REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

OCEANAGOLD (PHILIPPINES), INC., Petitioner,	CTA EB NO. 1222 (CTA Case No. 8618)
	Present:
- versus -	DEL ROSARIO, *PJ* CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, *and* RINGPIS-LIBAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 16 2016 1:03 p.m.

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DECISION

Fabon-Victorino, J.:

In the instant appeal[1] before the Court *En Banc*, petitioner assails the: (1) Resolution[2] dated June 13, 2014, which denied its *Petition for Review* dated March 11, 2013 for lack of jurisdiction; and the (2) Resolution[3] dated September 1, 2014, which denied its *Motion for Reconsideration*, for lack of merit.

THE PARTIES

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[1] *En Banc* docket, pp. 1-33.
[2] *En Banc* docket, pp. 40-46.
[3] *En Banc* docket, pp. 71-73.

Petitioner OceanaGold (Philippines), Inc. (Formerly: Australasian Philippines Mining, Inc.) [4] is a domestic corporation with principal place of business at the 2nd Floor, CJV Building, 108 Aguirre St., Legaspi Village, Makati City.

Respondent, on the other hand, is the Commissioner of Internal Revenue (CIR), tasked to assess and collect all national internal revenue taxes, fees and charges, and enforce all forfeitures, penalties, and fines connected therewith. She holds office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.

The following are the circumstances which allegedly gave rise to the present *petition*:

On June 20, 1994, Arimco Mining Corporation (Arimco) entered into a Financial or Technical Assistance Agreement[5] (FTAA) with the Republic of the Philippines, for the large-scale exploration, and subsequent development, and commercial utilization of mineral deposits, over a contract area spanning the Provinces of Nueva Vizcaya and Quirino. Later, Arimco changed its corporate name to Climax-Arimco Mining Corporation (CAMC).

Thereafter, CAMC transferred all its rights in the FTAA to petitioner (then known as Australasian Philippines Mining, Inc.). Such transfer was approved by then Secretary of the Department of Environment and Natural Resources (DENR) Michael T. Defensor, in the Order[6] dated December 4, 2004.

The FTAA allows petitioner to explore mining claims and areas in the provinces of Nueva Vizcaya and Quirino on the condition that the commercial rewards for extracting minerals and mineral products shall be shared with the Philippine government in accordance with the sharing scheme provided in the FTAA.

[4] Per Certificate of Filing of Amended Articles of Incorporation, *Rollo*, p. 251.
[5] Annex A, *Rollo*, pp. 197-250.
[6] Annex C, *Rollo*, pp. 252-254.

After conducting mineral exploration activities, petitioner identified 975 hectares of the Exploration Contract Area as suitable for the Didipio (the mine site) Project and subsequently filed a Partial Declaration of Mining Feasibility (PDMF). The PDMF, which includes the Mining Project Feasibility Study (MPFS), was approved by the DENR on October 11, 2005 and constituted 975 hectares of the Exploration Contract Area as the mining area. The PDMF's approval is petitioner's permit to operate the Didipio Project.

On February 13, 2007, petitioner (then still known as Australasian Philippines Mining, Inc.) requested respondent for ruling to confirm its position that it is exempt from the payment of excise tax on minerals during the recovery period which shall commence from the date of commercial operation but not exceeding five (5) years or until the date of actual recovery, whichever comes earlier.

On May 4, 2007, respondent issued BIR Ruling No. 10-2007[7], confirming petitioner's position that it is exempt from the payment of excise tax from the date of approval of its MPFS up to the end of the recovery period in accordance with the FTAA and the Philippine Mining Act of 1995 (RA No. 7942) and its Implementing Rules and Regulations.

Notwithstanding the issuance of BIR Ruling No. 10-2007, BIR Revenue Region No. 3 issued Mission Order No. 00030182[8] dated September 3, 2012, authorizing revenue officers to search petitioner's premises for articles subject to excise tax and to detain packages containing excisable articles by virtue of Sections 171 and 172 of the 1997 NIRC.

In late 2012, petitioner commenced the commissioning of the Didipio Project, and mined and stockpiled approximately 800,000 metric tons (MT) of ore for further processing. Petitioner commenced ore milling operations to produce copper concentrates.

On December 7, 2012, respondent detained approximately 800,000 MT of mineral ores in petitioner's

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[7] Annex E, *Rollo*, pp. 258-263.
[8] Annex L, *Rollo*, p. 271.

stockpile to prevent it from making removals of copper concentrates without prepayment of excise tax. The subject detention was covered by Apprehension Slip No. 00013424[9]. Three (3) days thereafter, or on December 10, 2012, petitioner protested[10] the said detention of 800,000 MT of ore.

On January 14, 2013, petitioner obtained from the Mines and Geosciences Bureau (MGB) an Ore Transport Permit[11] (OTP) authorizing its first sale and delivery of 5,500 MT of copper concentrates from the Didipio mine site to the shipping point in Poro Point, La Union.

On February 11 and 12, 2013, while petitioner was transporting copper concentrates for delivery to the buyer in accordance with the OTP, respondent seized and detained a total of 100 MT of copper concentrates with an estimated value of US$ 320,000.00. The two (2) apprehensions were covered by Apprehension Slip Nos. 00013426 [12] and 00013427[13], respectively.

On February 12, 2013, petitioner received a letter[14] from respondent dated December 12, 2012, denying its letter-protest dated December 10, 2012.

On February 15, 2013, respondent issued the assailed RMC No. 17-2013[15], revoking and invalidating BIR Ruling No. 10-2007 it earlier issued.

On February 20, 2013, respondent again seized and detained 160 MT of copper concentrates with an estimated value of US$512,000.00 for delivery to the buyer.[16]

On February 26 and 28, 2013, petitioner, for fear of possible breach of its contractual obligation to deliver the copper concentrates, paid under protest the excise taxes

[9] Annex M, *Rollo*, p. 272.
[10] Annex N, *Rollo*, pp.273-274.
[11] Annex F, *Rollo*, p. 264.
[12] Annex O, *Rollo*, p. 275.
[13] Annex P, *Rollo*, p. 276.
[14] Annex Q, *Rollo*, p. 277.
[15] Annex R, *Rollo*, pp. 278-280.
[16] Annexes S to Z, *Rollo*, pp. 281-288.

due on the seized copper concentrates and the remaining concentrates awaiting removal from the Didipio mine site (total of 5,500 MT of concentrates per OTP), in the total amount of ₱14,359,922.59.

On March 1, 2013, respondent again seized and detained 40 MT of copper concentrates while the same were in transit to the buyer.[17] The said 40 MT of copper concentrates were part of the 5,500 MT of copper concentrates per OTP.

On March 13, 2013, petitioner filed a *Petition for Review (With Extremely Urgent Prayer for Issuance of a Suspension Order and Status Quo Ante Order)* before the Court in Division assailing: (1) the seizure and detention of its copper concentrates on February 11, 12 and 20, 2013 and March 1, 2013; (2) the alleged illegal collection of excise tax on the 5,500 MT of copper concentrates; and (3) the validity of the issuance of RMC No. 10-2007.

On June 11, 2013, the Court in Division granted petitioner's application for the issuance of Suspension Order subject to the posting of a bond which petitioner complied with on June 24, 2013.[18]

On July 2, 2013, respondent filed a *Motion to Admit Answer*[19] to which petitioner filed a *Comment with Opposition and a Motion to Declare Respondent in Default*[20] on July 18, 2013.

On November 21, 2013, the Court in Division denied respondent's *Motion to Admit Answer* and granted petitioner's *Motion to Declare Respondent in Default*[21]. But due to petitioner's failure to submit the *Pre-Trial Brief* and the affidavits of its witnesses, and as prayed for by respondent, the Court, reconsidered its resolution and admitted respondent's Answer.[22]

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[17] Annexes AA and BB, *Rollo*, pp. 289-290.
[18] *Rollo*, pp. 702-705.
[19] *Rollo*, pp. 728-733.
[20] *Rollo*, pp. 776-780.
[21] *Rollo*, pp. 864-867.
[22] Minute Resolution, *Rollo*, p. 871.

On January 14, 2014, respondent filed an *Omnibus Motion (to Lift or Dissolve Suspension Order and to Preliminary Determine Issue of Jurisdiction)*[23], which the Court in Division denied in the Resolution[24] dated March 20, 2014.

On April 8, 2014, respondent filed a *Motion for Clarification and/or Reconsideration*[25] of the Resolution of March 20, 2014, which the Court in Division granted in the assailed Resolution[26] of June 13, 2014. Accordingly, the Court in Division dismissed the *Petition for Review* dated March 11, 2013, as follows:

> Based from the foregoing jurisprudence, it is clear that it is not within the CTA's special and limited jurisdiction to rule on the validity of the rules and regulations issued by administrative agency in the performance of its quasi-legislative function which may be defined as the authority delegated by the law-making body to the administrative body to adopt rules and regulations intended to carry out the provisions of the law and implement legislative policy. Thus, this Court cannot grant petitioner's prayer to declare null and void the Assailed RMC as it lacks jurisdiction to do so. Consequently, *We* cannot, likewise, rule upon the propriety of the apprehension and seizure by respondent of the copper concentrates extracted by petitioner since the resolution of the same would depend on the validity or invalidity of the Assailed RMC.

Petitioner moved for reconsideration of the adverse ruling but it was denied in the equally assailed Resolution[27] of September 1, 2014 for lack of merit.

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[23] *Rollo*, pp. 1170-1179.
[24] *Rollo*, pp. 1238-1242.
[25] *Rollo*, pp. 1243-1247.
[26] *Rollo,* 1326-1332.
[27] *Rollo*, pp. 1402-1404.

Hence, this *Petition for Review* before the Court *En Banc* raising the following questions for resolution, to wit:

I. Based on the allegations in the *Original Petition*, is the main subject matter of the case the legality of the collection of excise tax through apprehension, seizure and detention of petitioner's copper concentrates?

II. If the main subject matter of the case is the legality of the collection of excise tax through the apprehension, seizure and detention of petitioner's copper concentrates, does the Second Division of the CTA have jurisdiction to take cognizance of the *Original Petition*?

III. If the main subject matter of the case is the legality of the collection of excise tax through the apprehension, seizure and detention of petitioner's copper concentrates, and the Second Division of the CTA has jurisdiction to take cognizance of the *Original Petition*, does the Court also have jurisdiction to rule upon the corollary issue of whether the Assailed RMC was validly issued and may retroactively apply the revocation of the Ruling?

Petitioner submits that the crux of the controversy in the instant case is not the constitutionality or validity of a law, rule or regulation, but the legality of respondent's decision to collect excise tax through apprehension, seizure, and detention of its copper concentrates by virtue of Sections 171 and 172 of the 1997 NIRC. It contends that respondent's decision to enforce the collection of excise tax through apprehension, seizure and detention of its copper concentrates falls within the jurisdiction of the Court to review decisions of respondent on "other matters" arising under the 1997 NIRC, as mandated in Section 4 thereof and Section 7(a)(1) of RA 1125, as amended.

Further, considering that respondent's decision to enforce collection of alleged unpaid excise tax through the apprehension, seizure and detention of the copper concentrates is an adverse decision appealable to the CTA in accordance with Section 4 of the 1997 NIRC and Section 7(a)(1) of Republic Act No. (RA) 1125[28], the CTA necessarily has jurisdiction to resolve all corollary issues including the determination of whether the Assailed RMC was validly issued and may be applied retroactively. In support thereof, petitioner cited several cases[29] where the Court allegedly took cognizance of and assumed jurisdiction on collateral attacks on the validity of implementing rules and regulations or interpretative rulings or opinions issued by the BIR.

Lastly, petitioner theorizes that the reliance of the Court in Division in the case of *British American Tobacco v. Camacho*[30] is improper as the said case and the present case have entirely different factual milieus. The British American Tobacco case involves a direct attack on the constitutionality of Section 145 of the 1997 NIRC and its implementing rules and regulations, while the instant case involves a collateral attack on the validity of the assailed RMC No. 17-2013. Petitioner cites the case of *Commissioner of Internal Revenue vs. Leal*[31] and *Asia Int'l Auctioneers, Inc. v. Parayno*[32]as authority on matter.

In her *Comment*[33], respondent claims that petitioner wants the CTA to assume jurisdiction over its Petition for Review based on the "other matters" clause of Section 7(a)(1) of RA No. 1125, as amended. However, she argues that the propriety of the apprehension, seizure and detention of petitioner's extracted copper concentrates will depend on the validity or invalidity of RMC No. 17-2003.

Respondent further submits that the Court in Division cannot take cognizance of the instant case even if it falls under Section 171 and 172 of the Tax Code. According to her, it is misleading for petitioner to state that she issued a decision to apprehend, seize and detain petitioner's

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[28] An Act Creating the Court of Tax Appeals
[29] *Commissioner of Internal Revenue v. Fortune Tobacco Corp.*, CTA EB Case No. 228, July 12, 2007; *Negros Consolidated Farmers Ass'n Multi-Purpose Coop. v. Commissioner of Internal Revenue*, CTA Case No. 7994, February 17, 2012; *Metro Pacific Corp. v. Commissioner of Internal Revenue*, CTA Case No. 8318, June 11, 2014
[30] 562 SCRA 571 (2008).
[31] 392 SCRA 9 (2002).
[32] 540 SCRA 536 (2007).
[33] *En Banc* docket, pp. 393-396.

extracted copper concentrates on the ground of its non-payment of excise taxes on extracted minerals sanctioned under Section 151 of the 1997 NIRC. For respondent, resort to summary remedies to enforce collection of delinquent taxes is valid, if there is violation of the Tax Code.

In compliance with the Court's directive, petitioner filed its Memorandum[34] on May 13, 2015, while respondent did not, despite notice. Hence, the case was deemed submitted for decision on June 18, 2015.

RULING OF THE COURT *EN BANC*

In the recent case of *The Philippine American Life and General Insurance Company v. The Secretary of Finance and The Commissioner of Internal Revenue*[35], the Supreme Court categorically declared 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 in the exercise of its appellate jurisdiction**. The pertinent portion of the decision reads:

> 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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> 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 within its

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[34] *En Banc* docket, pp. 402-431.
[35] G.R. No. 210987, November 24, 2014.

> 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.**

The Court *En Banc* grasp the significance of the foregoing ruling that it virtually echoed it in the case of *Delta Air Lines, Inc. vs. Hon. Sec. Cesar V. Purisima (in his capacity as Sec. of the Department of Finance) and Hon. Commissioner Kim S. Jacinto-Henares (in her capacity as Incumbent Commissioner of Internal Revenue)*[36], in the following manner:

> In light of the foregoing pronouncements by the Supreme Court, it is clear that the Court has the authority to review the rulings or opinions of the CIR which were issued to interpret the provisions of the NIRC and other laws administered by the BIR as it falls under the phrase "other matters" arising under the NIRC or other laws administered by the BIR. **Consequently, the Court now has the jurisdiction over the instant Petition for Review insofar as the issue of the validity of BIR Ruling No. 099-2011, DOF Letter dated September 8, 2011 and Q&A No. 11 of RMC No. 46-2008, as provided under Sec. 7 (a) (1) of the NIRC of 1997, as amended.** (*Emphasis supplied*)

Albeit recognition of such jurisdiction, still the CTA cannot take cognizance of the case for failure of petitioner to exhaust administrative remedies before seeking judicial remedy.

Section 4 of the NIRC of 1997, as amended, provides for two powers of respondent, namely, the power to interpret tax laws and the power to decide tax cases, thus:

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[36] CTA EB No. 1113, September 10, 2015.

> Sec. 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**.
>
> The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising 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. (*Boldfacing supplied*)

Respondent's power to make interpretative rules is specifically bestowed in the first paragraph of Section 4, subject only **to review by the Secretary of Finance**.

In relation to the foregoing, there are three types of quasi-legislative or rule making powers of an administrative agency, to wit, interpretative rule, supplementary or detailed legislation, and contingent legislation. Interpretative rule is promulgated by the administrative agency to interpret, clarify or explain statutory regulations under which the administrative body operates. The purpose or objective of an interpretative rule is merely to construe or interpret the statute being administered. Generally, it refers to no single person or party in particular but concerns all those belonging to the same class which may be covered by the said interpretative rule.[37]

Department Order (DO) No. 23-01, as implemented by Revenue Administrative Order (RAO) Nos. 2-2001 and 3-2001, issued by the Secretary of the Department of Finance, laid down the procedure for filing an appeal from the adverse ruling of respondent to the said office. The aggrieved taxpayer may, within thirty (30) days from receipt

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[37] *CIR vs. CA, CTA and Fortune Tobacco Corp.*, G.R. No. 119761, August 29, 1996, Separate Opinion of Justice Bellosillo.

of respondent's adverse ruling, file with the office of the Secretary of the Department of Finance a request for review in writing and under oath.

In the instant case, there is no indication that petitioner filed an appeal with the Secretary of Finance questioning respondent's issuance of the RMC No. 17-2013, which revoked BIR Ruling No. 10-2007 issued in its favor. In other words, petitioner failed to exhaust available administrative remedies before it filed its Petition for Review with the Court in Division.

Jurisprudence have it that before a party is allowed to seek the intervention of the court, it is a pre-condition that he should first avail of all available administrative remedies under the rules. Thus, if a remedy within the administrative machinery can still be resorted to or availed of by giving the administrative officer concerned every opportunity to decide on a matter that comes within his competence, then such remedy should be exhausted first before the court's judicial power can be sought. The premature invocation of the court's intervention is lethal to one's cause of action. Accordingly, absent any finding of waiver or estoppel, the case is susceptible of dismissal for failure to state a cause of action. This doctrine of exhaustion of administrative remedies is not without practical and legal reasons, for one thing, availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. It is no less true to state that courts of justice for reasons of comity and convenience will shy away from a dispute until the system of administrative redress has been completed and complied with so as to give the administrative agency concerned every opportunity to correct its error and to dispose of the case.[38]

The Court does not subscribe to petitioner's stance that the crux of the controversy is not the validity of RMC No. 17-2013, but the legality of respondent's decision to collect excise tax through the apprehension, seizure and detention of the copper concentrates pursuant to Sections 171 and 172 of the 1997 NIRC. And since the Court has jurisdiction over the main subject of the case, it follows that it also has

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[38] *Paat v. Court of Appeals*, 334 Phil. 146, 152-153 (1997).

the power to rule on the corollary issue of the validity of RMC No. 17-2013.

Granting that the allegations in its Petition for Review focus on the legality of the apprehension, seizure and detention of its copper concentrates, it cannot be denied that in assailing the propriety, legality and validity of the revocation of the BIR Ruling No. 10-2007, through RMC No. 17-2013, and in seeking declaration of nullity of the latter issuance, petitioner is actually impugning the validity of the latter's issuance and its implementation which the Court cannot rule upon on the ground of prematurity. As correctly pointed out by the Court in Division, the resolution on the propriety of the apprehension, seizure, and detention of the copper concentrates is anchored on the validity or invalidity of assailed RMC No. 17-2-13.

WHEREFORE, the *Petition for Review* filed by petitioner OceanaGold (Philippines), Inc. is **DENIED**. Accordingly, the assailed Resolution dated June 13, 2014 and Resolution dated September 1, 2014, are hereby **AFFIRMED.**

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

(With Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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

ON LEAVE
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
(I join the Dissenting Opinion of PJ Del Rosario)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that 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

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

OCEANAGOLD (PHILIPPINES), INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1222
CTA CASE No. 8618

Present:

DEL ROSARIO, *P.J.,*
CASTANEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, and
RINGPIS-LIBAN, *JJ.*

Promulgated:

JUN 16 2016 1:03 p.m.

x -- x

DISSENTING OPINION

DEL ROSARIO, P.J.:

With due respect to my esteemed colleague, I dissent with the *ponencia* in denying the Petition for Review which thereby upholds the Court in Division's Resolutions dated June 13, 2014 and September 1, 2014 declaring that the Court of Tax Appeals (CTA) has no jurisdiction over the case on the premise that petitioner failed to exhaust administrative remedies before appealing before this Court.

The present case, however, is not confined to an attack on the validity of Revenue Memorandum Circular (RMC) No. 17-2013 issued on February 15, 2013 but -- more appropriately -- an appeal from the action of the Bureau of Internal Revenue (BIR) in causing the apprehension, seizure and detention of petitioner's copper concentrates despite the existence of BIR Ruling No. 10-

2007 which confirms petitioner's position that it is exempt from payment of excise tax on minerals. **To be sure, the Bureau of Internal Revenue (BIR)'s order detaining petitioner's copper concentrates until payment of its excise taxes takes the nature of the Commissioner of Internal Revenue (CIR)'s decision on "other matters" arising** under the National Internal Revenue Code (NIRC) of 1997, as amended, which is clearly within the exclusive appellate jurisdiction of the CTA pursuant to Section 7 (1) of Republic Act (RA) No. 1125, as amended, *viz:*

> "Section 7. *Jurisdiction.* - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided.
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or **other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue;**" (*Boldfacing supplied*)

In clarifying the CTA's jurisdiction on the CIR's decisions involving aforestated "other matters", the Supreme Court in *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.,*[1] opined that such term **covers other cases that arise out of the NIRC or related laws administered by the BIR and not limited to cases** which involve the decisions of the CIR with regard to assessments or refunds. Said the Supreme Court:

> "Plainly, the assailed CTA *En Banc* Decision was correct in declaring that there was nothing in the foregoing provision upon which petitioner's theory with regard to the parameters of the term "other matters" can be supported or even deduced. What is rather clearly apparent, however, is that the term "other matters" is limited only by the qualifying phrase that follows it.
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> Thus, on the strength of such observation, we have previously ruled that the appellate jurisdiction of the CTA is not limited to cases which involve decisions of the CIR on matters relating to assessments or refunds. **The second part of the provision covers other cases that arise out of the National Internal Revenue Code (NIRC) or related laws administered by the**

[1] G.R. No. 169225, November 17, 2010.

> **Bureau of Internal Revenue (BIR).**" (*Boldfacing supplied* and *Citation omitted*)

Undeniably, the apprehension, detention and seizure of petitioner's copper concentrates purportedly for non-payment of excise tax are actions carried out pursuant to the NIRC and, thus, fall within the category of "other matter" decision of the CIR.

I agree with the *ponencia* that the Court has jurisdiction, through its power of *certiorari*, to rule on the validity of a particular administrative rule or regulation in the exercise of its appellate jurisdiction.[2] I also agree with the *ponencia* that questions on the validity of BIR issuances should first be appealed before the Secretary of Finance and failure to do so would be tantamount to non-exhaustion of administrative remedies. **This latter legal precept, however, is confined to situations where no appeal against the particular action of the BIR is warranted or taken. In situations where under existing law, an action of the BIR is ripe for appeal, the invocation of the CTA's jurisdiction becomes the proper remedy lest the right to appeal may be foreclosed. Stated otherwise, had petitioner deferred to avail of the remedy of appeal to the CTA, the apprehension, detention and seizure of the copper concentrates would have become final and executory.**

I further reiterate my Dissenting Opinion in *EGIS Projects S.A. vs. Secretary of Finance and Commissioner of Internal Revenue*[3] that the CTA has jurisdiction to pass upon the validity of BIR issuances if it is the *lis mota* of the case, as that involved in the present controversy, *viz*:

> "xxx Notwithstanding this limitation, I am of the view that the affected taxpayer can still seek a review of the CIR's ruling before the CTA pursuant to Section 7 of Republic Act (R.A.) No. 1125, as amended by R.A. No. 9282, which provides:
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> > 'Sec. 7. Jurisdiction. — The CTA shall exercise:

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[2] *The Philippine American Life and general Insurance Company vs. The Secretary of Finance and the Commissioner of Internal Revenue*, G.R. No. 210987, November 24, 2014 citing *City of Manila vs. Cuerdo*, G.R. No. 175723, February 4, 2014.

[3] CTA EB No. 1023, September 16, 2014.

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;

Plainly, the CTA is authorized to review, on appeal, decisions of the CIR on 'other matters arising under the NIRC and other tax laws administered by the BIR.' The 'other matters' contemplated under the aforesaid provision of law includes rulings of the CIR implementing tax laws. **In CIR vs. Josefina Leal, the Supreme Court was no less categorical in declaring that jurisdiction to review rulings of the CIR, i.e., RMO No. 15-91 and RMC No. 43-91, is vested with the CTA**, *viz.*:

'The questioned RMO No. 15-91 and RMC No. 43-91 are actually rulings or opinions of the Commissioner implementing the Tax Code on the taxability of pawnshops. . . .

xxx xxx xxx'

Under Republic Act No. 1125 (An Act Creating the Court of Tax Appeals [CTA for brevity]), as amended, such rulings of the Commissioner of Internal Revenue are appealable to that court, thus:

'SEC. 7. Jurisdiction. — The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided —

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other laws or part of law administered by the Bureau of Internal Revenue;

xxx xxx xxx'

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> 'SEC. 11. Who may appeal; effect of appeal. — Any person, association or corporation adversely affected by a decision or ruling of the Commissioner of Internal Revenue, or the Commissioner of Customs or any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling.' . . .
>
> 'SEC. 18. . . . — No judicial proceedings against the Government involving matters arising under the National Internal Revenue Code, the Customs Law or the Assessment Law shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the Court of Tax Appeals and disposed of in accordance with the provisions of this Act.' . . .

The Court, in *Rodriguez, etc. vs. Blaquera, etc.*, ruled:

'Plaintiff maintains that this is not an appeal from a ruling of the Collector of Internal Revenue, but merely an attempt to nullify General Circular No. V-148, which does not adjudicate or settle any controversy, and that, accordingly, this case is not within the jurisdiction of the Court of Tax Appeals.

'We find no merit in this pretense. General Circular No. V-148 directs the officers charged with the collection of taxes and license fees to adhere strictly to the interpretation given by the defendant to the statutory provisions abovementioned, as set forth in the Circular. **The same incorporates, therefore, a decision of the Collector of Internal Revenue (now Commissioner of Internal Revenue) on the manner of enforcement of the said statute, the administration of which is entrusted by law to the Bureau of Internal Revenue. As such, it comes within the purview of Republic Act No. 1125, Section 7 of which provides that the Court of Tax Appeals 'shall exercise exclusive appellate jurisdiction to review by appeal . . . decisions of the Collector of Internal Revenue in . . . matters arising under the National Internal Revenue Code or other law or part of the law administered by the Bureau of Internal Revenue.' . . .' . . .**

In the same vein, we held in *Meralco Securities Corporation vs. Savellano*, thus:

'Respondent judge has no jurisdiction to take cognizance of the case because the subject matter thereof clearly falls

> within the scope of cases now exclusively within the jurisdiction of the Court of Tax Appeals. Section 7 of Republic Act No. 1125, enacted June 16, 1954, granted to the Court of Tax Appeals exclusive appellate jurisdiction to review by appeal, among others, decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue. The law transferred to the Court of Tax Appeals jurisdiction over all cases involving said assessments previously cognizable by Courts of First Instance, and even those already pending in said courts. The question of whether or not to impose a deficiency tax assessment on Meralco Securities Corporation undoubtedly comes within the purview of the words 'disputed assessments' or of 'other matters arising under the National Internal Revenue Code. . . .' In the case of Blaquera, etc. vs. Rodriguez, etc. (103 Phil. 511 [1958]), this Court ruled that 'the determination of the correctness or incorrectness of a tax assessment to which the taxpayer is not agreeable, falls within the jurisdiction of the Court of Tax Appeals and not of the Court of First Instance, for under the provisions of Section 7 of Republic Act No. 1125, the Court of Tax Appeals has exclusive appellate jurisdiction to review, on appeal, **any decision of the Collector of Internal Revenue in cases involving disputed assessments and other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue.**'
>
> Here, as earlier mentioned, respondent Josefina Leal, being a pawnshop owner, is assailing the revenue orders imposing 5% lending investor's tax on pawnshops issued by petitioner. Clearly then, she should have filed her petition with the Court of Tax Appeals, not the RTC. Indeed, the Court of Appeals erred in holding that the RTC order should have been challenged before this Court.

Indubitably, rulings or opinions of the CIR implementing tax laws are reviewable by the CTA as they pertain to 'other matters' arising under the NIRC or other laws administered by the BIR.

xxx xxx xxx

xxx Once the tax assessment case is appealed before the CTA, the CTA will have to rule on the constitutionality or validity of BIR

> ruling as it is the very *lis mota* or crux of the controversy in a tax assessment case. Considering the CTA has jurisdiction to review ruling/opinion of the BIR, the CTA has the power to touch the issue of the constitutionality of a law, or validity of revenue regulations and issuances of the BIR, upon which the assessment is based. **Jurisprudence dictates that courts will not touch the issue of constitutionality unless it is truly unavoidable and is the very *lis mota* or crux of the controversy. Conversely, courts are mandated to resolve the issue of constitutionality if it is unavoidable and is the very *lis mota* of the case.**" (*Boldfacing supplied* and *Citations omitted*)

All told, I **VOTE** to **GRANT** the Petition for Review filed by Oceanagold, **REVERSE** and **SET ASIDE** the Resolutions of the CTA Second Division dated June 13, 2014 and September 1, 2014, and **REMAND** the case to the Court in Division for further proceedings.

ROMAN G. DEL ROSARIO
Presiding Justice