REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

DELTA AIR LINES, INC.,
Petitioner,

CTA CASE NO. 8360

- versus -

HON. SEC. CESAR V. PURISIMA (in his capacity as Incumbent Secretary of the Department of Finance) and HON. COM. KIM S. JACINTO-HENARES (in her capacity as Incumbent Commissioner of Internal Revenue),
Respondents.

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

AUG 15 2013 9:50 a.m.

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DECISION

CASTAÑEDA, JR., *J.*:

This is a Petition for Review filed on October 24, 2011 by Delta Air Lines, Inc. (petitioner) to review by appeal the letter[1] dated September 8, 2011 issued by Secretary Cesar V. Purisima of the Department of Finance (DOF) affirming the Bureau of Internal Revenue (BIR) Ruling No. 099-2011[2] dated April 6, 2011 issued by BIR Commissioner Kim S. Jacinto-Henares.

Petitioner is a foreign company organized and existing under the laws of Delaware, United States of America, which was duly licensed by the Securities and Exchange Commission (SEC) on December 29, 2009, in accordance with the Corporation Code of the

[1] Exhibit "A", docket, pp. 324 to 325.
[2] Exhibit "B", docket, pp. 374 to 376.

Philippines (Batas Pambansa Blg. 68) and the Foreign Investments Act of 1991 (Republic Act No. 7042, as amended) to establish its branch office in the Philippines to engage in international air transportation services.[3] It is registered with the BIR as evidenced by Certificate of Registration No. OCN9RC0000269800, with Taxpayer's Identification No. (TIN) 288-293-147-000.[4] Its principal office is located at 10th Floor, Philamlife Tower, 8767 Paseo de Roxas, Makati City.

On the other hand, respondent Cesar V. Purisima is the incumbent Secretary of the Department of Finance, who is duly empowered to review the interpretation of the National Internal Revenue Code (NIRC) of 1997 and other tax laws by respondent Commissioner of Internal Revenue, pursuant to Section 4 of the NIRC of 1997, as amended. He holds office at the DOF Building, BSP Complex, Roxas Boulevard, Manila.

Respondent Kim S. Jacinto-Henares is the incumbent Commissioner of the BIR, duly appointed to perform the duties of her office and vested by law with the power to interpret the provisions of the NIRC of 1997 and other tax laws, subject to review by the Secretary of the DOF; and to decide matters arising under the NIRC of 1997 and other laws or portions thereof administered by the BIR. She holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

During the course of its operations in the Philippines, Delta Air Lines, Inc. Hotel Room Agreement 106750 (Agreement)[5] was made and entered into by and between The Peninsula Manila (Hotel) and petitioner. Under the said Agreement the Hotel agrees to provide room accommodations and other hotel services to petitioner's guests[6] including its pilots and cabin crews during flight layovers in the Philippines for consideration paid by petitioner.[7]

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[3] Exhibit "H", docket, p. 409.
[4] Exhibit "G", docket, p. 408.
[5] Exhibit "F", docket, pp. 396 to 405.
[6] "Delta Guests" shall include the following categories of persons: (a) Scheduled Delta flight crews and scheduled flight crews of any Affiliate of Delta ("Flight Crew Guests"); and (b) Delta employees on company business; non-crew employees of subsidiaries or affiliates of Delta; contractors of any of the foregoing entities engaged in work for any of same; and any third party for whom occupancy is authorized by Delta or by Hotel on Delta's behalf, including parties holding a Delta voucher (*e.g.*, inconvenienced passengers) ("Non-crew Guests"). "Affiliate" means any individual, corporation, partnership, association or business that directly or indirectly through intermediaries, controls, is controlled by or is under common control with Delta.
[7] Exhibit "J", docket, pp. 426 to 427.

On August 11, 2010, petitioner filed with the Law Division of the BIR a Request for VAT Ruling dated August 10, 2010 on the application of Section 108(B)(4) of the NIRC of 1997, as amended, to services rendered to persons engaged in international air transport operations, such as services provided by local suppliers to petitioner for the accommodation/lodging including meals of its pilots and cabin crews.[8]

On May 9, 2011, petitioner received from respondent Commissioner BIR Ruling No. 099-2011 dated April 6, 2011,[9] the pertinent portion of which reads:

> "In the instant case, the services provided by the Hotel to its clients engaged in international air transport operations pertain to room accommodations and food and beverage services. As they are rendered within the Hotel's premises, they have no direct connection with the transport of goods or passengers, and as such, they cannot be considered as services directly attributable to the transport of goods and passengers from a Philippine port directly to a foreign port entitled to zero-rating. Such being the case, the sale of the foregoing services by the Hotel is not zero rated, but is appropriately subject to the 12% VAT.
>
> This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered null and void."

On June 8, 2011, petitioner filed a Request for Review of BIR Ruling No. 099-2011 with respondent Secretary of Finance.[10]

Respondent Secretary issued a letter dated September 8, 2011 addressed to petitioner affirming the said BIR Ruling. The letter was received by petitioner on September 22, 2011.[11]

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[8] Exhibit "C", docket, pp. 379 to 384.
[9] Exhibit "B", docket, pp. 374 to 376.
[10] Exhibit "D", docket, pp. 385 to 393.
[11] Exhibit "A", docket, pp. 324-325.

Hence, on October 24, 2011, petitioner filed the instant Petition for Review to assail BIR Ruling No. 099-2011 dated April 6, 2011 and the letter dated September 8, 2011 of the DOF Secretary.[12]

On December 2, 2011, respondent BIR Commissioner filed her Answer[13] interposing the following Special and Affirmative Defenses:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

Respondent reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses.

BIR Ruling 099-2011 is a valid interpretation of the 1997 National Internal Revenue Code.

The present Petition for Review before this Honorable Court of Tax Appeals stemmed from petitioner's allegation that BIR Ruling No. 99-2011 (herein referred to as the 'ruling') dated April 6, 2011 should be nullified.

Respondent humbly submits that the questioned BIR Ruling is a valid interpretation of the provisions of the NIRC of 1997. The questioned ruling is quoted herein below, *to wit:*

xxx xxx xxx

This refers to your letter dated August 10, 2010 requesting confirmation of your opinion that the sale of services rendered to persons engaged in international air transport operations, such as services provided by local suppliers to Delta Air Lines for the accommodation/lodging including meals of its pilots and cabin crews shall be subject to the value-added tax (VAT) at zero percent (0%) rate.

[12] Par. 3.1, Joint Stipulation of Facts and Issues, docket, p. 267; Docket, pp. 6 to 31.
[13] Docket, pp. 156 to 175.

The facts as represented are as follows:

Delta Air Lines, Inc. is a foreign company organized and existing under the laws of Delaware, United States of America and has branch office in the Philippines engaged in international air transportation services; that it is registered with the Securities and Exchange Commission (SEC) under Registration No. FS200920070.

In the ordinary course of operating its business, Delta regularly procures accommodation and lodging, including meals for pilots and cabin crew during flight layovers in the Philippines.

From the foregoing, it is your opinion that the sale of the aforementioned hotel services to international airlines which are engaged exclusively in international air transport operations are subject to zero-rated VAT in accordance With Section 108(B)(4) of the National Internal Revenue Code of 1997, as amended.

In reply, please be informed that Section 108(B)(4) of the 1997 Tax Code, as amended by Republic Act (RA) No. 9337 provides that:

> 'SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. –
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> xxx xxx xxx
>
> (B) Transactions Subject to Zero Percent (0%) Rate. - The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate.
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> xxx xxx xxx

> (4) Services rendered to vessels engaged in international shipping or international air transport operations, including leases of property for use thereof;'

The above provision must be read in connection with Section 4.108-5 (b) (4) of Revenue Regulations (RR) No. 16-2005, as amended by RR 4-2007, to wit:

> 'Sec. 4.108-5. Zero-Rated Sale of Services.
>
> xxx xxx xxx
>
> (b) Transactions Subject to Zero Percent (0%) Rate - The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
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> xxx xxx xxx
>
> (4) Services rendered to persons engaged in international shipping or air transport operations, including leases of property for use thereof; Provided, however, that the services referred to herein shall not pertain to those made to common carriers by air and sea relative to their transport of passengers, goods or cargoes from one place in the Philippines to another place in the Philippines, the same being subject to twelve percent (12%) VAT under Sec. 108 of the Tax Code starting Feb. 1, 2006;'

The rule on zero-rating of a sale of service to international air carriers is further clarified in Revenue Memorandum Circular No. 046-08 dated February 1, 2008, Q & A 11 states thus:

'REVENUE MEMORANDUM CIRCULAR NO. 046-08

SUBJECT: Clarification of Issues Concerning Common Carrier by Air and Their Agents Relative to the Revenue and Receipt from Transport of Passengers, Goods/Cargoes and Mail, and from Excess Baggage

xxx xxx xxx

Q-11: Are sales of goods, supplies, equipment, fuel and services to persons engaged in international air transport operation subject to VAT?

A-11: The sale of goods, supplies, equipment, fuel and services (including leases of property) to the common carrier to be used in its international air transport operations is zero-rated. Provided, that the same is limited to goods, supplies, equipment, fuel and services pertaining to or attributable to the transport of goods and passengers from a port in the Philippines directly to a foreign port without docking or stopping at any other port in the Philippines to unload passengers and/or cargoes loaded in and from another domestic port; Provided, further, that if any portion of such fuel, equipment, goods or supplies and services is used for purposes other than that mentioned in this paragraph, such portion of fuel, equipment, goods, supplies and services shall be subject to 12% VAT.'

Based on the foregoing, in order to qualify for zero-rating, the services rendered by a VAT-registered person to a person engaged in international air transport operations must pertain to or must be attributable to the transport of goods and passengers from a port in the Philippines directly to a foreign port without docking or stopping at any port in the Philippines.

It is worthy to mention that in case of international vessels, for which the same rule on zero-rating is applied, this Office held that the VAT zero-rated services contemplated in the VAT law only refer to services rendered to the international vessel itself. Examples of such services are crewing, repair, catering, and other similar arrangements. (VAT Ruling No. 021-01 dated May 15, 2001). Inasmuch as this rule applies as well to international air carriers, it is our opinion, therefore, that for purposes of zero-rating the sale of service to international air carriers, such service must be rendered to the aircraft itself.

In the instant case, the services provided by the Hotel to its clients engaged in international air transport operations pertain to room accommodations and food and beverage services. As they are rendered within the Hotel's premises, they have no direct connection with the transport of goods or passengers, and as such, they cannot be considered as services directly attributable to the transport of goods and passengers from a Philippine port directly to a foreign port entitled to zero-rating. Such being the case, the sale of the foregoing services by the Hotel is not zero rated, but is appropriately subject to the 12% VAT.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered null and void.' *(Emphasis supplied)*

Administrative rulings, known as BIR rulings, are the less general interpretation of tax laws being issued from time to time by respondent. Thus, in the case of ***Protector's Services, Inc. vs. Court Of Appeals And*** ﾉz

Commissioner Of Internal Revenue, G.R. No. 118176 April 12, 2000, the Supreme Court had the occasion to rule that 'these rulings were made by the CIR in the exercise of his power to 'make judgments or opinions in connection with the implementation of the provisions of the internal revenue code.' The opinions and rulings of officials of the government called upon to execute or implement administrative laws, command respect and weight.'

They are usually rendered on request of taxpayers to clarify certain provisions of a tax law. These rulings may be revoked by the Secretary of Finance if the latter finds them not in accordance with the law. Otherwise stated, rulings made by the Commissioner of Internal Revenue and affirmed by the Secretary of Finance command great respect and weight. Thus, the Secretary of Finance eloquently ruled to affirm BIR Ruling 99-2011:

xxx xxx xxx

> This pertains to your request for review of Bureau of Internal Revenue ('BIR') Ruling No. 099-2011, which held that the services provided by local suppliers to Delta Air Lines, Inc. ('Delta') for the accommodation/lodging, including the meals, of its pilots and cabin crews during flight layovers in the Philippines are subject to 12% value-added tax (VAT). Thus:
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> > 'In the instant case, the services provided by the Hotel to its clients engaged in international air transport operations pertain to room accommodations and food and beverage services. As they are rendered within the Hotel's premises, they have no direct connection with the transport of goods or passengers, and as such, they cannot be considered as services directly attributable to the transport of goods and passengers from a Philippine port directly to a foreign port entitled to zero-rating. Such being the case, the sale of the foregoing services by the

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Hotel is not zero rated, but is appropriately subject to the 12% VAT.'

Moreover, Section 108 (B)(4) of the Tax Code should be read in accordance with the Destination Principle and Cross Border Doctrine to which the Philippine VAT system adheres. According to the Destination Principle, goods and services are taxed only in the country where these are consumed. In connection with the said principle, the Cross Border Doctrine mandates that no VAT shall be imposed to form part of the cost of the goods destined for consumption outside the territorial border of the taxing authority. This is the reason why under our VAT Law, goods, property or services destined, used or consumed in the Philippines are subject to the 12% VAT whereas those destined, used or consumed abroad are subject to 0% VAT.

Here, the use or benefit derived from the subject services (room accommodations and meals) being rendered to the crew of Delta does not cross the Philippine territory. Such services furthermore, cannot be characterized as services directly used in connection with international air operation unlike in the case of general sales agents of international airlines whose services are directly connected with or attributable to the transport of goods or passengers from the Philippines to a foreign port.

In view of the foregoing, we hold that the services provided by local VAT-registered suppliers to Delta for the accommodation/lodging of its pilots and cabin crew members during flight layovers in the Philippines are not entitled to 0% VAT but rather, are subject to the 12% VAT.' *(Emphasis supplied)*

It is widely accepted that interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by courts. **Unless and**

until the Secretary of Finance reverses or modifies the ruling of the CIR, BIR Rulings shall be considered valid with full force and effect.

Revenue Memorandum Circular (RMC) No. 44-2001, *supra*, provides:

> 'Section 2. Validity of Rulings. - A ruling by the Commissioner of Internal Revenue shall be presumed valid unless modified, reversed or superseded by the Secretary of Finance.
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> xxx xxx xxx'

Respondent respectfully submits that rules and regulations issued by the administrative or executive officers pursuant to the procedure or authority conferred by law upon the administrative agency have the force and effect or partake of the nature, of a statute.
In fact, government agencies or officials charged with the implementation of the law, like respondent Commissioner are frequently the drafters of the law they interpret. Thus, the courts give much weight to their competence, expertness, experience, and informed judgment ***(Gorospe vs. Vinzons-Chato, G.R. No. 132228. January 21, 2003)***.

A catena of cases establishes the basic rule that the court will not interfere in matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies.

The Bureau of Internal Revenue, which respondent Commissioner heads, is the government agency charged with the enforcement of tax laws. It is presumed to be familiar with all the considerations pertinent to the meaning and purpose of tax laws, and to have formed an independent, conscientious and competent expert opinion thereon (***Gorospe vs. Vinzons-Chato, G.R. No. 132228. January 21, 2003)***. It bears stressing that **BIR Rulings** are considered administrative rulings issued from time to time by the Commissioner of Internal Revenue. As such it affords great weight as to its validity.

To reiterate, as validly ruled by the Commissioner of Internal Revenue and affirmed by the Secretary of Finance, the sale of services rendered by VAT-registered suppliers for the accommodation/lodging of pilots and cabin crew members of petitioners during flight layovers in the Philippines are subject to the 12% VAT.

Prescinding from and anent the foregoing, petitioner's claim that BIR Ruling 099-2011 is invalid has no basis in fact and in law. Thus, the instant petition should be dismissed for lack of merit.

The Honorable Court has no jurisdiction to rule on the issue of validity of Answer 11 to Question 11 of RMC No. 46-2008 for failure of petitioner to exhaust all administrative remedies.

Petitioner's allegation that Answer 11 to Question 11 of RMC No. 46-2008 should be nullified is bereft of merit as petitioner failed to exhaust all administrative remedies before elevating this issue to this Honorable Court. Unmistakably, Section 1(j) of Rule 16 of the 1999 Rules of Civil Court Procedure provides that:

'MOTION TO DISMISS'

> Section 1. Grounds. – Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:
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> (j) That a condition precedent for filing the claim has not been complied with.'

Revenue Memorandum Circular (RMC) No. 44-2001 entitled 'Circularizing Department Order 23-01 providing for the Implementing Rules of the First Paragraph of Section 4 of the NIRC of 1997 and Repealing for this Purpose Department Order No. 005-99 and Revenue Administrative Order No. 1-99' which was issued on October 11, 2001 provides:

> 'Section 3. Rulings Adverse to the Taxpayer. A taxpayer who receives an adverse ruling from the Commissioner of Internal Revenue may, **within thirty (30) days** from the date of receipt of such ruling, seek its review by the Secretary of Finance, either by himself/itself or through his/its duly accredited agent or representative. The request for review shall be in writing and under oath, and must:
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> These are **mandatory requirements and failure to comply with any of the stated substantive requirements** shall be sufficient basis for the Secretary of Finance to dismiss with prejudice the request for review.' *(Underscoring and emphasis supplied.)*

Feeling aggrieved by Answer 11 to Question 11 of RMC No. 46-2008, petitioner should have moved for the reconsideration of the same with the Commissioner of Internal Revenue and should the Commissioner of Internal Revenue deny its motion, then, petitioner is given thirty (30) days from receipt of the same within which to file before the Secretary of Finance a request for review in writing and under oath said RMC.

Petitioner did not appeal to the Secretary of Finance the alleged RMC. Worst it did not even ask the Commissioner of Internal Revenue to reconsider said RMC prior to its questioning the legality before this Honorable Court. This is contrary to the requirements of the law that where there is a condition precedent, in this case, reconsideration before the Commissioner of Internal Revenue and subsequent appeal before the Secretary of Finance should the Commissioner of Internal Revenue ruled against petitioner, petitioner must observe the same. Petitioner, however, went straight before this Honorable Court which is a clear contravention of the law. Thus, petitioner slept on its right and allowed the period within which to present its side of the case to lapse. Petitioner should therefore suffer the consequence of its omission to exercise its rights. Thus the Honorable Supreme Court held that:

> 'In the case at bar, **the assailed** revenue regulations and **revenue memorandum circulars are actually rulings or opinions of the CIR** on the tax treatment of motor vehicles sold at public auction within the SSEZ to implement Section 12 of R.A. No. 7227 which provides that 'exportation or removal of goods from the territory of the [SSEZ] to the other parts of the Philippine territory shall be subject to customs duties and taxes under the Customs and Tariff Code and other relevant tax laws of the Philippines.' They were issued pursuant to the power of the CIR under Section 4 of the National Internal Revenue Code, *viz:*
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>> 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.
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> Petitioners point out that the CA based its decision on Section 7 of R.A. No. 1125 that the

> CTA 'shall exercise exclusive appellate jurisdiction to review by *appeal* . . .' decisions of the CIR. They argue that in the instant case, there is no decision of the respondent CIR on any disputed assessment to speak of as what is being questioned is purely the authority of the CIR to impose and collect value-added and excise taxes.
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> **Petitioners' failure to ask the CIR for a reconsideration of the assailed revenue regulations and RMCs is another reason why the instant case should be dismissed. 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.' *(Emphasis supplied)*

This Court, in a long line of cases, has consistently held that 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 be exhausted first before the court's power of judicial review can be sought (***Province of Zamboanga del Norte vs. Court of Appeals, 342 SCRA 549, 557 [2000]; Zabat vs. Court of Appeals, 338 SCRA 551, 560 [2000]; Diamonon vs. Department of Labor and Employment, 327 SCRA 283, 291 [2000]; Social Security System Employees Association vs. Bathan-Velasco, 313 SCRA 250, 252 [1999]; Paat vs. Court of Appeals, 266 SCRA 167, 175 [1997]***).

The party with an administrative remedy must not merely 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 (***Carale vs. Abarintos, 269 SCRA 132, 142 [1997]***).

The doctrine of exhaustion of administrative remedies has practical and legal reasons. Resort to administrative remedies entails lesser expenses and provides for speedier disposition of controversies. Thus, for reasons of comity and convenience, courts will shy away from a dispute until the system of administrative redress has been completed and complied with so as to give the administrative agency every opportunity to correct its error and to dispose of the case. The underlying principle of the rule rests on the presumption that the administrative agency, if afforded a complete chance to pass upon the matter, will decide the same correctly (***Gorospe vs. Vinzons-Chato, G.R. No. 132228. January 21, 2003***).

The doctrine of primary jurisdiction does not authorize a court to arrogate unto itself the authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence (***Province of Zamboanga del Norte vs. Court of Appeals, 342 SCRA 549, 557 [2000]***). This doctrine squarely applies to this case considering that the reconsideration and/or review of answer 11 to question 11 of RMC 46-2008 is within the **exclusive and original jurisdiction** of respondent Commissioner.

Based on the foregoing, it is respectfully submitted that the issue on the validity of answer 11 to question 11 of RMC 46-2008 should not be given due course by this Honorable Court for failure of petitioner to exhaust all administrative remedies." *(Citations omitted)*

During trial, petitioner presented the following witnesses: Ma. Richelle O. Aritalla, receptionist of Follosco Morallos & Herce[14]; Ceazar Lorenzo T. Veneracion III, Manager, Finance/Human Resources/Legal, Philippines, Australia and New Zealand of Delta Air Lines, Inc.[15]; Gamiel D. Gumapon, Paralegal of Follosco Morallos & Herce; and Marlon G. Addatu, Head of Paralegal of Follosco Morallos & Herce[16].

Thereafter, petitioner filed on September 25, 2012 its Formal Offer of Evidence[17], submitting Exhibits "A" to "L", inclusive of their sub-markings; which was admitted by this Court in the Resolution[18] dated October 15, 2012.

On the other hand, counsel for respondents manifested during the hearing held on November 14, 2012 that he will dispense with the presentation of witness as this case involved questions of law only. Upon motion of the counsels for both parties, the parties were given thirty (30) days or until December 14, 2012 to file their respective Memorandum.[19]

On April 5, 2013, this case was submitted for decision, considering petitioner's Memorandum filed on January 2, 2013 and Reply Memorandum filed on March 18, 2013; respondent Commissioner of Internal Revenue's Memorandum filed on January 2, 2013; and respondent Secretary of Finance's Memorandum filed on March 5, 2013.[20]

The following are the parties' jointly stipulated issues[21] submitted for this Court's resolution:

"A.

WHETHER OR NOT PETITIONER COMPLIED WITH THE RULE ON EXHAUSTION OF ADMINISTRATIVE REMEDIES

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[14] Minutes of Hearing dated May 21, 2012, docket, p. 283.
[15] Minutes of Hearing dated June 11, 2012, docket, p. 292.
[16] Minutes of Hearing dated July 9, 2012, docket, p. 302.
[17] Docket, pp. 315 to 323.
[18] Docket, pp. 444 to 445.
[19] Minutes of Hearing dated November 14, 2012, docket, p. 448.
[20] Docket, 641.
[21] Docket, pp. 269 and 270.

B.

WHETHER OR NOT THE INSTANT PETITION INVOLVES A QUESTION OR CONTROVERSY FALLING UNDER '*OTHER MATTERS ARISING UNDER THE NATIONAL INTERNAL REVENUE CODE OR OTHER LAWS ADMINISTERED BY THE BUREAU OF INTERNAL REVENUE*'

C.

WHETHER OR NOT RESPONDENTS' BIR RULING NO. 99-2011 DATED 6 APRIL 2011 AND LETTER DATED 8 SEPTEMBER 2011 HAVE LEGAL BASIS

D.

WHETHER OR NOT REVENUE MEMORANDUM CIRCULAR NO. 46-2008 ISSUED BY RESPONDENT COMMISSIONER IS VALID

E.

WHETHER SERVICES RENDERED TO PERSONS ENGAGED IN INTERNATIONAL AIR TRANSPORT OPERATIONS, SUCH AS SERVICES PROVIDED BY VAT-REGISTERED SUPPLIERS FOR ACCOMMODATION/LODGING OF PILOTS AND CABIN CREW MEMBERS DURING FLIGHT LAYOVERS IN THE PHILIPPINES ARE SUBJECT TO ZERO PERCENT (0%) VAT UNDER SECTION 108(B)(4) OF THE TAX CODE

F.

WHETHER SERVICES RENDERED TO PERSONS ENGAGED IN INTERNATIONAL AIR TRANSPORT OPERATIONS, SUCH AS SERVICES PROVIDED BY VAT-REGISTERED SUPPLIERS FOR ACCOMMODATION/LODGING OF PILOTS AND CABIN CREW MEMBERS DURING FLIGHT LAYOVERS IN THE PHILIPPINES ARE SUBJECT TO TWELVE PERCENT (12%) VAT"

The foregoing issues can be summarized as follows:

"Whether or not petitioner is entitled to its prayer for the nullification of BIR Ruling No. 99-2011 and the Secretary of Finance's letter dated September 8, 2011; the nullification of Answer 11 to Question 11 of RMC No. 46-2008; and the issuance of a ruling declaring that sales of services rendered by VAT-registered suppliers for the accommodation/lodging of pilots and cabin crew members of petitioner during flight layovers in the Philippines are subject to VAT at zero percent (0%) pursuant to Section 108(B)(4) of the NIRC of 1997, as amended."

The jurisdiction of this Court is defined under Republic Act No. 1125, as amended by Republic Act No. 9282. Section 7 thereof states, in pertinent part:

"SEC. 7. *Jurisdiction*. – The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;

(3) Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction; xxx"

In the case of *British American Tobacco vs. Jose Isidro N. Camacho, et al.*[22], the Supreme Court explained that this Court's jurisdiction to resolve tax disputes in general does not include cases where 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 is challenged, as quoted below:

> "**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 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)*

In this case, petitioner filed on August 11, 2010 with the Law Division of the BIR a Request for VAT Ruling dated August 10, 2010 to request confirmation that the services rendered to persons engaged in international air transport operations, such as services provided by local suppliers to petitioner for the accommodation/lodging including meals of its pilots and cabin crews, *Je*

[22] G.R. No. 163583, August 20, 2008.

are subject to 0% VAT in accordance with Section 108(B)(4) of the NIRC of 1997, as amended.[23]

Respondent Commissioner issued the assailed BIR Ruling No. 099-2011 dated April 6, 2011[24] wherein respondent Commissioner ruled that sales of services provided by local suppliers, such as hotels to petitioner for the accommodation/lodging including meals of its pilots and cabin crews, are not zero-rated but subject to 12% VAT, citing as basis Section 108(B)(4) of the NIRC of 1997, as amended; Section 4.108-5(b)(4) of Revenue Regulations (RR) No. 16-2005 as amended by RR No. 4-2007; Answer 11 to Question No. 11 of RMC No. 46-2008; and VAT Ruling No. 021-01 dated May 15, 2001. BIR Ruling No. 099-2011 dated April 6, 2011 was appealed to respondent Secretary of Finance, who in turn, affirmed the said BIR Ruling and issued the assailed DOF Ruling.

The instant Petition substantially argues that (a) BIR Ruling No. 99-2011 was based on the old Section 108(B)(4) of the NIRC of 1997 before it was amended by Republic Act No. 9337 and is therefore invalid; (b) BIR Ruling No. 99-2011 and RMC No. 46-2008 are not consistent with the express provision of Section 108(B)(4) of the NIRC of 1997, as amended, hence, both are null and void; and (c) the interpretation made by respondent Secretary in the DOF Letter that VAT zero-rating of services under Section 108(B)(4) is subject to the destination principle and cross border doctrine is erroneous and has no legal basis. Accordingly, petitioner prays for this Court to render a ruling as follows:

1. BIR Ruling No. 99-2011 dated April 6, 2011 issued by respondent Commissioner and letter dated September 8, 2011 issued by respondent Secretary of Finance, insofar as they interpret Section 108(B)(4) of the Tax Code, as amended, are null and void;

2. Answer 11 to Question 11 of RMC No. 46-2008 issued by respondent Commissioner, insofar as its interpretation of Section 108(B)(4) of the Tax Code, as amended, is contrary to the plain language and intention of the law, is null and void; and

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[23] Exhibit "C", docket, pp. 379 to 384.
[24] Exhibit "B", docket, pp. 374 to 376.

3. The sale of services rendered by VAT-registered suppliers for the accommodation/lodging of pilots and cabin crew members of petitioner during flight layovers in the Philippines are subject to VAT at zero percent (0%) pursuant to Section 108(B)(4) of the Tax Code, as amended.

The subject matter of the instant petition is the validity of the assailed BIR Ruling No. 099-2011 dated April 6, 2011 and DOF Letter dated September 8, 2011, as well as Answer 11 to Question 11 of RMC No. 46-2008.

The jurisdiction of the Court over the subject matter refers to the nature of the cause of action and of the relief sought. This is conferred by the sovereign authority which organizes the court, and is to be sought for in the general nature of its powers, or in authority specially conferred.[25]

From the foregoing, the issue pertaining to the validity of BIR Ruling No. 099-2011 dated April 6, 2011, DOF Letter dated September 8, 2011, and Answer 11 to Question 11 of RMC No. 46-2008 is indeed beyond the jurisdiction of this Court. The Court, therefore, will not pass upon the question of validity of the above-stated Ruling No. 099-2011 dated April 6, 2011 and DOF Letter dated September 8, 2011, as well as Answer 11 to Question 11 of RMC No. 46-2008.

In the recent case of *St. Paul College of San Rafael vs. Commissioner of Internal Revenue*[26], this Court ruled in this wise:

> "Here, the **validity of BIR Ruling No. 143-2010 should have been elevated** to the Secretary of Finance and eventually **before the regular courts, and not with the CTA**.
>
> Indeed, **petitioner's immediate filing of the instant case with the CTA resulted to the dismissal of the present case due to** its failure to exhaust administrative remedies and the **absence of the CTA's jurisdiction**." *(Emphases supplied)*

[25] *Idonah Slade Perkins vs. Mamerto Roxas, et al.*, 72 Phil. 514 (1941).
[26] CTA Case No. 8217, November 9, 2011.

In view of the foregoing finding, this Court deems it unnecessary to discuss the other arguments and issues raised by the parties.

WHEREFORE, premises considered, the Petition for Review is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

I attest 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's Division.

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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