REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

OCEANAGOLD (PHILIPPINES), INC., Petitioner,	CTA EB NO. 1222 (CTA Case No.8618)
	Present:
- versus -	DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, *and* MANAHAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 22 2017 1:23 p.m.

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RESOLUTION

Fabon-Victorino, J.:

On June 16, 2016, the Court *En Banc* promulgated a Decision,[1] the dispositive portion of which reads:

> **WHEREFORE**, the instant *Petition for Review* filed by petitioner OceanaGold (Philippines), Inc. is hereby **DENIED**. Accordingly, the assailed Resolution dated June 13, 2014 and Resolution dated September 1, 2014, are hereby **AFFIRMED**.
>
> **SO ORDERED.**

[1]*En Banc* docket, pp. 439-459.

In the assailed Decision, the Court ratiocinated that while it is now within the competence of the Court to rule on the validity of a particular administrative rule or regulation in the exercise of its appellate jurisdiction per recent jurisprudence, still it cannot take cognizance of the instant case for failure of petitioner to exhaust available administrative remedies warranted before seeking judicial intervention. In other words, it was premature on the part of petitioner to seek recourse to this Court to assail the propriety, legality and validity of Revenue Memorandum Circular (RMC) No. 17-2013 issued by respondent which effectively revoked BIR Ruling No. 10-2007 exempting it from payment of excise tax from the date of the approval of its Mining Project Feasibility Study (MPFS) on October 11, 2005 up to the end of the recovery period in accordance with the Financial or Technical Assistance Agreement (FTAA) and the Philippine Mining Act of 1995 and its implementing Rules and Regulations.

Unconvinced, petitioner filed a *Motion for Reconsideration*[2] on July 13, 2016, raising the following errors allegedly committed by the Court, thus:

> I. THE HONORABLE COURT COMMITTED REVERSIBLE ERROR IN APPLYING THE FIRST PARAGRAPH OF SECTION 4 OF THE 1997 NIRC, INSTEAD OF THE SECOND PARAGRAPH OF THE SAID SECTION 4. CONSEQUENTLY, THE HONORABLE COURT ERRED IN APPLYING THE RULE ON EXHAUSTION OF ADMINISTRATIVE REMEDIES WHICH APPLIES ONLY TO ACTIONS APPEALABLE UNDER THE FIRST PARAGRAPH OF SAID SECTION 4.
>
> A. The appealable decision is the action of respondent in collecting, without legal basis, excise tax through the apprehension, seizure and detention of the copper concentrates supposedly pursuant to Sections 171 and 172 of the 1997 NIRC.
>
> B. Respondent's illegal action in collecting, without legal basis, excise tax through the apprehension, seizure and detention of the copper concentrates supposedly pursuant to Sections 171 and 172 of the 1997 NIRC is a decision on "other matters" arising under the 1997 NIRC, which is directly appealable to the Court of Tax Appeals ("CTA")

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[2]*En Banc* docket, pp. 460-481.

pursuant to the second paragraph of Section 4 of the 1997 NIRC.

C. The Assailed RMC is not the appealable decision as it was issued after respondent apprehended, seized and detained petitioner's copper concentrates. The Assailed RMC was a mere afterthought intended to validate respondent's illegal action in apprehending, seizing and detaining petitioner's copper concentrates.

D. Therefore, the Honorable Court erred when it faulted petitioner for failing to exhaust administrative remedies by appealing the Assailed RMC to the Secretary of Finance pursuant to the first paragraph of Section 4 of the 1997 NIRC.

II. ASSUMING FOR THE SAKE OF ARGUMENT THAT THE RULE ON EXHAUSTION OF ADMINISTRATIVE REMEDIES IS APPLICABLE, THE EXCEPTIONS TO THIS RULE CLEARLY APPLY TO THE PETITIONER'S CASE.

A. The Revocation of the Ruling by the Assailed RMC violated petitioner's right to due process.

B. Respondent's decision to collect excise tax through the apprehension, seizure and detention of petitioner's copper concentrates is patently illegal for being contrary to petitioner's Financial or Technical Assistance Agreement ("FTAA") with the Philippine Government, Republic Act No. ("RA") 7942, DENR Department Administrative Order Nos. ("DAO") 95-23 and 95-56, and the Ruling.

C. Respondent's illegal action in apprehending, seizing, and detaining petitioner's copper concentrates is tantamount to an unlawful collection of taxes thereby gravely jeopardizing the interest of, and resulting in grave irreparable injury to petitioner.

D. Appealing the Assailed RMC to the Secretary of Finance pursuant to the first paragraph of Section 4 of the 1997 NIRC is not a plain, speedy and adequate remedy. Moreover, petitioner's direct resort to the CTA was necessitated by the urgency of judicial intervention.

Despite notice, respondent failed to file any comment/objection to petitioner's *motion* per Records Verification Report dated September 9, 2016. Hence, petitioner's *motion* was submitted for resolution without the required pleading from respondent.[3]

On November 17, 2016, petitioner filed a *Motion for Leave to File Supplement to Motion for Reconsideration [and admit attached Supplement to Motion for Reconsideration]*,[4] which the Court *En Banc* granted on January 30, 2017.[5] Again, respondent failed to register any objection despite the opportunity granted.

Petitioner claims that the filing of the *Supplement to Motion for Reconsideration* was prompted by the Supreme Court's Resolution dated August 16, 2016 in the case of *Banco de Oro v. Republic of the Philippines*[6], which allegedly settled the issue on the jurisdiction of the Court of Tax Appeals (CTA) over cases assailing the constitutionality or validity of a certain tax law or regulation. The said *BDO Resolution* further ruled that the CTA has the authority not only to pass upon the constitutionality or validity of a tax law or regulation when raised by the taxpayer as a defense in disputing or contesting an assessment or claiming a refund, but also over cases directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance. Petitioner posits that the *BDO Resolution* is the case in point, hence, should be applied in the present incident.

Despite directive, respondent again failed to file *Comment* to petitioner's *Supplement to Motion for Reconsideration*.[7]

Hence, this resolution.

After a careful and thorough evaluation of the arguments proffered by petitioner, the Court *En Banc* finds petitioner's *Motion for Reconsideration,* as well as its *Supplement* thereto, bereft of merit.

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[3] Minute Resolution, *En Banc* docket, pp. 486.
[4] *En Banc* docket, pp. 487-490.
[5] Resolution, *En Banc* docket, pp. 511- 512.
[6] G.R. No. 198756, January 13, 2015.
[7] Records Verification Report dated March 16, 2017.

Petitioner claims that the Court, in denying its Petition for Review on jurisdictional ground, erred in applying the principle of exhaustion of administrative remedies required under the first paragraph of Section 4 of the National Internal Revenue Code (NIRC), as amended, insisting that its case should be considered as pertaining to "other matters" arising under the NIRC, as amended, or other laws administered by the BIR under the mantle of the second paragraph of the same provision, hence, directly appealable to this Court.

Plainly, petitioner endeavors to skirt the very core of the controversy only to end up questioning the propriety, legality and validity of RMC No. 17-2013, which effectively deprived it of continued enjoyment of its exemption from payment of excise tax on the removal of its mined minerals during recovery period which shall commence from the date of commercial operation but not exceeding five (5) years, or until the date of actual recovery, whichever comes earlier.

However, petitioner is betrayed by its own pleadings. From its Petition for Review filed with the Court in Division to the last pleading filed with the Court *En Banc*, petitioner consistently seeks for the declaration of nullity of RMC No. 17-2013 and tenaciously invokes its exemption from payment of excise tax on removal of its copper concentrates granted under BIR Ruling No. 10-2007 which was withdrawn from it by virtue of RMC No. 17-2013, the root cause of its present plight.

Note that RMCs are rulings or opinions of the Commissioner of the Internal Revenue (CIR) implementing the Tax Code on the taxability of taxpayer(s), or on the tax treatment of taxable item(s), which is subject to review by the Secretary of the Department of Finance (DOF) in accordance with DOF Department Order No. 23-01, Section 1 of which specifically provides that it shall apply to all rulings of the Bureau of Internal Revenue (BIR) and other tax laws.

There is no arguing that the CTA, in the exercise of its appellate jurisdiction has the competence to determine the validity of certain administrative issuances made by respondent however if the same is assailed, prior review by the Secretary of Finance is warranted as mandated under Republic Act No. 8424. This much is clearly provided in the case of *Banco De Oro, et al. v. Republic of the Philippines, et al.,*[8] upon which petitioner relied its stance in invoking the CTA's jurisdiction over its case. The Supreme Court thus ruled:

> Furthermore, with respect to administrative issuances (revenue orders, revenue memorandum circulars, or rulings), these are issued by the Commissioner under its power to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws. Tax rulings, on the other hand, are official positions of the Bureau on inquiries of taxpayers who request clarification on certain provisions of the National Internal Revenue Code, other tax laws, or their implementing regulations. Hence, the determination of **the validity of these issuances clearly falls within the exclusive appellate jurisdiction of the Court of Tax Appeals under Section 7 (1) of Republic Act No. 1125, as amended, subject to prior review by the Secretary of Finance, as required under Republic Act No. 8424**.

The Court cannot also subscribe to petitioner's contention that the subject of the present case is the appealable action of respondent in collecting, without legal basis, of excise tax through the apprehension, seizure and detention of its copper concentrates pursuant to Sections 171 and 172 of the NIRC. If that is the case, petitioner should have assailed the September 3, 2012 Mission Order issued by respondent against it authorizing the BIR investigators to search and determine packages containing excisable articles which appears to be the precursor of respondent's subsequent actions. Assuming that petitioner's position that it is respondent's apprehension, seizure and detention of its shipment of copper concentrates that is being assailed, the first of which occurred on December 7, 2012, then, its appeal has already prescribed given that its Petition for Review was filed only on March 13, 2013, or more than 30 days from the impugned action.

[8]G.R. No. 198756, August 16, 2016.

To repeat, and as correctly pointed out by the Court in Division, **the resolution on the propriety of the apprehension, seizure, and detention of the copper concentrates is anchored on the validity or invalidity of assailed RMC No. 17-20-3** (*sic*). (*Boldfacing supplied*)

The fact that there is no indication that petitioner filed an appeal with the Secretary of Finance questioning respondent's issuance of RMC No. 17-2013, which revoked BIR Ruling No. 10-2007 issued in its favor, highlights petitioner's failure to exhaust administrative remedies prescribed by law.

It has been ruled that before a party is allowed to seek the intervention of the courts, it is a pre-condition that he avail of all administrative processes afforded him, such that if a remedy within the administrative machinery can be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must be exhausted first before the court's power of judicial review can be sought, otherwise, the premature resort to the court is fatal to one's cause of action.[9]

While there are exceptions to the principle of exhaustion of administrative remedies, it has not been shown that the present case falls under any of the exceptions. The Court *En Banc* cannot simply give weight and credence to petitioner's unsubstantiated allegations that the revocation of BIR Ruling No. 10-2007 through the issuance of the assailed RMC was just an afterthought and violated its right to due process. In the first place, a Mission Order was issued on September 3, 2012 for the determination of petitioner's excisable articles, which is within respondent's authority. Verily, bare allegations do not constitute substantial evidence and, thus, have no probative value.

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[9]*Province of Zamboanga Del Norte v. Court of Appeals*, 396 Phil. 709, 717 (2000).

WHEREFORE, petitioner's *Motion for Reconsideration* with *Supplement to Motion for Reconsideration*, is hereby **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

(See Dissenting Opinion)
ROMAN G. DELROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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

(On Leave)
MA. BELEN RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
(I join PJ's DO)
CATHERINE T. MANAHAN
Associate Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

OCEANAGOLD (PHILIPPINES), INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1222
(CTA CASE No. 8618)

Present:

DEL ROSARIO, *P.J.,*
CASTANEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, *JJ.*

Promulgated:

SEP 22 2017 1:23 p.m.

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DISSENTING OPINION

DEL ROSARIO, P.J.:

With due respect, I maintain my Dissenting Opinion on the assailed Decision.

I reiterate my view that the present case is not merely confined to an attack on the validity of Revenue Memorandum Circular (RMC) No. 17-2013 issued on February 15, 2013 but primarily involves an appeal of respondent's denial of petitioner's letter-protest dated December 10, 2012. The denial of petitioner's protest is clearly a decision of respondent on "other matters" arising under the National Internal Revenue Code (NIRC) of 1997, as amended, which decision is appealable to the Court of Tax Appeals (CTA) pursuant to Section 7(1) of Republic Act (RA) No. 1125, as amended.

I am of the opinion that Revenue Memorandum Circular (RMC) No. 17-2013, which was issued after three (3) days from petitioner's receipt of respondent's letter denying petitioner's protest, is not the "decision on other matters" that is being appealed by petitioner. Thus, an appeal to the Secretary of Finance assailing the validity of said RMC before filing an appeal with the CTA is unnecessary since what is being assailed before the Court in Division is the "denial" of petitioner's protest.

Truth to tell, in so far as the detention of petitioner's mineral ores are concerned, petitioner has exhausted the required administrative remedy by filing an administrative protest on December 10, 2012. When petitioner received on February 12, 2013 respondent's letter dated December 12, 2012, which denied petitioner's protest, petitioner had thirty (30) days within which to assail said denial by filing an appeal with the CTA pursuant to Section 7(1) in relation to Section 11 of RA No. 1125, as amended.

In ***Commissioner of Internal Revenue vs. Court of Tax Appeals (Second Division) and Petron Corporation***,[1] the Supreme Court clarified the meaning of the phrase "other matters arising under this Code" as appearing in Section 7(1) of RA No. 1125, as amended, viz.:

> "xxx the **phrase 'other matters arising under this Code,' as stated in the second paragraph of Section 4 of the NIRC, should be understood as pertaining to those matters directly related to the preceding phrase "disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto" and must therefore not be taken in isolation to invoke the jurisdiction of the CTA**. In other words, the subject phrase should be used only in reference to cases that are, to begin with, subject to the exclusive appellate jurisdiction of the CTA, i.e., those controversies over which the CIR had exercised her quasi-judicial functions or her power to decide disputed assessments, refunds or internal revenue taxes, fees or other charges, penalties imposed in relation thereto, not to those that involved the CIR's exercise of quasi-legislative powers."(Boldfacing supplied)

Applying the doctrine in *Petron* to the present case, I submit that the commencement of the 30-day period to appeal before the

[1] G.R. No. 207843, July 15, 2015.

CTA should be reckoned from petitioner's receipt on February 12, 2013 of respondent's letter denying its protest and not from the issuance of the Mission Order on September 3, 2012. The denial of petitioner's protest is the "other matter arising under the NIRC of 1997, as amended" that is appealable to the CTA. Parenthetically, as of the date of the Mission Order's issuance on September 3, 2012, there was yet no decision of respondent that is appealable to the CTA considering said Mission Order merely authorized the BIR investigators to search and determine packages containing excisable articles, *akin* to a Letter of Authority (LOA) which authorizes the examination of a taxpayer's books of accounts and other financial records, the issuance of which is not yet appealable before the CTA.

In fine, since the decision appealable in this case is respondent's letter dated December 12, 2012 which denied petitioner's protest, the thirty-day period should be reckoned from February 12, 2013 when petitioner received said respondent's decision. Petitioner had until March 14, 2013 within which to file its appeal before the CTA. The Petition for Review which was filed by petitioner on March 13, 2013 before the Court in Division was seasonably filed.

All told, I **VOTE** to: (i) **GRANT** the Motion for Reconsideration filed by petitioner Oceanagold (Philippines), Inc.; (ii) **REVERSE** and **SET ASIDE** the Court *En Banc*'s Decision dated June 16, 2016 and the Court in Division's Resolutions dated June 13, 2014 and September 1, 2014; and, (iii) **REMAND** the case to the Court in Division for further proceedings.

ROMAN G. DEL ROSARIO
Presiding Justice