Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FOOD TERMINAL,
INCORPORATED,
Petitioner,

- versus - C.T.A. CASE NO. 5526

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 19 1997

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RESOLUTION

The incidental questions submitted for resolution pertain to petitioner's motion to declare respondent in default and respondent's motion to dismiss.

As regards petitioner's motion to declare respondent in default, the Court finds no need to discuss extensively its merit in view of the prejudicial question of lack of jurisdiction raised by respondent in her motion to dismiss. Indeed, if the Court has no jurisdiction over the subject matter, it has no power or authority to hear and decide the case and must perforce dismiss it. The issue of lack of jurisdiction can be raised at any stage of the proceedings and, even if not raised in a motion to dismiss or answer, can be inquired into by the Court *motu proprio*. This is the doctrine enunciated by the Supreme Court in several cases, thus:

> "Jurisdiction over the subject matter is fundamental for a court to act on a given controversy. It is conferred by law, not by consent of the parties. It can be challenged at any stage of the proceedings and for lack of it, a court can dismiss a case *ex mero motu.*
>
> To inquire into the existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend the ability of its entire proceedings. xxx." ***(Commissioner of Internal Revenue vs. Leonardo Villa, et al., 22 SCRA 3-8.)***
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> "Even without a motion to dismiss, a case may, for lack of jurisdiction over the subject matter or nature of the case, be dismissed *motu proprio* by the Court." ***(Ace Publications Inc. vs. The Commissioner of Customs, L-16761, Oct. 31, 1964.)***
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> "Courts are bound to take notice of the limits of their authority, and they may by their own motion (motu proprio), even though the question is NOT RAISED by the pleadings, or not even suggested by counsel, recognize the WANT OF JURISDICTION, and act accordingly by staying the pleadings dismissing the action, or otherwise notice the defect, at any stage of the proceedings." ***(See also p. 405, Rules of Court Annotated, 2nd Edition (1989), Paras.)***

Consequently, contrary to petitioner's postulation, the time for raising the question of jurisdiction over the subject matter is neither confined to the answer nor limited to the period for filing thereof, because even without the answer or motion to dismiss, the jurisdictional question can be taken cognizance of by the Court on its own initiative.

In the case at bar, respondent's contention that this Court has no jurisdiction to entertain petitioner's appeal is tenable. As admitted in its petition for review, petitioner Food Terminal Incorporated is a government-owned or controlled corporation; while respondent Commissioner of Internal Revenue is the head of the Bureau of Internal Revenue (BIR), which is a purely government agency charged with the assessment and collection of taxes. Under Section 1, 2 and 3 of P.D. No. 242 and Sections 66 and 67 of Chapter 14 of Executive Order No. 292 or "Administrative Code of 1987", disputes or controversies between or among government entities, including government-owned or controlled corporations, shall be administratively settled or adjudicated, as the case may be, by the officials mentioned therein and not by the Court of Tax Appeals. Thus as clearly expressed by this Court in the case of ***Philippine Export and Foreign Loan Guarantee Corporation vs. The Hon.***

Liwayway Vinzons-Chato, Commissioner of Internal Revenue, CTA Case No. 5196, May 17, 1996, citing the Supreme Court's ruling in *Development Bank of the Philippines vs. The Court of Appeals and the Commissioner of Customs (180 SCRA 612)*:

> "Our firm resolve is based on the lack of jurisdiction of this Court to entertain the petition. Petitioner has no legal standing to sue before the Court of Tax Appeals. It must be noted that Petitioner is a government-owned and controlled corporation created under its enabling statute, Presidential Decree No. 550, as amended. (Petition for Review, par. 1, p. 1, CTA records).
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> In the case of the Development Bank of the Philippines vs. Court of Appeals (180 SCRA 612-614, 617), the High Tribunal held, thusly:
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>> "xxx The Court of Appeals sustained the position of the customs Commissioner that it was grave error for the Court of Tax Appeals to have taken cognizance of the case in view of the explicit provisions of Presidential Decree No. 242, pertinently providing that:
>>
>> 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 government-owned or controlled corporations but excluding 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.."

The appellate Tribunal thus held that the controversy between the DBP and the Commissioner of Customs was not within the jurisdiction of the CTA and should have been decided in accordance with the mode of settlement and adjudication set forth in Sections 2 and 3 of P.D. No. 242, viz:

> SEC. 2. In all cases involving only questions of law, the same shall be submitted to and settled or adjudicated by the Secretary of Judtice, as Attorney General and ex officio legal admiser 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.
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> Sec. 3. Cases involving mixed questions of law and of fact or only factual issues shall be submitted to and settled or adjudicated by:
>
> (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).

The Appellate Court ruled that Section 7(2) of Republic Act No. 1125 - pursuant to which the Court of Tax Appeals had therefore been exercising exclusive appellate jurisdiction over decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, *inter-alia* - had been superseded by said P.D. No. 242, it being "a settled rule of statutory construction that where there is irreconcilable repugnancy between two statutes anent the same subject matter - as there is between P.D. 242 and Sec. 7 (2) of R.A. No. 1125 in regard to the manner of settlement of disputes involving customs duties, etc. between government offices, agencies and corporations - the one of late enactment, being the latest expression of the legislative will, should previal over the other which is of earlier enactment."

Indubitably, therefore, a controversy or dispute between a government-owned or controlled corporation like the petitioner and the BIR is not under the jurisdiction of this Court but under the sphere of authority or jurisdiction of the Secretary of Justice.

The pertinent provisions of P.D. No. 242 are also found substantially in the Administrative Code of 1987 or Executive Order No. 292 (which is a later enactment governing government structures and functions) thus lending more justification on the applicability of the interpretation of the Honorable Supreme Court in the DBP case. Sections 66 and 67 of Chapter 14 of Book 1 of the Administrative Code of 1987 covering controversies among government offices and corporations, provide thus:

> Chapter 14 - CONTROVERSIES AMONG GOVERNMENT OFFICES AND CORPORATIONS.
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> 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 on this Chapter. This Chapter shall, however, not apply tp disputes involving the Congress, the Supreme Court, the Constitutional Commissions, and local governments.
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> SEC. 67. *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).

Similarly, in ***National Development Company vs. Commissioner of Internal Revenue, CTA Case No. 5309, September 4, 1996,*** this Court, in sustaining the dismissal of the case for lack of jurisdiction, explained the purpose for prescribing the procedure for administrative settlement or adjudication of disputes between or among government entities and agencies, as follows:

> Apparently the purpose for prescribing the procedure for administrative settlement or adjudication of disputes, claims and controversies between or among government offices, agencies, instrumentalities, including government owned or controlled corporation was to "avoid litigations in Court where government lawyers appear for government offices, agencies and instrumentalities to espouse and protect their respective

> interests altho, in the ultimate analysis, there is but one real party in interest - the GOVERNMENT ITSELF - in such "litigation" and to avoid, too, "needlessly contributing to the clogged dockets of the Courts and dissipating or wasting the time and energies not only of the Courts but also of the government lawyers and the considerable expenses incurred in the filing and prosecution of judicial actions". (see footnote #4, pp. 612-613, ibid.)

WHEREFORE, in the light of the foregoing considerations, respondent's motion to dismiss is GRANTED and this case is DISMISSED for lack of jurisdiction.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

RAMON O. DE VEYRA
Associate Judge