Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

OCEANAGOLD (PHILIPPINES), INC., Petitioner,	**CTA Case No. 8618**
	Members: **CASTAÑEDA, JR.**, *Chairperson* **CASANOVA**, *and* **COTANGCO-MANALASTAS**, *JJ.*
-versus-	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JUN 13 2014 11:21 a.m.

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RESOLUTION

For resolution is respondent's "**Motion for Clarification and/or Reconsideration**", filed on April 8, 2014, with petitioner's "**Comment with Opposition** (*To Respondent's Motion for Clarification and/or Reconsideration*)", filed on May 5, 2014, praying for this Court to reconsider its Resolution dated March 20, 2014 and, accordingly, issue another one, granting her "**Omnibus Motion (to Lift or Dissolve Suspension Order and to Preliminarily Determine Issue of Jurisdiction)**", filed on January 14, 2014.

In her Motion, respondent maintains that when she filed her Omnibus Motion on January 14, 2014, she was not in default, and she had the necessary legal standing to do so.

Upon close scrutiny of the records, We found that this Court has, indeed, already lifted the Order of Default and admitted respondent's Answer as shown in the Minutes of the Hearing[1] dated November 21,

[1] Docket (Vol. II), p. 871.

2013, which was, unfortunately, inadvertently overlooked by this Court when it issued its Resolution dated March 20, 2014. Thus, the Court hereby rectifies the said error and now **SETS ASIDE its Resolution promulgated on March 20, 2014.**

Hence, We now resolve respondent's "**Omnibus Motion (to Lift or Dissolve Suspension Order and to Preliminarily Determine Issue of Jurisdiction)**" filed on January 14, 2014, with petitioner's **"Comment with Opposition** (To Respondent's Omnibus Motion)" filed on February 5, 2014.

In the subject Motion, respondent raised the following grounds for the consideration of the Court:

> **"4.1. This Honorable Court has no jurisdiction over the issues involved in this particularly case;**
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> > **4.1.1 Firstly, this Honorable Court does not have jurisdiction over the issue of whether or not Revenue Memorandum Circular No. 17-2013 is valid; and**
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> > **4.1.2 Secondly, neither does this Honorable Court have jurisdiction over the issue of whether or not the apprehension and seizure by respondent, of the copper concentrates extracted by petitioner, was undertaken in accordance with law;**
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> **4.2. The maintenance of the suspension order is not proper under the circumstances in this case;**
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> > **4.2.1 The circumstances of this case are incompatible with the mechanics of the issuance of a suspension order, as defined in Republic Act No. 1125, as amended, and also in the Revised Rules of this Honorable Court;**
> >
> > **4.2.2 The suspension order, defined in Republic Act No. 1125, as amended, and also in the Revised Rules of this Honorable Court, does not apply to this case."**

On the other hand, petitioner posits that respondent's Omnibus Motion does not comply with the rule on motions. It also argues that this Honorable Court has jurisdiction over the propriety of the apprehension, seizure and detention of the copper concentrates and the validity of the revocation of the ruling, through the Assailed RMC, as these fall within the jurisdiction of this Honorable Court under "other matters" arising under the NIRC or other laws administered by the BIR. Further, petitioner asseverates that respondent waived the objections she raised in her Omnibus Motion by her failure to raise the same in her Motion for Reconsideration. Furthermore, it contends that respondent's Omnibus Motion requesting the lifting of the suspension order is in essence a second motion for reconsideration which is expressly prohibited under the rules of this Honorable Court. Lastly, petitioner claims that the suspension order is compatible with the factual milieu of the instant case.

Considering that Court's lack of jurisdiction may be raised at any stage of the proceedings, even on appeal,[2] We will entertain respondent's motion to preliminarily determine issue of jurisdiction.

In the subject Motion, respondent claims that it is the regular courts and not this Honorable Court that has jurisdiction on the issue of whether or not Revenue Memorandum Circular No. 17-2013 (Assailed RMC) is valid.

Petitioner, on the other hand, counter-argues that the instant case does not involve the constitutionality of the Assailed RMC but rather it involves only the propriety, legality and validity of the revocation of the BIR Ruling No. 10-2007 through the Assailed RMC. Accordingly, the validity of the Assailed RMC is but a corollary issue necessary to the adjudication of the validity of respondent's revocation of the Ruling. Hence, the instant case clearly falls within the jurisdiction of this Court.

We agree with respondent's contention.

Petitioner cannot rely on its play of semantics in trying to persuade this Court that this case does not involve an issue on the constitutionality or validity of the RMC No. 17-2013. It is undeniable 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 praying for the declaration of nullity of the Assailed RMC[3] in its Petition for Review, petitioner is, in effect, questioning the constitutionality or validity of the issuance and the implementation of the said Circular

[2] Francel Realty Corporation vs. Sycip, 469 SCRA 431
[3] Par. 3 (c), Prayer, Petition for Review, Docket (Vol. I), p. 35.

which this Court cannot rule upon since the same is not within Our jurisdiction.

The case of *British American Tobacco vs. Camacho,*[4] citing the case of *Smart Communications, Inc. vs. National Telecommunications Commission*[5] *(Smart Communication Case)*, is instructive:

> "**However, where what is assailed is the validity or constitutionality of a law, or a rule or regulation issued by the administrative agency in the performance of its quasi-legislative function, the regular courts have jurisdiction to pass upon the same. 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. Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." (Emphasis supplied)

It should, likewise, be pointed out that the foregoing ruling in *Smart Communication Case* was reiterated in the recent case of *Commissioner of Customs vs. Hypermix Feeds Corporation (Hypermix Case)*[6]. Moreover, the Supreme Court in the *Hyper Mix Case* treated the following issues (similar to the issues in the case at bench) as issue on constitutionality of CMO 27-2003, *viz:*

> "xxx. Respondent contended that CMO 27-2003 was issued without following the mandate of the Revised

[4] GR. No. 163583, August 20, 2008.
[5] G.R. No. 151908, August 12, 2003
[6] G.R. No. 179579, February 1, 2012

> Administrative Code on public participation, prior notice, and publication or registration with the University of the Philippines Law Center.
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> x x x
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> Lastly, respondent asserted that the retroactive application of the regulation was confiscatory in nature."

In relation thereto, the High Tribunal, again, emphasized in the case of *Sergio Carbonilla, et al., vs. Board of Airlines representatives, et al.,*[7] that the jurisdiction over the validity and constitutionality of rules and regulations lies before the regular courts and not before the Court of Tax Appeals, to wit:

> "The jurisdiction over the validity and constitutionality of rules and regulations issued by the Commissioner under Section 608 of the TCCP lies before the regular courts. It is not within the jurisdiction of the Office of the President or the CTA."

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.[8] Thus, this Court cannot grant petitioner's prayer to declare null and void the Assailed RMC as it lacks the 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.

Anent petitioner's contention that respondent's Omnibus Motion should be denied on the ground that said motion fails to comply with the requirement that "the notice of hearing must be served in such a manner as to ensure its receipt by the other party at least three days before the date of hearing" pursuant to Section 4, Rule 15 of the 1997 Rules of Civil Procedure, the same, likewise, deserves scant consideration.

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[7] G.R. No. 193247, September 14, 2011.

[8] Executive Secretary, et al., vs. Southwing Heavy Industries, et al., G.R. Nos. 164171, 164172 & 168741, February 20, 2006, citing the Book of Cruz, Philippine Administrative Law, 2003 Edition, p. 24.

In the case of *KKK Foundation, Inc. v. Hon. Adelina Calderon-Bargas*,[9] the Supreme Court ruled:

> ". . . Service of a copy of a motion containing a notice of the time and the place of hearing of that motion is a mandatory requirement, and the failure of movants to comply with these requirements renders their motions fatally defective. However, there are exceptions to the strict application of this rule. These exceptions are: (1) where a rigid application will result in a manifest failure or miscarriage of justice especially if a party successfully shows that the alleged defect in the questioned final and executory judgment is not apparent on its face or from the recitals contained therein; (2) where the interest of substantial justice will be served; (3) where the resolution of the motion is addressed solely to the sound and judicious discretion of the court; and (4) where the injustice to the adverse party is not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.
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> xxx xxx xxx
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> **The notice requirement is not a ritual to be followed blindly. Procedural due process is not based solely on a mechanical and literal application that renders any deviation inexorably fatal. Instead, procedural rules are liberally construed to promote their objective and to assist in obtaining a just, speedy and inexpensive determination of any action and proceeding."** (Emphasis supplied.)

In the case at bench, while petitioner may have received on January 14, 2014, the subject Omnibus Motion setting the case for hearing on January 16, 2014, records show that petitioner was still given the opportunity to study and oppose the said motion. In fact, it was given twenty (20) days from receipt of the same to file a comment thereto.[10] Thus, the very purpose of giving a notice of hearing had been achieved.

In view of the foregoing findings, the Court deems it unnecessary to discuss the other issues raised for being moot and academic.

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[9] G.R. No. 163785, December 27, 2007.
[10] Minutes of the Hearing dated January 16, 2014.

WHEREFORE, premises considered, respondent's **Motion for Clarification and/or Reconsideration**, filed on April 8, 2014, is **GRANTED.** Accordingly, the Resolution promulgated on March 20, 2014 is **SET ASIDE.**

Likewise, the "**Omnibus Motion (to Lift or Dissolve Suspension Order and to Preliminarily Determine Issue of Jurisdiction)**", filed on January 14, 2014, is **GRANTED.** Accordingly, the instant **Petition for Review [With Extremely Urgent Prayer for Issuance of a Suspension Order and Status Quo Ante Order]** is hereby **DENIED** for lack of jurisdiction. Thus, the **Suspension Order** issued by this Court in June 11, 2013 Resolution is hereby **LIFTED** or **DISSOLVED.**

SO ORDERED.

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

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice