REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Second Division

DHL GLOBAL FORWARDING (PHILIPPINES), INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 11336

Members:

RINGPIS-LIBAN, *Chairperson*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:
APR 04 2024 2:43 pm

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RESOLUTION

On November 13, 2023, a "Petition for Review" was filed in the instant case.

A review of the "Verification and Certification against Forum Shopping" attached to the "Petition for Review" showed that there is a pending review with the Secretary of Finance, of the denial by the Commissioner of Internal Revenue ("CIR") of Petitioner's application for Value-Added Tax ("VAT") zero rating for calendar year 2023.

Accordingly, on November 30, 2023, a Resolution was issued by this Court dismissing the instant "Petition for Review" on the ground of forum shopping.

On December 19, 2023, Petitioner filed a "Motion for Reconsideration (Re: Resolution dated 30 November 2023 of the Honorable Court of Tax Appeals - *Second Division*)" seeking reconsideration of the December 19, 2023 Resolution.

To help the Court in properly resolving Petitioner's motion, Petitioner was ordered in the January 26, 2024 Resolution to submit a copy of its request for review with the Secretary of Finance as stated in its "Verification and Certification against Forum Shopping" within five (5) days from notice.

On February 05, 2024, Petitioner filed its "Compliance (Re: Resolution dated 26 January 2024)", attaching a copy of its Request for Review with the Secretary of Finance dated November 10, 2023.

In the Minute Resolution dated February 12, 2024, Petitioner's "Compliance (Re: Resolution dated 26 January 2024)" was noted and Petitioner's "Motion for Reconsideration (Re: Resolution dated 30 November 2023 of the Honorable Court of Tax Appeals - Second Division)" was submitted for resolution.

To recall, the Court dismissed the "Petition for Review" in this case because the "Verification and Certification against Forum Shopping" attached to it included a disclosure that the "Petitioner requested for the review by the Secretary of Finance the denial of its application for VAT Zero Rating for calendar year 2023 on 10 November 2023". Simply stated, together with the instant "Petition for Review" filed with this Court, Petitioner also has a pending review with the Secretary of Finance.

Petitioner however avers in its motion for reconsideration that it did not commit forum shopping.

Petitioner maintains that the rule on forum shopping only applies to judicial proceedings and not to administrative cases. According to Petitioner, the request for review with the Secretary of Finance was hinged on the proper interpretation of Bureau of Internal Revenue ("BIR") issuances concerning application for VAT zero rating. Since the same is primarily concerned with the interpretation of tax laws, it falls under the exercise of quasi-legislative function/power of the Secretary of Finance and as such is administrative in nature.

Additionally, Petitioner claims that there is no law which explicitly provides that rulings of the Secretary of Finance under Section 4 of the National Internal Revenue Code ("NIRC") of 1997, as amended, are appealable to the Cout of Tax Appeals ("CTA"). For this reason, Petitioner was constrained to file the instant "Petition for Review" to preserve its right to appeal the denial of the CIR and avoid the same from prescribing.

Petitioner also contends that it did not commit or intend to commit the evil sought to be prevented by the rule on forum shopping. Rather, its actions are the result of the absence of a definitive remedy in cases of denial of applications for zero rating by the CIR.

The court is not persuaded by Petitioner's assertions.

There is forum shopping when there is identity of parties, rights or causes of action, and reliefs sought. It is not necessary however that there be absolute identity. Mere similarity suffices. The purpose of the prohibition is to prevent the institution of separate proceedings which will have to consider substantially the same evidence, engendering possibly conflicting interpretations on fundamentally the same incidents and unnecessarily expending judicial resources.[1]

A comparison of the "Petition for Review" filed on November 13, 2023 and the Request for Review to the Secretary of Finance dated November 10, 2023 shows that there is a similarity on the parties, arguments/basis and reliefs sought on the two (2) actions.

	Petition for Review filed on November 13, 2023	**Request for Review to the Secretary of Finance dated November 10, 2023**
Who filed	Petitioner	Petitioner
Document being appealed/reviewed	Denial Letter dated September 25, 2023 issued by the CIR	Denial Letter dated September 25, 2023 issued by the CIR
Relief/s sought	That a decision be issued: • annulling the letters/notices denying or disallowing Petitioner's applications for VAT zero rating in relation to its sale of services to registered export enterprises ("REE") customers for taxable year 2023; and • ordering Respondent to issue approval to Petitioner's VAT zero rating application for its sale of freight services to (REE) customers for taxable year 2023.	That a ruling be issued: • confirming that Petitioner's door to door freight services, both inbound and outbound, to its REE customers are directly and exclusively used in the latter's registered projects/activities and therefore qualified for VAT zero-rating; • confirming that Petitioner's sales to its REE customers are accorded VAT zero rating treatment based on the VAT zero rating certifications issued by their respective Investment Promotion Agency (IPA), and that the denial of the applications were done by the BIR after effectivity of Revenue Regulations ("RR") No. 3-2023 on April 28, 2023; and • reversing the denial by the CIR of Petitioner's request for reconsideration of the

1 *See* Philippine College of Criminology, Inc., Ma. Cecilia Bautista-Lim, Rodolfo Valentino F. Bautista, Ma. Elena F. Bautista, Jean-Paul Bautista Lim, Marco Angelo Bautista Lim, Eduardo F. Bautista, Jr., Corazon Bautista-Javier, Sabrina Bautista-Panlilio, Ma. Ines V. Almeda, Rosario R. Diaz, And Atty. Ramil G. Gabao v. Gregory Alan F. Bautista, G.R. No. 242486, June 10, 2020.

		disapproved applications for VAT zero rating and the remaining pending applications.
Arguments in support of the appeal/request for review	1) Petitioner's sale of freight forwarding services is among those qualified for VAT zero rating. • Freight in service is included as an example of costs that are indispensable to the project/activity under Revenue Memorandum Circular ("RMC") No. 24-2022. • Freight out service also falls under the definition of "other expenditures" in RMC No. 24-2022. • Directly and exclusively used in the registered project/activity of an REE per Republic Act (RA) No. 11534 or Corporate Recovery and Tax Incentives for Enterprises ("CREATE") Law is not synonymous to "direct costs" for minimum corporate income tax (MCIT) and gross income tax (GIT) purposes. • Freight costs are not included the list of local services not considered as directly and exclusively used under RR No. 3-2023. 2) The REEs have secured VAT zero rating Certification from their respective IPA, such as Philippine Economic Zone Authority (PEZA), Authority of the Freeport of Bataan (AFAB), etc. 3) Petitioner's sale of services shall be accorded VAT zero rating treatment upon	1) Petitioner's sale of door to door services is among those qualified for VAT zero rating. • Freight in service is included as an example of costs that are indispensable to the project/activity under RMC No. 24-2022. • Freight out service also falls under the definition of "other expenditures" in RMC No. 24-2022. • Directly and exclusively used in the registered project/activity of an REE per CREATE Law is not synonymous to "direct costs" for MCIT and GIT purposes. • Freight costs are not included the list of local services not considered as directly and exclusively used under RR No. 3-2023. 2) The REEs have secured VAT zero rating Certification from the PEZA. 3) Petitioner's sale of services shall be accorded VAT zero rating treatment upon effectivity of RR No. 3-2023 and RMC No. 80-2023. 4) Administrative issuances must remain consistent with the law they intend to carry out.

	effectivity of RR No. 3-2023 and RMC No. 80-2023. 4) Administrative issuances must remain consistent with the law they intend to carry out.	

Petitioner pursued two (2) successive actions: first, a Request for Review to the Secretary of Finance; and second, the instant petition with the CTA. Both actions arose from the denial by the CIR of its application for VAT Zero Rating for calendar year 2023. They involve substantially the same set of facts, parties, and causes of action. Both actions rely on the same evidence to prove the claim. They also concern the same central question: whether Petitioner's sale of freight forwarding services is among those qualified for VAT zero rating. Lastly, the relief in the event of a favorable resolution in either action depend on the examination of these same bases. Thus, applying the same evidence test and the same relief test, it is evident that there was forum shopping.

What We want to avoid is the diverging interpretation by this Court and the Secretary of Finance on fundamentally the same controversy. If we allow both proceedings to continue, there will be unnecessary duplication of actions.

Besides, Petitioner can file an appeal with this Court in the event the Secretary of Finance denies its Request for Review. In the case of *Confederation for Unity, Recognition and Advancement of Government Employees (Courage), Et. Al. v. Commissioner, Bureau of Internal Revenue and the Secretary, Department of Finance*[2], the Supreme Court, citing *The Philippine American Life and General Insurance Co. v. Secretary of Finance*[3], held that "rulings of the Secretary of Finance in its exercise of its power of review under Section 4 of the NIRC of 1997, as amended, are appealable to the CTA. The Court explained that while there is no law which explicitly provides where rulings of the Secretary of Finance under the adverted to NIRC provision are appealable, Section 7(a) of RA No. 1125, the law creating the CTA, is nonetheless sufficient, albeit impliedly, to include appeals from the Secretary's review under Section 4 of the NIRC of 1997, as amended."

Moreover, the present petition is dismissible on the ground of prematurity. It is well settled that "[b]efore a party is allowed to seek the intervention of the courts, it is a pre-condition that he or she avail of all administrative processes afforded him or her, 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 or her jurisdiction, then such remedy must be exhausted first before

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2 G.R. Nos. 213446 and 213658, July 03, 2018.
3 G.R. No. 210987, November 24, 2014.

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."[4]

Interpretative rulings issued by the CIR, such as the denial of Petitioner's application for VAT zero rating for calendar year 2023, are subject to prior review by the Secretary of Finance under Section 4[5] of the NIRC of 1997, as amended. This administrative machinery must be first resorted to and pursued to its appropriate conclusion before Petitioner sought judicial recourse.[6] Petitioner's filing of a petition with this court violates the doctrine of exhaustion of administrative remedies.

From all the foregoing, we see no reason to overturn our previous ruling on the matter.

WHEREFORE, Petitioner's "Motion for Reconsideration (Re: Resolution dated 30 November 2023 of the Honorable Court of Tax Appeals - Second Division)" is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

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4 Commissioner of Internal Revenue v. Court of Tax Appeals (Second Division) and Petron Corporation, G.R. No. 207843, July 15, 2015 *citing* Province of Zamboanga Del Norte, Represented by Gov. Isagani S. Amatong v. Court of Appeals and Zamboanga Del Norte Electric Cooperative, Inc., G.R. No. 109853, October 11, 2000.

5 **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. xxx

6 Banco de Oro, Et. Al. v. Republic of the Philippines, Et. Al., G.R. No. 198756, January 13, 2015.