REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PETRON CORPORATION, Petitioner,	**CTA CASE NO. 8544**
	Members:
- versus -	**CASTAÑEDA, JR.**, Chairperson, **CASANOVA**, and **COTANGCO-MANALASTAS**, ***JJ.***
COMMISSIONER OF INTERNAL REVENUE, COMMISSIONER OF CUSTOMS and COLLECTOR OF CUSTOMS (PORT OF LIMAY, BATAAN) Respondents.	Promulgated: MAY 17 2016 4:20 p.m.

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DECISION

CASTAÑEDA, JR., ***J.***:

THE CASE

The Petition for Review and Supplemental Petition for Review filed by petitioner Petron Corporation, seek to question the propriety of Customs Memorandum Circular (CMC) No. 164-2012 dated July 18, 2012 and to refund the total amount of P55,691,571.00, representing excise taxes paid under IEIRD No. SN 122406532, respectively.

THE FACTS

Petitioner Petron Corporation is a corporation organized and existing under the laws of the Philippines with principal office at San Miguel Corporation Head Office Complex, 40 San Miguel Avenue, 1550 Mandaluyong City.[1]

Respondent Commissioner of Internal Revenue (CIR) is the chief of the Bureau of Internal Revenue, a government agency tasked to, among others, assess and collect all national internal revenue taxes and charges, and enforce all forfeitures, penalties and fines connected therewith.[2]

Respondent Commissioner of Customs is the chief of the Bureau of Customs, a government agency tasked to, among others, collect customs duties, taxes and other charges on imported goods on behalf of the Commissioner of Internal Revenue pursuant to Section 12(a) of the National Internal Revenue Code of 1997, as amended (NIRC of 1997, as amended).[3]

Respondent Collector of Customs is the District Collector of the collection district at the Port of Limay, Bataan tasked to, among others, collect customs duties, taxes and other charges on imported goods on behalf of the CIR pursuant to Section 12(a) of the NIRC of 1997, as amended.[4]

Petitioner is engaged in the business of manufacturing and marketing petroleum products.[5] On June 2012, petitioner imported 79,231 barrels of alkylate,[6] a raw material or blending component for the manufacture of a gasoline blend which will be further blended with 10% ethanol.[7] Petitioner paid the corresponding excise tax.[8]

On July 18, 2012, respondent CIR issued CMC No. 164-2012 dated July 18, 2012, implementing the BIR Letter dated June 29, 2012, stating that alkylate is subject to tax under Section 148(e) of the NIRC of 1997, as amended.

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[1] Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, Vol. III, p. 1562.
[2] Par. 2, Stipulation of Facts, JSFI, Docket, Vol. III, p. 1562.
[3] Par. 3, Stipulation of Facts, JSFI, Docket, Vol. III, p. 1563.
[4] Par. 4, Stipulation of Facts, JSFI, Docket, Vol. III, p. 1563.
[5] Par. 5, Stipulation of Facts, JSFI, Docket, Vol. III, p. 1563.
[6] Exhibits "P-1" to "P-6", Docket, Vol. IV, pp. 1875-1884.
[7] Par. 7, The Material Facts and Antecedent Proceedings, Petition for Review, Docket, Vol. I, p. 9.
[8] Exhibits "P-88" and "P-89".

Thus, on September 26, 2012, petitioner filed the present Petition for Review (Original Petition), questioning the propriety of CMC No. 164-2012 which imposed excise tax on petitioner's alkylate importation.

On October 5, 2012, respondent CIR filed her Motion to Dismiss,[9] arguing that the Court has no jurisdiction to take cognizance of this case. On November 15, 2012, the Court issued a Resolution,[10] the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, respondent Commissioner of Internal Revenue's Motion to Dismiss is hereby **GRANTED**. Accordingly, the instant Petition for Review is hereby **DISMISSED** for lack of jurisdiction and for having been filed prematurely.
>
> **SO ORDERED.**"

On November 23, 2012, petitioner moved for the reconsideration[11] of the November 15, 2012 Resolution of the Court. On February 13, 2013, the Court issued a Resolution[12] which reversed and set aside the November 15, 2012 Resolution. The dispositive portion thereof reads:

> "**WHEREFORE**, premises considered, the instant **Motion for Reconsideration** is hereby **GRANTED**. Our Resolution dated November 15, 2012 granting respondent's Motion to Dismiss for lack of merit is **REVERSED and SET ASIDE**. Accordingly, the present Petition should be given due course and the issues therewith should be decided on the merits.
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> **SO ORDERED.**"

On March 1, 2013, respondent CIR filed her Motion for Reconsideration of the Resolution dated February 13, 2013.[13] On May

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[9] Docket, Vol. I, pp. 174-189.
[10] Docket, Vol. I, pp. 350-365.
[11] Motion for Reconsideration, Docket, Vol. I, pp. 398-434.
[12] Docket, Vol. I, pp. 553-572, with Associate Justice Juanito C. Castañeda, Jr. dissenting.
[13] Docket, Vol. II, pp. 573-595.

8, 2013, the Court issued a Resolution[14] denying respondent CIR's motion.

On July 15, 2013, respondent CIR furnished the Court through registered mail, a copy of her Petition for Certiorari filed before the Supreme Court.[15]

On August 1, 2013, respondent CIR filed her Answer *ad cautelam*,[16] where she reiterated her position that the Court has no jurisdiction to entertain the Petition; that there is no assessment to speak of; that petitioner failed to exhaust its administrative remedies, *i.e.*, appeal to the Commissioner of Customs; and that petitioner is liable to pay excise tax on its alkylate importation.

On January 28, 2014, petitioner filed its Motion for Leave of Court to File Attached Supplemental Petition for Review (Supplemental Petition),[17] which the Court granted in the Resolution dated March 26, 2014.[18] In its Supplemental Petition, petitioner prayed for the refund of the total amount of P55,691,571.00, representing excise taxes paid under IEIRD No. SN 122406532. On April 25, 2014, respondent CIR filed her Supplemental Answer *ad cautelam*.[19]

On June 26, 2014, respondent filed her pre-trial brief[20] while petitioner filed its pre-trial brief[21] on June 27, 2014.

During trial, petitioner presented the following witnesses: Ms. Clarissa C. Arguelles,[22] Mr. Michael F. Manzano and Mr. Bayani I. Rodriguez, Jr.,[23] Ms. Cecilia N. Senguia and Ms. Monita A. Lopez,[24] Mr. Simon Christopher Mulqueen, Mr. Jonathan F. Del Rosario and Mr. Enrico T. Pizarro,[25] and Mr. Ronald Q. Chiong as its rebuttal witness.[26] Petitioner likewise filed its Formal Offer of Exhibits.[27]

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[14] Docket, Vol. II, pp. 627-640, with Associate Justice Juanito C. Castañeda, Jr. dissenting.
[15] Certiorari, Docket, Vol. II, pp. 665-737.
[16] Docket, Vol. II, pp. 738-764.
[17] Docket, Vol. II, pp. 897-947.
[18] Docket, Vol. II, pp. 1009-1014.
[19] Docket, Vol. II, pp. 1048-1066.
[20] Docket, Vol. III, pp. 1112-1116.
[21] Docket, Vol. III, pp. 1117-1133.
[22] Minutes of the Hearing dated October 1, 2014, Docket, Vol. III, p. 1583.
[23] Minutes of the Hearing dated November 10, 2014, Docket, Vol. IV, p. 1586.
[24] Minutes of the Hearing dated February 11, 2015, Docket, Vol. IV, p. 1693.
[25] Minutes of the Hearing dated March 11, 2015, Docket, Vol. IV, p. 1780.
[26] Minutes of the Hearing dated July 22, 2015, Docket, Vol. IV, p. 2117.
[27] Formal Offer of Exhibits with Motion for Permanent Marking, Docket, Vol. IV, pp. 1789-1874.

On the other hand, respondent CIR presented her witness, Ms. Ma. Lourdes Rosula R. Ramos[28] and formally offered her evidence.[29]

On July 22, 2015, the Court required the parties to submit their Memoranda.[30] Petitioner filed its Memorandum[31] on August 24, 2015 while respondent CIR filed her Memorandum[32] on October 30, 2015. On November 6, 2015, the case was submitted for Decision.[33]

Hence, this Decision.

THE ISSUES

The issues to be resolved by the Court are as follows:

> "A. WHETHER OR NOT PETITIONER IS LIABLE FOR EXCISE TAX ON THE IMPORTATION OF ALKYLATE.
>
> B. WHETHER OR NOT PETITIONER IS ENTITLED TO THE RECOVERY OF THE ALLEGED EXCISE TAXES PAID ON IMPORTED ALKYLATE COVERED BY IMPORT ENTRY AND INTERNAL REVENUE DECLARATION ("IERD") NO. SN 122406532 IN THE AMOUNT OF P55,691,571.00.
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> C. WHETHER THE HONORABLE COURT HAS JURISDICTION OVER THE INITIAL CASE FILED BY PETITIONER AND SUBSEQUENT AMENDEMENT THERETO."[34]

To encapsulate, the issues to be resolved by the Court are: (1) Whether the Court has jurisdiction to entertain the Original Petition and the Supplemental Petition; and (2) If the Court has jurisdiction, whether petitioner is liable to pay the excise tax on its alkylate importation.

[28] Minutes of the Hearing dated May 27, 2015, Docket, Vol. IV, p. 2074.
[29] Respondent's Formal Offer of Evidence, Docket, Vol. IV, pp. 2075-2078.
[30] See Note 25.
[31] Memorandum, Docket, Vol. IV, pp. 2123-2162.
[32] Memorandum, Docket, Vol. IV, pp. 2213-2235.
[33] Resolution, Docket, Vol. IV, p. 2238.
[34] Stipulation of Issues, JSFI, Docket, Vol. III, p. 1563.

THE RULING

Prefatorily, the Court is mindful of the decision of the Supreme Court in the case of *Commissioner of Internal Revenue v. Court of Tax Appeals*,[35] which is an offshoot of the Petition for Certiorari filed by respondent CIR before the Supreme Court, questioning the Resolutions of this Court dated February 13, 2013 and May 8, 2013, respectively. In the said case, the Supreme Court reversed and set aside the aforesaid Resolutions on the ground of lack of jurisdiction and prematurity. The Supreme Court pertinently held as follows:

> "Hence, as the CIR's interpretation of a tax provision involves an exercise of her quasi-legislative functions, the proper recourse against the subject tax ruling expressed in CMC No. 164-2012 is a review by the Secretary of Finance and ultimately the regular courts. In Commissioner of Customs v. Hypermix Feeds Corporation, the Court has held that:
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> The determination of whether a specific rule or set of rules issued by an administrative agency contravenes the law or the constitution is within the jurisdiction of the regular courts. Indeed, the Constitution vests the power of judicial review or the power to declare a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation in the courts, including the regional trial courts. This is within the scope of judicial power, which includes the authority of the courts to determine in an appropriate action the validity of the acts of the political departments. x x x.
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> Besides, Petron prematurely invoked the jurisdiction of the CTA. Under Section 7 of RA 1125, as amended by RA 9282, what is appealable to the CTA is the decision of the COC over a customs collector's adverse ruling on a taxpayer's protest:
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> xxx xxx xxx
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> Verily, the fact that there is no decision by the COC to appeal from highlights Petron's failure to exhaust administrative remedies prescribed by law. Before a party is allowed to seek the intervention of the courts, it is a pre-condition that he avail of all administrative processes

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[35] G.R. No. 207843, July 15, 2015.

afforded him, such that if a remedy within the administrative machinery can be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must be exhausted first before the court's power of judicial review can be sought, otherwise, the premature resort to the court is fatal to one's cause of action. While there are exceptions to the principle of exhaustion of administrative remedies, it has not been sufficiently shown that the present case falls under any of the exceptions.

WHEREFORE, the petition is **GRANTED**. The Resolutions dated February 13, 2013 and May 8, 2013 of the Court of Tax Appeals (CTA), Second Division in CTA Case No. 8544 are hereby **REVERSED and SET ASIDE**. The petition for review filed by private respondent Petron Corporation before the CTA is **DISMISSED** for lack of jurisdiction and prematurity.

SO ORDERED."

However, considering that the principle of judicial courtesy is recognized as an exception rather than the rule and that no order was issued by the Supreme Court to suspend the proceedings, the instant case proceeded in its natural course.

In the consolidated cases of *Bernardo De Leon v. Public Estates Authority* and *Public Estates Authority v. Hon. Selma Palacio Alaras*,[36] the Supreme Court explained the principle of judicial courtesy in this wise:

"As to whether or not the RTC committed grave abuse of discretion in holding in abeyance the resolution of PEAs Motion for the Issuance of a Writ of Demolition, Section 7, Rule 65 of the Rules of Court provides the general rule that the mere pendency of a special civil action for certiorari commenced in relation to a case pending before a lower court or court of origin does not stay the proceedings therein in the absence of a writ of preliminary injunction or temporary restraining order. It is true that there are instances where, even if there is no writ of preliminary injunction or temporary restraining

[36] G.R. Nos. 181970 & 182678, August 3, 2010.

order issued by a higher court, it would be proper for a lower court or court of origin to suspend its proceedings on the precept of judicial courtesy. **The principle of judicial courtesy, however, remains to be the exception rather than the rule**. As held by this Court in *Go v. Abrogar*, the precept of judicial courtesy should not be applied indiscriminately and haphazardly if we are to maintain the relevance of Section 7, Rule 65 of the Rules of Court.

Indeed, in the amendments introduced by A.M. No. 07-7-12-SC, a new paragraph is now added to Section 7, Rule 65, which provides as follows:

> **The public respondent shall proceed with the principal case within ten (10) days from the filing of a petition for certiorari with a higher court or tribunal, absent a temporary restraining order or a preliminary injunction, or upon its expiration. Failure of the public respondent to proceed with the principal case may be a ground for an administrative charge.**"*(Emphasis supplied)*

Based on A.M. No. 07-7-12-SC, this Court should proceed with the principal case from the filing of a petition for certiorari absent any temporary restraining order or preliminary injunction. Meanwhile, the decision of the Supreme Court in G.R. No. 207843 has not yet attained finality because of the pendency of petitioner's motion for reconsideration in the said case. As such, it is the duty of this Court to render this Decision notwithstanding the decision of the Supreme Court in G.R. No. 207843.

The Court shall now rule on the issue of jurisdiction.

The Court has no jurisdiction to rule upon the Original Petition

It is a settled rule that what determines the nature of the action and which court has jurisdiction over it are the allegations in the complaint and the character of the relief sought.[37] It is beyond

[37] *Ermita v. Aldecoa-Delorino*, G.R. No. 177130, June 7, 2011.

doubt that the crux of the matter is petitioner's direct attack on the validity of the BIR Letter and CMC No. 164-2012.

Further, in its Motion for Reconsideration,[38] petitioner recognizes that the issue involved in this case is the propriety of the imposition of excise tax on importation of alkylate. Petitioner states:

> "5. **Indeed, there is no dispute that the issue in the instant case is the propriety of the imposition of excise tax on importation of alkylate**. The implementing issuances of such imposition, CMC No. 164-2012 and the BIR Letter, clearly constitute interpretations of Section 148(e) of the NIRC and any issues on the legality and validity thereof aptly fall within the jurisdiction of the CTA."*(Emphasis supplied)*

A perusal of the questioned BIR Letter reveals that it contains the CIR's interpretation of Section 148(e) of the NIRC of 1997, as amended. The BIR Letter is in the nature of a BIR Ruling considered as the present and official stand of the BIR to queries raised by taxpayers and other stakeholders relative to clarification and interpretation of tax laws. These rules and regulations are presumed to be valid interpretation of the tax code until revoked by the Secretary of Finance himself.[39]

Evidently, the BIR Letter was issued in the exercise of CIR's power to interpret tax law which is subject to review by the Secretary of Finance pursuant to Section 4 of the NIRC of 1997, as amended, to wit:

> "**SECTION 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases**. – The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.
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> The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising

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[38] See Note 11, Docket, Vol. I, p. 400.
[39] *Conwi v. Court of Tax Appeals*, G.R. Nos. 48532 & 48533, August 31, 1992.

under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals."

When the BIR renders an opinion by means of a circular or memorandum, it merely interprets a pre-existing law.[40] Thus, BIR Ruling falls under the quasi-legislative power under the first paragraph of Section 4 of the NIRC of 1997, as amended, and not in the second paragraph under "other matters". The quasi-legislative power is the power of subordinate legislation. It is the power of administrative agencies to issue administrative rules and regulations in order to implement the law and the legislative policy fixed by the legislature.[41] In the exercise of quasi-legislative power, an administrative agency may either be involved in the task of adopting rules and regulations intended to carry out the provisions of a law and to implement legislative policy (legislative rules or regulations), or in the task of interpreting the statute being administered (interpretative regulations).[42]

On the other hand, quasi-judicial power is the power of an administrative agency to hear, determine and make findings of facts, and to resolve the case presented to it on the basis of the said findings of facts and on the basis of its interpretation of the laws and jurisprudence concerning the issues of the case, subject only to the power of the courts to review and scrutinize the same on questions of law and jurisdiction.[43]

Under the second paragraph of Section 4, respondent CIR has the power to decide on administrative tax cases which includes "other matters". These "other matters" pertain to disputes such as the determination if the warrant of distraint and levy issued by the BIR is valid;[44] if the Waiver of Statute of Limitations was validly effected[45] and determination if the BIR's right to collect taxes has prescribed.[46] With the nature of "other matters" as previously enumerated, there is no way an action of the CIR through issuance of a BIR Ruling can be classified as "other matters". The BIR Ruling is simply an interpretation of a provision of tax code in the exercise of

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[40] *La Suerte Cigar and Cigarette Factory v. Court of Appeals*, G.R. No. L-36130, January 17, 1985.
[41] Rolando A. Suarez, Administrative Law, (2001) First Edition, p. 35.
[42] Id., p. 36.
[43] Id., p. 62.
[44] *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.
[45] Id.
[46] *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010.

its quasi-legislative power. To classify the BIR Ruling as "other matters" will render inoperative the first paragraph of Section 4.

In this regard, it has been held that this Court has jurisdiction to rule not only as to the propriety of an assessment or tax treatment of a certain transaction, but also on the validity of the revenue regulation or revenue memorandum circular on which the said assessment is based. In *The Philippine American Life and General Insurance Company v. The Secretary of Finance and the Commissioner of Internal Revenue* (*Philam Life* case),[47] the Supreme Court said:

> "In the recent case of *City of Manila v. Grecia-Cuerdo*, the Court *en banc* has ruled that the CTA now has the power of certiorari in cases within its appellate jurisdiction. To elucidate:
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> xxx xxx xxx
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> > On the strength of the above constitutional provisions, it can be fairly interpreted that **<u>the power of the CTA includes that of determining whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction</u> on the part of RTC in issuing an interlocutory order <u>in cases falling within the exclusive appellate jurisdiction of the tax court</u>. It, thus, follows that <u>the CTA, by constitutional mandate, is vested with jurisdiction to issue writs of certiorari in these cases</u>.**
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> xxx xxx xxx
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> Evidently, *City of Manila* can be considered as a departure from *Ursal* in that in spite of there being no express grant in law, the CTA is deemed granted with powers of certiorari by implication. Moreover, *City of Manila* diametrically opposes *British American Tobacco* to the effect that it is now within the power of the CTA, through its power of certiorari, to rule on the validity of a particular administrative rule or regulation so long as it is

[47] G.R. No. 210987, November 24, 2014.

within its appellate jurisdiction. **Hence, it can now rule not only on the propriety of an assessment or tax treatment of a certain transaction, but also on the validity of the revenue regulation or revenue memorandum circular on which the said assessment is based."**[48]

A reading of the above-quoted provision readily reveals that this Court has jurisdiction to rule on the validity of a revenue regulation or revenue memorandum circular in connection with the exercise of this Court's power to rule on the propriety of an assessment or tax treatment of a certain transaction.

In other words, before this Court may rule on the propriety of CMC No. 164-2012, it must first be determined if it is in connection with an assessment.

It is to be noted that the tax involved in the instant case is excise tax, a national internal revenue tax covered by the NIRC of 1997, as amended. The issuance of assessment on deficiency internal revenue taxes such as excise taxes is mandated under Section 228 of the NIRC of 1997, as amended, which essentially provides that when the CIR or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings through a pre-assessment notice with the law and the facts on which the assessment is made. Within the prescribed period, the taxpayer is required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue a final assessment based on his findings.

In this case, respondents themselves stated that they neither issued a final assessment which can be the proper subject of a protest. Not even petitioner was able to show receipt of the final assessment. Hence, there is nothing to dispute.

As regards IEIRD, it cannot be equated to an assessment. In the case of *Chevron Philippines, Inc. v. Commissioner of the Bureau of Customs*,[49] IEIRD is a document filed, submitted and prepared by the taxpayer-importer which serves as evidence of the final payment of duties and taxes. Thus:

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[48] Id., citing *City of Manila v. Grecia-Cuerdo*, G.R. No. 175723, February 4, 2014.
[49] G.R. No. 178759, August 11, 2008.

> "The term 'entry' in customs law has a triple meaning. It means (1) the documents filed at the customs house; (2) the submission and acceptance of the documents and (3) the procedure of passing goods through the customs house.
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> The IED serves as basis for the payment of advance duties on importations whereas the **IEIRD evidences the final payment of duties and taxes**."*(Emphasis supplied)*

An assessment, in contrast to an IEIRD, is defined in the case of *Adamson v. Court of Appeals*,[50] as follows:

> "xxx a written notice and demand made by the BIR on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed. A written communication containing a computation by a revenue officer of the tax liability of a taxpayer and giving him an opportunity to contest or disprove the BIR examiner's findings is not an assessment since it is yet indefinite."

Thus, there is no assessment in this case because an IEIRD cannot be equated to an assessment. IEIRD is prepared by the taxpayer-declarant, and is an evidence of final payment of duties and taxes. An assessment on the other hand, contains not only a computation of tax liabilities due, but also a demand for payment sent to the taxpayer within a prescribed period. An assessment is vital in determining the period of limitation regarding its proper issuance and the period within which to protest it. Clearly, IEIRD is not an assessment issued by the BIR against the taxpayer.

Considering that no assessment exists in this case, this Court is bereft of jurisdiction to rule upon the propriety of CMC No. 164-2012 following the ruling of the Supreme Court in the *Philam Life case*.

Even if this Court treats the IEIRD as an assessment, still, the Court has no power to rule on the validity of CMC No. 164-2012.

Section 4 of the NIRC of 1997, as amended, provides that BIR Rulings, issued by respondent CIR pursuant to its power to interpret

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[50] G.R. Nos. 120935 & 124557, May 21, 2009.

the provisions of the tax code and other tax laws, are subject to review by the Secretary of Finance. Relatively, the Supreme Court discussed in the *Philam Life* Case that:

> "Preliminarily, it bears stressing that there is no dispute that what is involved herein is the respondent Commissioner's exercise of power under the first paragraph of Sec. 4 of the NIRC – the power to interpret tax laws. This, in fact, was recognized by the appellate court itself, but erroneously held that her action in the exercise of such power is appealable directly to the CTA. As correctly pointed out by petitioner, Sec. 4 of the NIRC readily provides that the Commissioner's power to interpret the provisions of this Code and other tax laws is subject to review by the Secretary of Finance. The issue that now arises is this – where does one seek immediate recourse from the adverse ruling of the Secretary of Finance in its exercise of its power of review under Sec. 4?"

In the *Philam Life* case, the Supreme Court explicitly declared that the power to review the respondent CIR's rulings in relation to her power to interpret tax laws belongs to the Secretary of Finance. Consequently, the Supreme Court held that this Court is the proper forum with which to institute an appeal *from the adverse ruling of the Secretary of Finance*. Verily, it is the adverse ruling of the Secretary of Finance -- not that of the respondent CIR, which is appealable to this Court.

In the present case, petitioner failed to show that it questioned the subject CMC No. 164-2012 before the Secretary of Finance, prior to elevating the matter to this Court. Petitioner cannot directly question the propriety of CMC No. 164-2012 in this Court without affording the Secretary of Finance the opportunity to review the same.

Considering the foregoing, the Court has no jurisdiction over the Original Petition.

The Court, likewise, has no jurisdiction to entertain the Supplemental Petition

Petitioner also filed the subject Supplemental Petition which, essentially, is a claim for refund of the total amount of P55,691,571.00, representing excise taxes paid under IEIRD No. SN 122406532.

In *Spouses Matias B. Aznar III and Eleonor S. Aznar v. Hon. Juanito A. Bernad*,[51] the Supreme Court explained the nature of a supplemental pleading in this wise:

> "xxx a supplemental pleading does not extinguish the existence of the original. As its very name denotes, it only serves to bolster or adds something to the primary pleading. A supplement exists side by side with the original. It does not replace that which it supplements."

In *Planters Development Bank v. LZK Holdings and Development Corporation*,[52] the Supreme Court reiterated the *Aznar case*, and added that a supplemental pleading assumes that the original pleading is to stand and that the issues joined with the original pleading remained an issue to be tried in the action. Thus:

> "As its very name denotes, a supplemental pleading only serves to bolster or adds something to the primary pleading. A supplement exists side by side with the original. It does not replace that which it supplements. Moreover, a supplemental pleading assumes that the original pleading is to stand and that the issues joined with the original pleading remained an issue to be tried in the action. It is but a continuation of the complaint. Its usual office is to set up new facts which justify, enlarge or change the kind of relief with respect to the same subject matter as the controversy referred to in the original complaint."[53]

As previously discussed, the Court has no jurisdiction over the Original Petition. Hence, guided by the rulings of the Supreme Court in the *Aznar case* and later in the *Planters case*, the Court likewise has no jurisdiction over the Supplemental Petition.

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[51] G.R. No. 81190, May 9, 1988.
[52] G.R. No. 153777, April 15, 2005.
[53] Id., also citing *Delbros Hotel Corporation v. Intermediate Appellate Court*, G.R. No. L-72566, 12 April 1988, 159 SCRA 533 and *Southern Pacific Co. v. Conway*, 115 F. 2d 746.

Moreover, the Supplemental Petition suffers the material defect of non-payment of docket fees which divests this Court of jurisdiction to try the same.

Section 1, Rule 141 of the Revised Rules of Court provides:

> "**SECTION 1**. *Payment of fees.* – Upon the filing of the pleading **or other application which initiates an action or proceeding**, the fees prescribed therefor shall be paid in full."*(Emphasis supplied)*

In *Sun Insurance Office, LTD. v. Hon. Maximiano C. Asuncion,*[54] the Supreme Court emphasized the pertinent rule that "it is not simply the filing of the complaint or appropriate initiatory pleading, but the payment of the prescribed docket fee that vests a trial court with jurisdiction over the subject matter or nature of the action." In relation thereto, an initiatory pleading is "an incipient application of a party asserting a claim for relief".[55]

A review of the Supplemental Petition shows that it is an initiatory pleading as petitioner seeks to refund what it has paid to the BIR. In other words, the cause of action of petitioner in its Supplemental Petition is for refund, while its cause of action in the Original Petition is allegedly for assessment. Verily, these are two different initiatory pleadings as they seek different reliefs under the NIRC of 1997, as amended.

In its Motion for Leave of Court to File Attached Supplemental Petition for Review, petitioner states that:

> "11. Petitioner further manifests that the excise tax erroneously assessed and sought to be refunded of P55,691,571.00 had already been considered when filing fees were computed on the instant case. Petitioner thus paid filing fees in the amount of P545,851.53 on the amount sought to be refunded. xxx"[56]

However, the filing fees for the Original Petition could not have included the filing fees for the Supplemental Petition because at the

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[54] G.R. Nos. 79937-38, February 13, 1989.
[55] *Spouses Rodolfo Carpio and Remedios Orendain v. Rural Bank of Sto. Tomas (Batangas), Inc.*, G.R. No. 153171, May 4, 2006, citing *Santo Tomas University Hospital v. Surla*, G.R. No. 129718, August 17, 1998.
[56] See Note 17.

time of the filing of the Original Petition, petitioner had nothing to refund. In fact, the Original Petition even prayed for this Court to issue a temporary restraining order or preliminary injunction against respondents from collecting the subject tax.[57] Hence, the Original Petition and the Supplemental Petition are two distinct initiatory pleadings which require the payment of the corresponding docket fees.

To conclude, the Court has no jurisdiction to entertain the Original Petition because of non-existence of assessment properly appealable to this Court and for failure to question CMC No. No. 164-2012 with the Secretary of Finance, whose adverse ruling is subject to the power of review of this Court based on the *Philam Life* case. Similarly, the Court has no jurisdiction over the Supplemental Petition because the Court has no power to rule on the principal action or the Original Petition, and for petitioner's failure to pay the requisite docket fees, the Supplemental Petition being in the nature of an initiatory pleading.

Finally, considering that the Court has no jurisdiction to entertain the Original Petition and the Supplemental Petition, there is no need to discuss whether petitioner is liable to pay the excise tax on its alkylate importation.

WHEREFORE, in view thereof, the Petition for Review and the Supplemental Petition for Review are **DENIED**, for lack of jurisdiction.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

[57] Prayer, Petition for Review, Docket, Vol. I, pp. 37-38.

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 Section 13 of Article VIII of the Constitution, and the Division's 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice