

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

SECOND DIVISION

**DEPARTMENT OF ENERGY
REPRESENTED BY
SECRETARY ALFONSO G.
CUSI,**

Petitioner,

CTA Case No. 10198

Members:

CASTAÑEDA, JR., *Chairperson,*
MINDARO-GRULLA, and
BACORRO-VILLENA, JJ.

- versus -

**COMMISSIONER OF
INTERNAL REVENUE
REPRESENTED BY
COMMISSIONER
CAESAR R. DULAY,**

Respondent.

Promulgated:

NOV 08 2019

2:15 p.m.

X-----X

RESOLUTION

The present *Petition for Review (with Urgent Motion for Suspension of Collection of Taxes)* assails the Warrants of Distrain and/or Levy and Garnishment both dated 19 September 2019 issued by respondent wherein he seeks to collect from petitioner the alleged deficiency excise taxes amounting to ₱18,378,759,473.44 on the removal and export of condensates out of Service Contract No. 38.¹

The present *Petition for Review* was filed by the Department of Energy (DOE), an agency of the Government created by virtue of Republic Act No. 7638, otherwise known as the Department of

¹ Par. 1, *Petition for Review*, Docket, p. 5.

Energy Act of 1992, and is responsible for preparing, integrating, coordinating, supervising and controlling all plans, programs, projects and activities of the Government relative to energy exploration, development, utilization, distribution and conservation.² Impleaded as respondent is the Commissioner of Internal Revenue, the head of the Bureau of Internal Revenue (BIR) who has 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 the National Internal Revenue Code of 1997, as amended, or other laws or portions thereof administered by the BIR.

After careful evaluation of the allegations in the present *Petition for Review*, this Court finds that the same should be dismissed for lack of jurisdiction, in consonance with the Supreme Court *En Banc's* ruling in *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue*.³

Basic is the rule that jurisdiction of a court may be questioned at any stage of the proceedings.⁴ Moreover, it is the duty of the courts to consider the question of jurisdiction before they look into other matters involved in the case, even though such question is not raised by any of the parties.⁵ Lack of jurisdiction is one of those excepted grounds where the court may dismiss a claim or a case at any time when it appears from the pleadings or the evidence on record that any of those grounds exists, even if they were not raised in the answer or in a motion to dismiss.⁶ The reason is that jurisdiction is conferred by law, and lack of it affects the very authority of the court to take cognizance of and to render judgment on the action.⁷ If the court has no jurisdiction over the nature of an action, it has no other option but to dismiss the case.

It is also a settled rule that jurisdiction over the nature of an action is determined by the averments of the complaint or other initiatory pleading, not by the defenses contained in the answer.⁸

² Par. 2, *Petition for Review*, Docket, p. 6.

³ G.R. No. 198146, August 8, 2017 ("PSALM").

⁴ *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (now TeaM Energy Corporation)*, G.R. No. 180434, January 20, 2016, 781 SCRA 371; *Republic v. Bantigue Point Development Corporation*, G.R. No. 162322, March 14, 2012, 668 SCRA 163, 164.

⁵ *Bureau of Customs v. Devanadera*, G.R. No. 193253, September 8, 2015, 770 SCRA 24.

⁶ Section 1, Rule 9 of the Rules of Court; *Heirs of Jose Fernando v. De Belen*, G.R. No. 186366, July 3, 2013, 700 SCRA 562; *Geonzon Vda. De Barrera v. Heirs of Vicente Legaspi*, G.R. No. 174346, September 12, 2008, 565 SCRA 192, 198.

⁷ *Bernardo v. Heirs of Eusebio Villegas*, G.R. No. 183357, March 15, 2010, 615 SCRA 474-475; *Sales v. Barro*, G.R. No. 171678, December 10, 2008, 573 SCRA 464.

⁸ *Penta Pacific Realty Corporation v. Ley Construction and Development Corporation*, G.R. No. 161589, November 24, 2014, 741 SCRA 440.

In *PSALM*, the Supreme Court *En Banc* had ruled that purely intra-governmental disputes and claims shall be settled or adjudicated in accordance with Presidential Decree No. 242 (presently under Administrative Code of 1987). The relevant portions of said decision are quoted below:

"x x x 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.

x x x

x x x

x x x

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.

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.**

X X X X X X X X X

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.

X X X X X X X X X

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

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 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.**

X X X

X X X

X X X

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 intragovernmental 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.

X X X

X X X

X X X

PD 242 is now embodied in Chapter 14, Book IV of Executive Order No. 292 (EO 292), otherwise known as the Administrative Code of 1987, which took effect on 24 November 1989. The pertinent provisions read:

Chapter 14 — Controversies Among Government Offices and Corporations

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 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).

SEC. 69. *Arbitration.* — The determination of factual issues may be referred to an arbitration panel composed of one representative each of the parties involved and presided over by a representative of the Secretary of Justice or the Solicitor General, as the case may be.

SEC. 70. *Appeals.* — The decision of the Secretary of Justice as well as that of the Solicitor General, when approved by the Secretary of Justice, shall be final and binding upon the parties involved. Appeals may, however, be taken to the President where the amount of the claim or the value of the property exceeds one million pesos. The decision of the President shall be final.

SEC. 71. *Rules and Regulations.* — The Secretary of Justice shall promulgate the rules and regulations necessary to carry out the provisions of this Chapter.

Since the amount involved in this case is more than one million pesos, the DOJ Secretary's decision may be appealed to the Office of the President in accordance with Section 70, Chapter 14, Book IV of EO 292 and Section 5 of PD 242. If the appeal to the Office of the President is denied, the aggrieved party can still appeal to the Court of Appeals under Section 1, Rule 43 of the 1997 Rules of Civil Procedure." (*Citations omitted*)

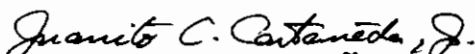
In the present *Petition for Review*, both parties are public entities. Petitioner DOE is a department of the executive branch of government while respondent is the Commissioner of Internal Revenue, the head of the Bureau of Internal Revenue. Without a doubt, this is a purely intra-governmental dispute. Accordingly, this Court has no jurisdiction over the present case. Notably, this Court

finds no merit in petitioner's arguments against the application of the *PSALM* in the present Petition for Review.

Given that the Supreme Court has already spoken on the matter, this Court has no other option but to strictly uphold and apply the same. Until and unless the doctrine laid down in *PSALM* is modified or reversed by the Supreme Court *En Banc*,⁹ the same remains to be binding and should be applied in determining the proper forum to resolve the disputes and claims solely between and among the departments, bureaus, offices, agencies, and instrumentalities of the National Government, including government-owned or controlled corporations. The Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is. It is the final arbiter of any justiciable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.¹⁰

WHEREFORE, the present *Petition for Review* is **DISMISSED** for lack of jurisdiction.

SO ORDERED.


JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice

⁹ Section 4(3), Article VIII, 1987 Constitution.

¹⁰ *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc.*, G.R. No. 150947, July 15, 2003, 406 SCRA 178.