation of Facts and Issues (JSFI), p. 294.
[4] Docket, Petition for Review. p. 11.
[5] *Id.*
[6] *Id.*, JSFI, p. 294.
[7] *Id.*
[8] *Id.*, Exhibit "P-2," pp. 29-40; Exhibit "P-6," p. 41; Exhibit "P-7" to "P-7-B," pp. 42-44.
[9] *Id.*, Petition for Review, p. 10.
[10] *Id.*, Exhibit "P-3," pp.45-46.

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 of the total amount of Php156,485,605.17 representing the VAT erroneously or illegally assessed and collected from January 1, to December 31, 2014.[11]

On May 31, 2016, respondent was required to file its Answer on the instant petition.[12] Respondent submitted its Answer[13] on August 22, 2016 after this Court granted[14] his several motions for extension to file said pleading.[15]

On August 24, 2016, both parties were ordered to submit their respective pre-trial briefs for the scheduled pre-trial conference on September 29, 2016.[16] Petitioner[17] and respondent[18] filed their respective Pre-Trial Briefs on September 23, 2016.

On November 24, 2016, both parties were ordered to submit a Joint Stipulation of Facts and Issues (JSFI).[19] On January 6, 2017, the required JSFI was submitted.[20]

On January 12, 2017, the pre-trial conference was terminated and the initial presentation of evidence by the petitioner was set on January 25, 2017.[21]

After petitioner presented its evidence, it filed its Formal Offer of Evidence[22] on March 24, 2017 which was admitted on September 20, 2017.[23] On the other hand, respondent manifested through his counsel that he will not present any witness in the case, hence, both parties were required to file their respective memoranda.[24]

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[11] Docket, Petition for Review, p. 22.
[12] *Id.*, Summons dated May 31, 2016, p. 151.
[13] *Id.* at 164-174.
[14] *Id.*, Order dated June 23, 2016, p. 157; Order dated July 22, 2016, p. 163.
[15] *Id.*, Motion for Extension of Time to File Answer, pp. 153-156; Second Motion for Extension of Time to File Answer, pp. 159-162.
[16] *Id.*, Notice of Pre-Trial Conference, pp. 175-176.
[17] *Id.* at 177-186.
[18] *Id.* at 222-224.
[19] *Id.*, Order dated November 24, 2016, pp. 228-229.
[20] *Id.* at 294-297.
[21] *Id.*, Pre-Trial Order dated January 12, 2017, pp. 299-304.
[22] *Id.* at 328-344.
[23] *Id.*, Resolution dated September 20, 2017, pp. 454-455.
[24] *Id.*

Petitioner filed its Memorandum[25] on October 26, 2017 after this Court granted[26] its Motion for Extension of Time to file Memorandum.[27] Respondent, on the other hand, submitted its Memorandum[28] on November 27, 2017. Respondent submitted a Manifestation with Motion[29] correcting the case number cited in his memorandum.

Thus, the case was submitted for decision on December 12, 2017.[30]

ISSUE

The following are the stipulated issues by the parties:[31]

1. Whether the respondent erred in denying petitioner's claim for refund of the total amount of Php156,485,605.17 on the alleged erroneously or illegally assessed and collected VAT for the period January 1 to December 31, 2014;

2. Whether the Honorable Court has jurisdiction over the instant case; and

3. Whether petitioner is entitled to its claim for refund of the total amount of Php156,485,605.17.

Petitioner's Arguments[32]

Petitioner argues that RA No. 10351 did not repeal DFPC's exemption from taxes and duties, including excise tax and VAT under Section 95 of RA No. 9593.

Respondent's Counter-Arguments[33]

Respondent argues that this Court has no jurisdiction over the instant petition citing the case of *Power Sector Assets and*

[25] *Id.*, Memorandum, pp. 461-469.
[26] *Id.*, Order dated October 30, 2017.
[27] Docket, at 456-459.
[28] *Id.* at 474-484.
[29] *Id.* at 470-473.
[30] *Id.*, Resolution dated December 12, 2017, p. 485.
[31] *Id.*, JSFI, p. 295.
[32] *Supra.*, Note 33.
[33] *Supra.*, Note 32.

Liabilities Management Corporation v. Commissioner of Internal Revenue (PSALM case).[34]

Respondent also argues that the petition was filed out of time and petitioner's exemption under RA No. 9593 was already repealed by RA No. 10351.

RULING OF THE COURT

The petition should be dismissed for lack of jurisdiction.

Under the Revised Rules of the Court of Tax Appeals (RRCTA), the Court in Division shall exercise exclusive original jurisdiction to review by appeal decisions of the CIR in cases involving disputed assessments.[35] Said appeal may be availed of by filing a petition for review with the CTA within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the CIR to act on the disputed assessments.[36]

However, the Supreme Court *En Banc* in *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue*[37] ruled that in disputes and claims solely between government agencies and offices, including GOCCs, the administrative procedure in Sections 2 and 3 of Presidential Decree (PD) No. 242 should be followed. A part of the Supreme Court's extensive discussion is quoted below:

> We agree with the Court of Appeals that jurisdiction over the subject matter is vested by the Constitution or by law, and not by the parties to an action. Jurisdiction cannot be conferred by consent or acquiescence of the

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[34] G.R. No. 198146 dated August 8, 2017.

[35] Rule 4 Jurisdiction of the Court
Sec. 3. Cases within the jurisdiction of the Court in Divisions. –
The Court in Divisions 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 disputed assessments, xxx.

[36] Rule 8 Procedure in Civil Cases
Sec. 3. Who may appeal; period to file petition. – (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments xxx may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. xxx

[37] *Supra*, Note 34.

parties or by erroneous belief of the court, quasi-judicial office or government agency that it exists.

However, contrary to the ruling of the Court of Appeals, we find that the DOJ is vested by law with jurisdiction over this case. This case involves a dispute between PSALM and NPC, **which are both wholly government-owned corporations, and the BIR, a government office, over the imposition of VAT on the sale of the two power plants**. There is no question that **original** jurisdiction is with the CIR, who issues the preliminary and the final tax assessments. However, if the government entity disputes the tax assessment, the dispute is already between the BIR (represented by the CIR) and another government entity, in this case, the petitioner PSALM. **Under Presidential Decree No. 242 (PD 242), all disputes and claims *solely* between government agencies and offices, including government-owned or controlled corporations, 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**. As regards cases involving only questions of law, it is the Secretary of Justice who has jurisdiction...

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The use of the word "shall" in a statute connotes a mandatory order or an imperative obligation. Its use rendered the provisions mandatory and not merely permissive, and unless PD 242 is declared unconstitutional, its provisions must be followed. The use of the word "shall" means that administrative settlement or adjudication of disputes and claims between government agencies and offices, including government-owned or controlled corporations, is not merely permissive but mandatory and imperative. Thus, under PD 242, it is mandatory that disputes and claims "**solely**" between government agencies and offices, including government-owned or controlled corporations, involving only questions of law, be submitted to and settled or adjudicated by the Secretary of Justice.

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

The purpose of PD 242 is to provide for a **speedy and efficient administrative settlement or adjudication of disputes between government offices or agencies under the Executive branch, as well as to filter cases to lessen the clogged dockets of the courts**...

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PD 242 is only applicable to disputes, claims, and controversies **solely** between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned or controlled corporations, and where no private party is involved. **In other words, PD 242 will only apply when all the parties involved are purely government offices and government-owned or controlled corporations**. Since this case is a dispute between PSALM and NPC, both government-owned and controlled corporation, and the BIR, a National Government office, PD 242 clearly applies and the Secretary of Justice has jurisdiction over this case...

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The second paragraph of Section 4 of the 1997 NIRC, providing for the exclusive appellate jurisdiction of the CTA as regards the CIR's decision on matters involving disputed assessments, refunds in internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under NIRC, is in conflict with PD 242. Under PD 242, **all** disputes and claims **solely** between government agencies and offices, including government-owned or controlled corporations, 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.

To harmonize Section 4 of the 1997 NIRC with PD 242, the following interpretation should be adopted: (1) As regards **private entities and the BIR**, the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, om or other matters arising under the NIRC or other laws administered by the BIR is vested in the CIR subject to the exclusive appellate jurisdiction of the CTA, in accordance with Section 4 of the NIRC; and (2) Where the disputing parties are **all public entities** (covers disputes between the BIR and other government entities), the case shall be governed by PD 242.

Furthermore, it should be noted that the 1997 NIRC is a general law governing the imposition of national internal revenue taxes, fees, and charges. **On the other hand, PD 242 is a special law that applies only to disputes involving solely government offices, agencies, or instrumentalities**...

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Thus, even if the 1997 NIRC, a general statute, is a later act, PD 242, which is a special law, will still prevail and is treated as an exception to the terms of the 1997 NIRC with regard solely to intra-governmental disputes. PD 242 is a special law while the 1997 NIRC is a general law, insofar as disputes solely between or among government agencies are concerned. Necessarily, such disputes must be resolved under PD 242 and not under the NIRC, precisely because PD 242 specifically mandates the settlement of such disputes in accordance with PD 242. PD 242 is a valid law prescribing the procedure for administrative settlement or adjudication of disputes among government offices, agencies, and instrumentalities under the executive control and supervision of the President.

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PD 242 is now embodied in Chapter 14, Book IV of Executive Order No. 292 (EO 292), otherwise known as the Administrative Code of 1987, which took effect on 24 November 1989... (*Emphasis and italics in the original, citations omitted*)

Since the Supreme Court has reconciled and interpreted the provisions of PD No. 242 and Republic Act (RA) No. 1125,[38] as amended, and declared in the PSALM case, in no uncertain terms, that **all controversies involving government offices, bureaus, agencies and instrumentalities, including GOCCs fall within the initial jurisdiction of the DOJ – such**

[38] An Act Creating the Court of Tax Appeals.

interpretation must be respected by all courts.[39] Unless and until modified by the Supreme Court *En Banc*, the interpretation of PD No. 242 in the *PSALM* case should be applied in determining the proper forum with jurisdiction to resolve disputes, claims and controversies solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government.[40]

Applying this jurisprudential disquisition to the case at hand, petitioner DFPC is an agency attached to DOT which is a national government agency while respondent BIR is a bureau under the supervision of DOF, which is also a national government agency. The opposing parties are both agencies of the government.[41] Hence, the jurisdiction belongs to the Secretary of Justice and the disputes should be resolved pursuant to PD 242.

This Court will not anymore discuss the other issues raised since it becomes moot and academic due to lack of jurisdiction.

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.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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[39] *Metropolitan Waterworks and Sewerage System (MWSS) v. Commissioner of Internal Revenue*, CTA Case No. 9599, February 22, 2018.
[40] *Id.*
[41] Executive Order No. 292, Introductory Provisions
SECTION 2. General Terms Defined. — Unless the specific words of the text, or the context as a whole, or a particular statute, shall require a different meaning:
xxx xxx
(4) Agency of the Government refers to any of the various units of the Government, including a department, bureau, office, instrumentality, or government-owned or controlled corporation, or a local government or a distinct unit therein.

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ATTESTATION

I attest 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's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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.

ROMAN G. DEL ROSARIO
Presiding Justice