REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PETRON CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE, COMMISSIONER OF CUSTOMS AND COLLECTOR OF CUSTOMS (PORT OF LIMAY, BATAAN),
Respondents.

CTA CASE NO. 8544

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MINDARO-GRULLA, *JJ*

Promulgated:

NOV 15 2012 11:15 am

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RESOLUTION

This resolves respondent Commissioner of Internal Revenue's **"Motion to Dismiss"** filed on October 5, 2012, with petitioner's "**Comment/Opposition [To Respondent's Motion to Dismiss dated October 5, 2012]**" filed on October 22, 2012.

Respondent moves for the dismissal of the instant Petition for Review based on the following grounds:

a. this Court has no jurisdiction over the instant case as the subject matter thereof does not fall under its special jurisdiction granted by statute; and

b. this Court has no jurisdiction over the instant case for petitioner's failure to exhaust administrative remedies.

In detail, respondent argues that the core issue of the instant case is the validity and applicability of Customs Memorandum Circular (CMC) No. 164-2012, which implemented the Letter issued by the Commissioner of Internal Revenue (CIR) on June 29, 2012. CMC No. 164-2012 is a circular issued by the Commissioner of Customs to implement Section 148(e) of the 1997 National Internal Revenue Code (NIRC), as amended. Respondent posits that CMC No. 164-2012 is issued in the exercise of the Commissioner of Customs' quasi-legislative function. Being so, this Court has no jurisdiction to act on the instant Petition. Respondent argues that the authority to declare an administrative issuance void is part of the general power conferred by the Constitution on courts of general jurisdiction.

Also, respondent claims that the hurried recourse of petitioner to this Court deprived the administrative agency the opportunity to fully exercise its function to correct, modify or affirm the findings of the subordinates, in violation of the rule on exhaustion of administrative remedies.

On the other hand, petitioner anchors its objection to the instant motion on the following grounds, to quote:

1. The crux of the matter is the propriety or correctness of the ruling, opinion or interpretation accorded by the CIR upon Section 148, particularly Section 148(e), of the NIRC of 1997 which this Court is clothed with the power to pass upon. While petitioner does not question the constitutionality, validity or legality of Section 148, particularly Section 148(e) of the 1997 NIRC, petitioner

questions respondent CIR's interpretation or application thereof. This is an issue which this Court is undeniably clothed with the power to pass upon;

2. The issue of the propriety of the collection of excise tax on petitioner's importation of alkylate falls within the jurisdiction of this Court under other matters arising under the NIRC of 1997 or other laws administered by the BIR; and

3. Considering the extraordinary circumstances of this case, immediate resort to this Court is justified.[1]

Petitioner claims that through the expertise of this Court, it is competent to resolve the propriety or correctness of the imposition of excise taxes on petitioner's importation of alkylate, as enforced in the Final Computation issued by respondent Collector, pursuant to CMC No. 164-2012. Petitioner argues that Section 7(a)(1) of Republic Act (RA) No. 1125, as amended, grants this Court exclusive appellate jurisdiction to review by appeal decisions of the CIR in cases involving assessments, refunds of internal revenue taxes, fees or other charges and penalties in relation thereto, or other matters arising under the 1997 NIRC or other laws administered by the Bureau of Internal Revenue (BIR).

Petitioner further argues that objections based on failure to exhaust administrative remedies may be raised on ground of lack of cause of action or failure to state a cause of action under Section 1(g) of Rule 16 of the Rules of Court, or non-compliance with a

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[1] See Comment /Opposition [To Respondent's Motion to Dismiss dated October 5, 2012].

condition precedent under Sec. 1(j) of said Rule and not jurisdictional in nature. It posits that there are several recognized and well-established exceptions to the doctrine of exhaustion of administrative remedies, such as, when the issue involves only legal questions, the administrative act is patently illegal, when an administrative action would cause irreparable damage, and when there is no plain, speedy or adequate remedy available to a party.

Petitioner asserts that the excepting circumstances are present in the instant case. It continues that there is no provision in the 1997 NIRC that subjects the importation of alkylate to excise taxes, making the collection of excise taxes on such importation patently illegal; imposing excise taxes on alkylate will cause great and irreparable damage to petitioner which cannot be prevented except by taking this court action so that judicial intervention is extremely urgent; and that any unreasonable delay or official inaction will irreversibly prejudice petitioner as the importation of alkylate is necessary to ensure the steady supply of much needed fuel that is compliant with both Republic Act (R.A.) No. 8749[2] and R.A. 9367[3]; hence, the instant Petition is filed for lack of any other plain, speedy and adequate remedy.

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[2] Clean Air Act of 1999.
[3] Biofuels Act of 2006.

After a careful evaluation of the arguments of both parties, this Court finds merit in respondent CIR's *Motion to Dismiss*.

At the onset, this Court finds that petitioner is questioning the propriety of the alleged imposition of excise taxes on its importation. The alleged imposition of excise taxes was pursuant to CMC No. 164-2012 dated July 18, 2012, issued by the Commissioner of Customs (COC), which quoted the CIR's letter that "alkylate, which is a product of distillation similar to that of naphta, is subject to excise tax under Section 148(e) of the NIRC of 1997, as amended". On the other hand, the CIR's letter dated June 29, 2012, from which the said CMC was based, made a finding that various importations of "alkylate" are subject to excise tax and VAT. Simply stated, the resolution of the instant Petition requires a deeper look into CMC No. 164-2012 and the CIR's letter.

Ultimately, the core of the instant petition is the validity of CMC No. 164-2012 and the CIR's letter. This fact is further confirmed by petitioner's prayer, among others, to: (a) annul CMC No. 164-2012 and the CIR's letter dated June 29, 2012 for lack of factual and legal basis, and for having been issued without or in excess of jurisdiction; (b) prohibit respondents from imposing and collecting excise taxes on petitioner's importation of alkylate; and (c) declare petitioner not liable for excise taxes on its importations of alkylate.[4]

Based on the foregoing, there is no dispute that petitioner is questioning the validity of CMC No. 164-2012 and the CIR's letter dated June 29, 2012.

The next issue is whether or not petitioner failed to exhaust administrative remedies justifying the dismissal of the instant petition.

The power of the CIR to issue rulings is based on Section 4 of the 1997 NIRC, which states:

> "Section 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." (*Emphasis supplied*)

Administrative rulings such as the rulings issued by the Bureau of Internal Revenue have been aptly describe as the best guess of the moment and incidentally often contain such well-considered and sound law; but they do not prevent an entire change of front at any

[4] Rollo, p. 38

time and are mere advisory-sort of information to the taxpayer.[5] In short, administrative rulings issued by the BIR or the Bureau of Customs (BOC) were issued basically to interpret tax laws.

The Court of Tax Appeals' jurisdiction to resolve tax disputes excludes the power to rule on the constitutionality or validity of a law, rule or regulation. This authority is vested before the regular courts as emphasized in the case of *British American Tobacco v. Jose Isidro N. Camacho, in his capacity as the Secretary of the Department of Finance and Guillermo L. Parayno, in his capacity as the Commissioner of the Bureau of Internal Revenue*[6] as follows:

> **While the above statute confers on the CTA jurisdiction to resolve tax disputes in general, this does not include cases where the constitutionality of a law or rule is challenged. 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

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[5] *Law of Basic Taxation in the Philippines, Revised Edition, Benjamin B. Aban, page 149.*
[6] G.R. No. 163583, August 20, 2008, 562 SCRA 511.

> 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.[7] (Emphasis Ours.)

In the instant case, a review of the assailed CIR's letter shows that it was issued to rule on the propriety of imposing taxes on the importations of alkalyte, within the context of Section 148 of the 1997 NIRC. It constitutes the CIR's opinion or ruling on the tax treatment of said importations. Considering so, the CIR's letter is in the nature of a BIR ruling and pursuant to Section 4 of the NIRC of 1997, the available recourse of petitioner is to question the said ruling with the Secretary of Finance and eventually before the regular courts, and not with the CTA.

Likewise, it is not disputed that there is no formal assessment issued either by the BIR or the BOC. What was interpreted by petitioner as equivalent to a demand to pay excise tax and value added tax (VAT) pertains to IEIRD No. 122406532, showing the supposed computation for the payment of excise tax and VAT. The alleged computation for the payment of excise taxes was made pursuant to CMC No. 164-2012 and the CIR's letter.

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[7] See *St. Paul College of San Rafael v. Commissioner of Internal Revenue*, C.T.A. Case No. 8217, November 9, 2011 and *Cathay Pacific Airways, LTD., v. Commissioner of Internal Revenue*, C.T.A. EB Case No. 717, April 17, 2012.

The issuance of assessment on deficiency internal revenue taxes such as excise taxes and VAT is mandated under Section 228 of the 1997 NIRC, as amended, reading:

"**CHAPTER III- Protesting an Assessment, Refund, Etc.**

"SECTION 228. *Protesting of Assessment*. — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:

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"The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

"Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

"Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

"If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable. (Emphasis supplied.)

Section 3 of Revenue Regulations No. 12-99[8] implements Section 228 of the 1997 NIRC, as amended, which provides:

> SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —
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> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
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> 3.1.1 Notice for informal conference. — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.
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> 3.1.2 Preliminary Assessment Notice (PAN). — If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the

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[8] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX A hereof). If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

3.1.3 Exceptions to Prior Notice of the Assessment. — The notice for informal conference and the preliminary assessment notice shall not be required in any of the following cases, in which case, issuance of the formal assessment notice for the payment of the taxpayer's deficiency tax liability shall be sufficient:

xxx xxx xxx

3.1.4 Formal Letter of Demand and Assessment Notice. — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void (see illustration in ANNEX B hereof). The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.

3.1.5 Disputed Assessment. — The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. If

there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest. No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended.

The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect. If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the taxpayer shall be required to pay the corresponding deficiency tax or taxes attributable thereto.

The taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable. The phrase "submit the required documents" includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation.

If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.

If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.

> In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner.
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> If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise, the assessment shall become final, executory and demandable.
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> 3.1.6 Administrative Decision on a Disputed Assessment. — The decision of the Commissioner or his duly authorized representative shall (a) state the facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, otherwise, the decision shall be void (see illustration in ANNEX C hereof), in which case, the same shall not be considered a decision on a disputed assessment; and (b) that the same is his final decision.

An IEIRD cannot be equated to an assessment. IEIRD is prepared by the taxpayer-declarant, and is an evidence of final payment of duties and taxes.[9] An assessment on the other hand, contains not only a computation of tax liabilities due, but also a

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[9] *Chevron Philippines, Inc. v. Commissioner of the Bureau of Customs*, G.R. No. 178759, 561 SCRA 710, 723.

demand for payment sent to the taxpayer within a prescribed period.[10] An assessment is vital in determining the period of limitation regarding its proper issuance and the period within which to protest it.[11] Clearly, IEIRD is not an assessment issued by the BIR against the taxpayer.

Petitioner admitted during the hearing of its prayer for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction on October 3, 2012, that it did not question CMC No. 164-2012 and the CIR's Letter dated June 29, 2012 before the Secretary of Finance[12], prior to the filing of the instant Petition. It bears stressing that even the assailed CIR's Letter was addressed to the COC and involved importations of alkylate by Pilipinas Shell Petroleum Corporation. Petitioner is not directly involved. Notwithstanding, petitioner still filed the instant Petition for Review and justified the filing thereof by raising the different exceptions to the rule on "exhaustion of administrative remedies".

However, after a review of the records of the case, this Court cannot find the existence of the excepting circumstances.

Petitioner claims that the imposition of excise taxes on its importation will cause irreparable injury which, in turn, makes judicial

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[10] *Petronila C. Tupaz v. Honorable Benedicto B. Ulep, Presiding Judge of RTC Quezon City, Branch 105, and People of the Philippines*, G.R. No. 127777, October 1, 1999, 316 SCRA 118. See *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation, Rogelio A. Dio and Virginia S. Dio*, G.R. No. 128315, June 29, 1999, 309 SCRA 402.
[11] *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation, Rogelio A. Dio and Virginia S. Dio, supra.*
[12] Pages 29-30, Transcript of Stenographic Notes dated October 3, 2012.

intervention urgent. This Court cannot agree because no assessment, collection or seizure had been issued against petitioner. Petitioner merely relied on its IEIRD to justify its conclusion that it will be damaged. Therefore, there is no urgency to file the instant Petition. Consequently, petitioner cannot say that there is no "other plain, speedy and adequate remedy" for it should have elevated the matter first with the Secretary of Finance.

It is settled that the premature invocation of the court's intervention is fatal to one's cause of action. If a remedy within the administrative machinery can still be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must first be exhausted before the court's power of judicial review can be sought. The party with an administrative remedy must not only initiate the prescribed administrative procedure to obtain relief but also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to the court.[13]

WHEREFORE, premises considered, respondent Commissioner of Internal Revenue's Motion to Dismiss is hereby **GRANTED**. Accordingly,

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[13] *Asia International Auctioneers, Inc. and Subic Bay Motors Corporation v. Hon. Guillermo L. Parayno, Jr., et al., G.R. No. 163445, December 18, 2007, 540 SCRA 536.*

the instant Petition for Review is hereby **DISMISSED** for lack of jurisdiction and for having been filed prematurely.

SO ORDERED.

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

CAESAR A. CASANOVA
Associate Justice

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