REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

****

DUTY FREE PHILIPPINES CORPORATION, Petitioner,	**CTA Case No. 9548**
	Members:
- versus -	**DEL ROSARIO,** P.J., Chairperson, **UY,** and **MINDARO-GRULLA,** JJ.
BUREAU OF INTERNAL REVENUE, REPRESENTED BY COMMISSIONER CAESAR R. DULAY, Respondent.	***Promulgated:*** MAY 3 0 2019 ; 11:00am

x - x

DECISION

UY, J.:

The instant *Petition for Review*[1] was filed on March 15, 2017 by Duty Free Philippines Corporation, petitioner, against the Bureau of Internal Revenue (BIR), respondent, arising from respondent's alleged inaction on petitioner's claim for refund of erroneously or illegally assessed and collected value-added tax (VAT) covering the period January 1 to December 31, 2015 in the total amount of ₱142,902,679.00.

THE FACTS

Petitioner Duty Free Philippines Corporation (or DFPC) is the corporate entity created out of the Duty Free Philippines, a government agency created pursuant to Executive Order No. 46 (1986).[2] It is attached to the Department of Tourism (DOT) and is under the supervision of the Secretary for program and policy

---

[1] Docket, pp. 10 to 28.
[2] Sections 2(d) and 89, Republic Act (RA) No. 9593, otherwise known as *"The Tourism Act of 2009"*.

coordination.[3] Its mandate, *inter alia*, is to operate the duty- and tax-free merchandising system in the Philippines to augment the service facilities for tourists and to generate foreign exchange and revenue for the government.[4]

On the other hand, respondent BIR is a government bureau under the supervision and control of the Department of Finance. The Honorable Caesar R. Dulay, Commissioner of Internal Revenue, represents it here.[5]

On October 17, 2016, petitioner filed its letter dated October 6, 2016 addressed to Commissioner Caesar R. Dulay,[6] requesting for the refund and/or reimbursement of the VAT imposed on the importations made by petitioner of alcohol and tobacco products for its merchandising operations, for the period of January 1, 2015 to December 31, 2015, amounting to ₱142,902,679.00, which respondent BIR allegedly assessed and collected, and which petitioner allegedly paid under protest.

Claiming inaction,[7] petitioner elevated the matter to this Court by filing the instant *Petition for Review* on March 15, 2017.[8]

On May 8, 2017, respondent filed his *Answer (To the Petition for Review dated 13 March 2017)*,[9] interposing certain special and affirmative defenses, to wit:

> (1) this Court cannot exercise jurisdiction over petitioners' judicial claim for the refund of alleged payment of VAT for the period January to March 2015, as the same was filed beyond the period allowed by the NIRC of 1997;
>
> (2) since the claim is for an alleged erroneously paid tax, Section 229 of the NIRC of 1997 should be applied to the instant case;

---

[3] Sections 28 and 89, RA No. 9593.
[4] Section 90, RA No. 9593.
[5] Par. 5, *Petition for Review*, Docket, p. 11, vis-à-vis Par. 1, *Answer*, Docket, p. 53.
[6] Exhibit "P-1", Docket, pp. 357 to 365.
[7] Par. 2, *Petition for Review*, Docket, p. 10.
[8] Docket, pp. 10 to 28.
[9] Docket, pp. 53 to 62.

(3) applying the said Section 229, the claim for the payment of the taxes for the subject period should have been filed within the two-year period from the date of payment;

(4) since the instant petition was filed with this Court on March 15, 2017, the same was already filed out of time; and

(5) petitioner cannot rely on the application of Section 112 of the NIRC to the instant case since it only applies to claim for refund of creditable input VAT attributable to zero-rated or effectively zero-rated sales.

This case was set for Pre-Trial Conference on July 6, 2017. By agreement of both parties' counsels, they submitted their *Joint Stipulation of Facts and Issues* on July 21, 2017.[10] Correspondingly, a Pre-Trial Order was issued by this Court on September 11, 2017.[11]

During trial, petitioner presented two (2) witnesses namely: Atty. Rosalie B. Dinoy, petitioner's Officer-in-Charge (OIC) for its Corporate and Legal Affairs Office; and Eleonor A. Macaraig, OIC of petitioner's Finance Division.[12]

After completing their respective testimonies, petitioner filed its *Formal Offer of Evidence* on February 14, 2018,[13] offering Exhibits "P-1" to "P-94", inclusive of sub-markings, as its documentary exhibits. In the Resolution dated April 24, 2018,[14] this Court admitted all of offered exhibits and deemed petitioner to have rested its case.

On the other hand, during the hearing held on June 14, 2018[15] for the presentation of respondent's evidence, counsel for respondent manifested that there is no report of investigation from the Revenue Officer who was assigned to conduct the audit of petitioner's case. Thus, he has no evidence to present. Hence, both counsels were given thirty (30) days to file their respective *Memoranda*.

Petitioner filed its *Memorandum* on July 16, 2018,[16] while respondent filed his *Memorandum* on July 30, 2018.[17] Thus, the

---

[10] Docket, pp. 253 to 259.
[11] Docket, pp. 297 to 308.
[12] Order dated January 30, 2018, Docket, pp. 341 to 342.
[13] Docket, pp. 344 to 356.
[14] Docket, pp. 517 to 518.
[15] Order dated June 14, 2018, Docket, pp. 520 to 521.
[16] Docket, pp. 527 to 542.
[17] Docket, pp. 548 to 556.

instant case was deemed submitted for decision on August 7, 2018.[18]

Hence, this Decision.

THE ISSUES

The parties stipulated the following issues[19] for this Court's resolution, to wit:

> "A. WHETHER [PETITIONER] IS EXEMPT FROM PAYMENT OF DUTIES AND TAXES, INCLUDING VALUE ADDED TAXES ON ITS IMPORTATION OF MERCHANDISE FOR SALE.
>
> B. WHETHER [PETITIONER] HAS COMPLIED WITH THE SUBMISSION OF COMPLETE DOCUMENTS IN SUPPORT OF ITS CLAIM FOR REFUND IN THE ADMINISTRATIVE LEVEL.
>
> C. WHETHER [PETITIONER] IS ENTITLED TO A REFUND OR TAX CREDIT IN THE TOTAL AMOUNT OF PHP142,902,679.00, REPRESENTING PAYMENT OF VAT FOR ITS IMPORTATION OF ALCOHOL AND TOBACCO MERCHANDISE FOR SALE FOR 2015."

Petitioner's arguments:

Petitioner argues that RA No. 10351 did not repeal its exemption from paying *"duties and taxes, including excise and VAT, relative to the importation of merchandise for sale"* under Section 95 of RA No. 9593. According to petitioner, Section 7 of RA No. 10351 did not authorize the BIR to impose VAT on alcohol and tobacco products.

Moreover, petitioner avers that assuming that petitioner's exemption was repealed, it is still not liable to pay VAT because its importation is not the same importation contemplated by the VAT law.

On the basis of the same assumption, petitioner contends that it is still not liable to pay VAT when the goods are disposed for

---

[18] Resolution dated August 7, 2018, Docket, p. 559.
[19] Stipulated Issues, *Joint Stipulation of Facts and Issues*, Docket, pp. 253 to 254.

ꝌD

consumption outside the Philippines based on the Cross-Border Doctrine.

Respondent's counter-arguments:

Respondent counter – argues that this Court cannot exercise jurisdiction over the instant case as the petition was filed beyond the period allowed by the National Internal Revenue Code (NIRC) of 1997, as amended.

In addition, respondent claims that petitioner is not entitled to a refund or tax credit in the total amount of ₱142,902,679.00, allegedly representing payment of VAT for its importation of alcohol and tobacco merchandise for sale for the period January 1 to December 31, 2015.

According to respondent, the exemption of petitioner under R.A. 9593 has already been repealed by the enactment of Republic Act No. 10351 or *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.*

THE COURT'S RULING

This Court lacks jurisdiction to entertain the present *Petition for Review*. Thus, the same must be dismissed.

Sections 66, 67, and 68, Chapter 14, Book IV of Executive Order (EO) No. 292, otherwise known as the Administrative Code of 1987, provides as follows:

> "SEC. 66. *How Settled.* - **All 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, such as those arising from the interpretation and application of statutes,** contracts or agreements, **shall be administratively settled or adjudicated in the manner provided in this Chapter.** This Chapter shall, however, not apply to disputes

ᴹᴺ

involving the Congress, the Supreme Court, the Constitutional Commissions, and local governments.

SEC. 67. *Disputes Involving Questions of Law.* - **All cases involving only questions of law shall be submitted to and settled or adjudicated by the Secretary of Justice** as Attorney-General of the National Government and as *ex officio* legal adviser of all government-owned or controlled corporations. His ruling or decision thereon shall be conclusive and binding on all the parties concerned.

SEC. 68. *Disputes Involving Questions of Fact and Law.* - **Cases involving mixed questions of law and of fact or only factual issues shall be submitted to and settled or adjudicated by:**

(1) **The Solicitor General,** if the dispute, claim or controversy involves only departments, bureaus, offices and other agencies of the National Government as well as government-owned or controlled corporations or entities **of whom he is the principal law officer or general counsel**; and

(2) **The Secretary of Justice, in all other cases not falling under paragraph (1)**." *(Emphases supplied)*

Based on the foregoing provisions, it is clear that all 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, such as those arising from the interpretation and application of statutes, shall be administratively settled or adjudicated, by the Secretary of Justice or the Solicitor General, depending on the question involved therein, and whether the latter officer is the principal law officer or general counsel of the government offices involved, as the case may be.

Interpreting the above-quoted provisions of EO No. 292 and its predecessor, Presidential Decree No. 242, which has substantially the same provisions, the Supreme Court, in *Power Sector Assets and Liabilities Management Corporation vs. Commissioner of Internal Revenue* ("*PSALM* case"),[20] ruled as follows:

---

[20] G.R. No. 198146, August 8, 2017.

"xxx 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. Sections 1, 2, and 3 of PD 242 read:

> Section 1. **Provisions of law to the contrary notwithstanding, *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, *shall* henceforth be administratively settled or adjudicated as provided hereinafter:** Provided, That, this shall not apply to cases already pending in court at the time of the effectivity of this decree.
>
> Section 2. **In all cases involving only questions of law, the same *shall* be submitted to and settled or adjudicated by the Secretary of Justice**, as Attorney General and ex officio adviser of all government owned or controlled corporations and entities, in consonance with Section 83 of the Revised Administrative Code. **His ruling or determination of the question in each case shall be conclusive and binding upon all the parties concerned.**
>
> Section 3. Cases involving mixed questions of law and of fact or only factual issues *shall* be submitted to and settled or adjudicated by:

ꝒD

> (a) The Solicitor General, with respect to disputes or claims [or] controversies between or among the departments, bureaus, offices and other agencies of the National Government;
>
> (b) The Government Corporate Counsel, with respect to disputes or claims or controversies between or among the government-owned or controlled corporations or entities being served by the Office of the Government Corporate Counsel; and
>
> (c) The Secretary of Justice, with respect to all other disputes or claims or controversies which do not fall under the categories mentioned in paragraphs (a) and (b). (Emphasis supplied)

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.

ND

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**. As explained by the Court in *Philippine Veterans Investment Development Corp. (PHIVIDEC) v. Judge Velez:*[21]

> Contrary to the opinion of the lower court, P.D. No. 242 is not unconstitutional. It does not diminish the jurisdiction of [the] courts but only prescribes an administrative procedure for the settlement of certain types of disputes between or among departments, bureaus, offices, agencies, and instrumentalities of the National Government, including government-owned or controlled corporations, so that they need not always repair to the courts for the settlement of controversies arising from the interpretation and application of statutes, contracts or agreements. The procedure is not much different, and no less desirable, than the arbitration procedures provided in Republic Act No. 876 (Arbitration Law) and in Section 26, R.A. 6715 (The Labor Code). It is an alternative to, or a substitute for, traditional litigation in court with the added advantage of avoiding the delays, vexations and expense of court proceedings. Or, as P.D. No. 242 itself explains, its purpose is 'the elimination of needless clogging of court dockets to prevent the waste of time and energies not only of the government lawyers but also of the courts, and eliminates expenses incurred in the filing and prosecution of judicial actions.'

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 corporations, and the BIR, a National Government office, PD 242 clearly applies and the Secretary of Justice has jurisdiction over this case. In fact, the MOA executed by the BIR, NPC, and PSALM explicitly provides that '[a] ruling from the Department of Justice (DOJ) that is favorable to

---

[21] 276 Phil. 439 (1991).

pk

NPC/PSALM shall be tantamount to the filing of an application for refund (in cash)/tax credit certificate (TCC), at the option of NPC/PSALM.' Such provision indicates that the BIR and petitioner PSALM and the NPC acknowledged that the Secretary of Justice indeed has jurisdiction to resolve their dispute.

xxx xxx xxx

Furthermore, under the doctrine of exhaustion of administrative remedies, it is mandated that where a remedy before an administrative body is provided by statute, relief must be sought by exhausting this remedy prior to bringing an action in court in order to give the administrative body every opportunity to decide a matter that comes within its jurisdiction. A litigant cannot go to court without first pursuing his administrative remedies; otherwise, his action is premature and his case is not ripe for judicial determination. PD 242 (now Chapter 14, Book IV of Executive Order No. 292), provides for such administrative remedy. Thus, only after the President has decided the dispute between government offices and agencies can the losing party resort to the courts, if it so desires. Otherwise, a resort to the courts would be premature for failure to exhaust administrative remedies. Non-observance of the doctrine of exhaustion of administrative remedies would result in lack of cause of action, which is one of the grounds for the dismissal of a complaint.

xxx xxx xxx

In requiring parties to exhaust administrative remedies before pursuing action in a court, the doctrine prevents overworked courts from considering issues when remedies are available through administrative channels. Furthermore, the doctrine endorses a more economical and less formal means of resolving disputes, and promotes efficiency since disputes and claims are generally resolved more quickly and economically through administrative proceedings rather than through court litigations.

The Court of Appeals ruled that under the 1997 NIRC, the dispute between the parties is within the

ph

authority of the CIR to resolve. Section 4 of the 1997 NIRC reads:

> 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 in 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. (Emphasis supplied)

The first paragraph of Section 4 of the 1997 NIRC provides that the power of the CIR to interpret the NIRC provisions and other tax laws is **subject to review by the Secretary of Finance, who is the alter ego of the President**. Thus, the constitutional power of control of the President over all the executive departments, bureaus, and offices is still preserved. The President's power of control, which cannot be limited or withdrawn by Congress, means the power of the President to alter, modify, nullify, or set aside the judgment or action of a subordinate in the performance of his duties.

The second paragraph of Section 4 of the 1997 NIRC, providing for the exclusive appellate jurisdiction of the CTA as regards the CIR's decisions 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.

<u>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</u>

ᴺᴹ

> decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, 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.** xxx.
>
> **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." *(Underscoring supplied)*

Based on the foregoing jurisprudential pronouncements, it is already established that where the disputing parties are all public entities, the case shall be governed by PD No. 242 (now Chapter 14, Book IV of EO No. 292), which requires that it shall be administratively settled or adjudicated in the manner provided therein, *i.e.*, the matter shall be brought either before the Secretary of Justice or the Solicitor General, as the case may be.

M

In this case, petitioner is clearly an agency of the government.

Section 2(4), (5) and (9), Introductory Provisions, of EO No. 292, provides as follows:

> "SEC. 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 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.
>
> (5) *National Agency* refers to a unit of the National Government.
>
> xxx xxx xxx
>
> (9) *Office* refers, within the framework of governmental organization, to any major functional unit of a department or bureau including regional offices. It may also refer to any position held or occupied by individual persons, whose functions are defined by law or regulation."

According to the foregoing provisions, an agency refers to any of the various units of the Government. Relative thereto, as already stated, petitioner is attached to the Department of Tourism.[22] Correspondingly, petitioner is considered as a unit of the Government, and thus, an agency thereof.

Particularly, petitioner may likewise be considered as an "office", as the term is defined above. In connection therewith, Section 90 of RA No. 9593 provides petitioner's legal mandate, to wit:

> "SEC. 90. *Mandate.* – **The DFPC shall be a body corporate to operate the duty- and tax-free merchandising system in the Philippines to augment the service facilities for tourists and to generate**

---

[22] Sections 28 and 89, RA No. 9593.

> **foreign exchange and revenue for the government**, as established by the Department under Executive Order No. 46.
>
> In the performance of its functions, the DFPC shall have all the general powers of a corporation established under the Corporation Code, in furtherance of its charter.
>
> **The DFPC shall have the exclusive authority to operate or franchise out stores and shops that would sell, among others, duty- and tax-free merchandise, goods and articles, in international airports and seaports, and in TEZs and ports of entry throughout the country** xxx.
>
> xxx xxx xxx
>
> **The DFPC shall likewise be authorized to operate stores and shops within the immediate vicinity of international airports and seaports to service the requirements of the international duty-free market.**" *(Emphases supplied)*

By virtue of the foregoing mandate, petitioner can be considered as a *"major functional unit"* of the Department of Tourism, and thus, falling under the purview of the term *"office"*.

On the other hand, respondent BIR is a bureau, which is defined as *"any principal subdivision or unit of any department."*[23] Respondent BIR is one of the principal subdivisions or units composing the Revenue Operations Group — a sub-group of the Operations Group of the Department of Finance.[24]

Thus, the parties herein are both public entities under the Executive Branch of the Republic of the Philippines, albeit there is no showing that their principal law officer or general counsel is the Solicitor General. Correspondingly, the subject dispute or claim is one falling under jurisdiction of the Secretary of Justice.

Such being the case, pursuant to PD No. 242 (now Chapter 14, Book IV of EO No. 292) in relation to the doctrinal pronouncement of

---

[23] Section 2(8), Introductory Provisions, EO No. 292, Series of 1987.
[24] Section 16, Chapter 4 (Bureaus), Title II (Finance), Book IV (The Executive Branch), EO No. 292, Series of 1987.

/m

the High Court in the *PSALM* case, this Court is without jurisdiction to entertain the instant claim for refund or reimbursement.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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
Chairperson, Special 1st Division