

Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

COMMISSIONER OF INTERNAL  
REVENUE,

G.R. No. 210501

Petitioner,

-versus-

COURT OF TAX APPEALS  
(FIRST DIVISION) and  
PILIPINAS SHELL PETROLEUM  
CORPORATION,

Respondents.

X ----- X  
THE BUREAU OF CUSTOMS and  
COLLECTOR OF CUSTOMS OF  
THE PORT OF BATANGAS,

G.R. No. 211294

Petitioners,

-versus-

PILIPINAS SHELL PETROLEUM  
CORPORATION,

Respondent.

X ----- X  
PILIPINAS SHELL PETROLEUM  
CORPORATION,

G.R. No. 212490

Petitioner,

Present:

-versus-

COURT OF TAX APPEALS  
(FIRST DIVISION),  
COMMISSIONER OF INTERNAL  
REVENUE, BUREAU OF  
CUSTOMS and COLLECTOR OF  
CUSTOMS OF THE PORT OF  
BATANGAS,

PERLAS-BERNABE, S.A.J.,  
Chairperson,  
GESMUNDO,  
LAZARO-JAVIER,  
LOPEZ, and  
ROSARIO, JJ.

Promulgated:

Respondents.

MAR 15 2021

X-----X

**DECISION****PERLAS-BERNABE, J.:**

These three (3) consolidated<sup>1</sup> cases originated from Court of Tax Appeals (CTA) Case No. 8535, wherein respondent Pilipinas Shell Petroleum Corporation (PSPC) assailed the validity of Document No. M-059-2012 and the consequent Demand Letter dated October 1, 2012 issued by the Collector of the Port of Batangas (Collector) of the Bureau of Customs (BOC) requiring PSPC to pay ₱1,994,500,677.47 in deficiency excise taxes, inclusive of interest and penalties, for its alkylate importations between January 2010 to June 2012.

**The Facts**

PSPC is a corporation engaged in the manufacture and distribution of petroleum products. As an integral part of its manufacturing process, and to comply with Republic Act No. (RA) 8749,<sup>2</sup> otherwise known as the “Philippine Clean Air Act of 1999” and the Philippine National Standards (PNS), PSPC started to import alkylate – a raw material and blending component to be mixed with other substances to produce petroleum products.<sup>3</sup> For PSPC’s alkylate importations between May 2010 until August 2011, the Bureau of Internal Revenue (BIR) issued twenty-one (21) Authorities to Release Imported Goods (ATRIGs) which all stated that alkylate was not subject to excise tax considering that it is “not among those articles enumerated under Title VI of NIRC 1997.”<sup>4</sup> Subsequently, the BOC further conducted an independent/third-party test of the specifications of alkylate, which showed that alkylate was, in fact, not in the nature of premium plus, premium, or regular gasoline but a mere component additive,<sup>5</sup> and hence, should not be subject to excise tax.

Despite these findings, records show that the BIR, in September 2011, began inserting a *colatilla* in the ATRIGs it issued for PSPC’s alkylate importations, stating that the BIR’s tax assessments was “without prejudice to the collection of the corresponding excise taxes, penalties and interests depending on the final resolution of the Office of the Commissioner on the issue on whether this item is subject to the excise taxes under the NIRC of 1997, as amended.” Since the ATRIGs were issued directly to the BOC,<sup>6</sup> and not to PSPC, the latter only found out about the *colatilla* later in the proceedings. Further, around the same time (September 2011), the Collector

<sup>1</sup> See Resolution dated July 7, 2014 (*rollo* [G.R. No. 211294], pp. 1715-1717).

<sup>2</sup> Entitled “AN ACT PROVIDING FOR A COMPREHENSIVE AIR POLLUTION CONTROL POLICY AND FOR OTHER PURPOSES,” approved on June 23, 1999.

<sup>3</sup> See Amended Petition for Review in G.R. No. 210501 (*rollo* [G.R. No. 210501], pp. 342-432).

<sup>4</sup> *Id.* at 356.

<sup>5</sup> *Id.* at 356-358.

<sup>6</sup> *Id.* at 359.

also sent a request for a legal opinion to the Department of Energy (DOE) with respect to the nature of alkylate. In a Letter dated June 27, 2012, the DOE likewise held that alkylate was not a finished product but an intermediate product;<sup>7</sup> hence, not subject to excise tax.

In spite of all the foregoing findings, the Collector still issued a Memorandum dated June 4, 2012 addressed to then Commissioner of Customs (COC) Rozzano Rufino Biazon (Commissioner Biazon) requesting for a formal legal opinion on whether it could collect excise taxes on PSPC's alkylate importations. Commissioner Biazon forwarded the same to the BIR through a Letter dated June 13, 2012 (June 13, 2012 Letter).<sup>8</sup> In the meantime, PSPC discovered the *colatilla* in its ATRIGs; consequently, it filed a Letter to the BIR Large Taxpayer Services (LTS), decrying violation of due process. The BIR-LTS, however, did not reply to this Letter as of the time of filing of the instant case.<sup>9</sup>

On June 29, 2012, the CIR issued **Document No. M-059-2012** in response to Commissioner Biazon's June 13, 2012 Letter. In this issuance, the CIR cited the report of the BIR Laboratory Section, Excise Taxpayers Regulatory Division, which found that alkylate was similar to naphtha as a product of distillation. Based on this, it opined that **alkylate importations are subject to excise tax**<sup>10</sup> and corresponding value-added taxes (VAT). Afterwards, Commissioner Biazon issued Customs Memorandum Circular (CMC) No. 164-2012 on July 18, 2012 directing the Collector to take "appropriate action" based on Document No. M-059-2012.<sup>11</sup>

Aggrieved, PSPC filed a **petition for review with the CTA on August 24, 2012 assailing Document No. M-059-2012**. It claimed that the said issuance was actually an invalid BIR Ruling since it was issued without factual bases and in violation of its right to due process.<sup>12</sup> PSPC's petition was docketed as **CTA Case No. 8535** and initially raffled to the CTA Second Division.

In August 2012, the BIR began issuing ATRIGs assessing PSPC's alkylate importations for excise tax. As such, PSPC filed a **Verified Urgent Motion for the Issuance of a Suspension Order with a Prayer for Immediate Issuance of a Temporary Restraining Order dated September 17, 2012** (September 17, 2012 Verified Urgent Motion) in CTA Case No. 8535 seeking to enjoin the Collector and the BIR from

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<sup>7</sup> Id. at 364-365.

<sup>8</sup> Id. at 365.

<sup>9</sup> Id. at 365-366.

<sup>10</sup> Under Section 148 (e) of the National Internal Revenue Code of 1997, as amended (Tax Code). See *rollo* (G.R. No. 211294), pp. 89-93.

<sup>11</sup> *Rollo* (G.R. No. 210501), pp. 510-515.

<sup>12</sup> Id. at 371-419.

implementing Document No. M-059-2012 for PSPC's subject and future alkylate importations. The BOC and the Collector opposed the same.<sup>13</sup>

On August 31, 2012, Commissioner Biazon sent a letter to the CIR requesting for assistance in the computation of deficiency excise taxes and applicable interests and penalties for PSPC's previous importations from 2010 to 2012.<sup>14</sup> On September 5, 2012, the CIR issued a letter-reply containing the requested computation in the aggregate amount of ₱1,994,500,677.47.<sup>15</sup> As a result, on **October 1, 2012**, the Collector sent a **Demand Letter to PSPC for the deficiency excise taxes, inclusive of interest and penalties, in the amount of ₱1,994,500,677.47** as computed by the CIR in her September 5, 2012 letter-reply.<sup>16</sup> Because of this development, PSPC **amended its Petition for Review in CTA No. 8535 to include the October 1, 2012 Demand Letter (Amended Petition)**.

On October 5, 2012, the CTA Second Division initially denied PSPC's September 17, 2012 Urgent Verified Motion on the ground that **no assessment has yet been issued**. However, on PSPC's motion for reconsideration and upon presenting the October 1, 2012 Demand Letter, **the CTA reversed itself via a Resolution dated October 22, 2012**, and issued a **Suspension Order covering the ₱1,994,500,677.47 demand by the Collector (October 22, 2012 Suspension Order)**. This notwithstanding, the CTA clarified that it was granting a Suspension Order only on the amounts covered by the assessment contained in the Demand Letter which was for importations from January 2010 to June 2012, and not a general Suspension Order as to future or incoming shipments. Anent these future/incoming shipments, it held that it had no authority to enjoin the collection of taxes sans an actual assessment.<sup>17</sup> **Notably, the October 22, 2012 Resolution did not rule on the PSPC's separate prayer (in the September 17, 2012 Verified Urgent Motion) for the issuance of a TRO/WPI to enjoin the implementation of Document No. M-059-2012.**

Thereafter, **the CIR, BOC, and the Collector filed an Omnibus Motion to dismiss the case, to lift the October 22, 2012 Suspension Order, and to require PSPC to explain how it obtained Document No. M-059-2012**. Essentially, they argued that: (a) the CTA has no jurisdiction over the case since Document No. M-059-2012 was neither a ruling nor an adverse decision but a mere internal communication between the COC and the CIR; (b) PSPC failed to exhaust the protest procedure under the Tariff and Customs Code of the Philippines (TCCP) in order to properly contest the tax assessment in the October 1, 2012 Demand Letter, thus rendering the same final and executory; and (c) PSPC failed to prove its entitlement to a

<sup>13</sup> *Rollo* (G.R. No. 212490), pp. 19-21.

<sup>14</sup> *Rollo* (G.R. No. 211294), pp. 311-312.

<sup>15</sup> *Id.* at 318-322.

<sup>16</sup> *Id.* at 308-309.

<sup>17</sup> *Rollo* (G.R. No. 212490), pp. 22-24.

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Suspension Order.<sup>18</sup> The Omnibus Motion was opposed by PSPC which maintained that Document No. M-059-2012 was, in fact, a BIR Ruling and was issued by the CIR in the exercise of her quasi-judicial powers. In any event, it would fall under the “other matters” jurisdiction of the CTA.<sup>19</sup>

On November 19, 2012, the CIR filed a separate Answer in CTA Case No. 8535, similarly arguing that the CTA did not have jurisdiction over the case and that PSPC failed to exhaust administrative remedies.<sup>20</sup>

Prior to the resolution of the Omnibus Motion, PSPC filed two (2) separate Urgent Verified Motion for Suspension Orders for its alkylate importations on November 5, 2012 and December 17, 2012. In a Resolution dated January 4, 2013, the CTA denied the December 17, 2012 Motion on the ground that no assessment has yet been issued by the Collector for the alleged shipment.<sup>21</sup>

Meanwhile, in a Resolution<sup>22</sup> dated January 28, 2013, the CTA Second Division denied the November 5, 2012 Urgent Verified Motion and the Omnibus Motion. With respect to the Urgent Verified Motion, the CTA reiterated its position in its January 4, 2013 Resolution that no Suspension Order could be issued sans an actual assessment. As to the Omnibus Motion, it held that it has jurisdiction over PSPC’s petition since: *(a) the assailed Document No. M-059-2012 was actually in the nature of a BIR Ruling;* and *(b) the likewise assailed October 1, 2012 Demand Letter was a tax assessment* given that liability of the taxpayer was definitively determined. Finally, the CTA held that there was sufficient basis to maintain the Suspension Order over the ₱1,994,500,677.47 assessment in the October 1, 2012 Demand Letter.

Unperturbed, the BOC and the Collector moved for reconsideration but was denied by the CTA First Division (not the Second Division due to a reorganization)<sup>23</sup> in a Resolution<sup>24</sup> dated June 24, 2013. The BOC and the Collector then elevated this resolution to the CTA *En Banc* through a Petition for Review, docketed as **CTA EB Case No. 1047**. However, in a Resolution<sup>25</sup> dated February 10, 2014, the CTA *En Banc* denied due course

<sup>18</sup> *Rollo* (G.R. No. 211294), pp. 411-456

<sup>19</sup> *Id.* at 463.

<sup>20</sup> *Id.* at 1651-1670.

<sup>21</sup> *Rollo* (G.R. No. 212490), pp. 25-27.

<sup>22</sup> *Rollo* (G.R. No. 211294), pp. 457-484. Signed by Associate Justice Cielito N. Mindaro-Grulla. Associate Justices Juanito C. Castañeda, Jr. and Caesar A. Casanova issued Concurring and Dissenting Opinions.

<sup>23</sup> Notably, during the interim, CTA Case No. 8535 was transferred from the CTA Second Division to the CTA First Division following a reorganization

<sup>24</sup> *Rollo* (G.R. No. 211294), pp. 509-526. Signed by Associate Justices Erlinda P. Uy and Cielito N. Mindaro-Grulla. Presiding Justice Roman G. Del Rosario issued a Dissenting Opinion.

<sup>25</sup> *Id.* at 8-14. Signed by Presiding Justice Roman G. Del Rosario, Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Amelia R. Cotangco-Manalastas, and Ma. Belen M. Ringpis-Liban. Associate Justice Cielito N. Mindaro-Grulla was on leave.

to their petition for being the wrong remedy to contest an interlocutory order of the CTA First Division. **Undeterred, the BOC and the Collector filed their Petition for Review on *Certiorari*<sup>26</sup> before this Court assailing the CTA *En Banc*'s Resolution, which was docketed as G.R. No. 211294.**

On June 17, 2013, PSPC filed yet another Urgent Verified Motion for Suspension Order for its alkylate importation,<sup>27</sup> this time presenting the Import Entry and Internal Revenue Declaration (IEIRD) and the ATRIG corresponding to its importation to prove an existing assessment against it.<sup>28</sup> This was opposed by the BOC and the Collector. On the other hand, the CIR filed a Motion to Dismiss in response, reiterating the grounds she raised in her separate Answer filed in CTA Case No. 8535.<sup>29</sup>

In a Resolution<sup>30</sup> dated July 15, 2013, the CTA First Division denied the CIR's Motion to Dismiss on the ground that the CTA's jurisdiction over the case had already been settled through the CTA's Resolutions dated January 28, 2013 and June 24, 2013. Furthermore, it granted PSPC's June 17, 2013 Urgent Verified Motion, and **issued a Suspension Order covering the excise taxes for PSPC's alkylate shipment under IEIRD Nos. C-1298-13 and C-1301-13**. The CIR's Motion for Reconsideration was denied through a Resolution<sup>31</sup> dated October 14, 2013, prompting it to **file a Petition for *Certiorari*<sup>32</sup> before this Court assailing these twin Resolutions, which was docketed as G.R. No. 210501**.

Thereafter, PSPC filed several other Urgent Verified Motions for Suspension Orders for its succeeding alkylate importations from September 11, 2013 until February 26, 2014, but the same were withdrawn due to the CTA's inability to resolve the same within the fifteen (15) day period under the TCCP.<sup>33</sup>

On March 19, 2014, PSPC filed its **Urgent Verified Motion for the Issuance of a Suspension Order Against the Collection of Excise Taxes and Value Added Tax thereon on the Shipment of 80,162 Barrels of Alkylate as Delivered by the Vessel MT Marine Express**. However, this was denied by the CTA First Division in a Resolution<sup>34</sup> dated April 2, 2014, opining that it has **no jurisdiction to issue Suspension Orders on incoming alkylate importations because the same were not covered by**

<sup>26</sup> Id. at 20-77.

<sup>27</sup> Note. Prior to this, PSPC also filed an Urgent Verified Motion for Suspension Order on January 22, 2013 for an alkylate importation, but the same was withdrawn due to the CTA's failure to act within the fifteen (15)-day period provided under the TCCP before abandonment occurred. (See *rollo* [G.R. No. 212490], pp. 30-32.)

<sup>28</sup> Id. at 30-32.

<sup>29</sup> *Rollo* (G.R. No. 210501), p. 42.

<sup>30</sup> Id. at 39-44.

<sup>31</sup> Id. at 48-56.

<sup>32</sup> Id. at 3-36.

<sup>33</sup> *Rollo* (G.R. No. 212490), pp. 32-35.

<sup>34</sup> Id. at 121-132. Signed by Associate Justices Erlinda P. Uy and Cielito N. Mindaro-Grulla. Presiding Justice Roman G. Del Rosario penned a concurring and dissenting opinion.

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**the Amended Petition for Review.** Furthermore, it held that the PSPC failed to initiate protest proceedings and that, in any event, jeopardy was not proven. Distressed by the CTA's sudden change of position, **PSPC filed a Petition for *Certiorari* with an application for the issuance of a TRO and/or WPI<sup>35</sup> before this Court assailing the April 2, 2014 Resolution of the CTA, which was docketed as G.R. No. 212490.**

### Proceedings Before this Court

In a Resolution<sup>36</sup> dated July 7, 2014, this Court consolidated all three (3) petitions and assigned the case to a member of the Second Division. It likewise granted PSPC's prayer for injunctive relief in G.R. No. 212490 and **issued a TRO enjoining the customs and taxing authority from imposing excise taxes on the incoming alkylate importations of PSPC under Document No. M-059-2012 upon the posting of an appropriate bond in the amount of ₱496,944,000.00 (July 7, 2014 TRO).**

On July 30, 2014, and upon posting of the required bond, the Court confirmed the issuance of a TRO based on the July 7, 2014 Resolution. In the meantime, the BOC and the Collector filed their Motion for Reconsideration to the issuance of the TRO, which was denied in a Resolution<sup>37</sup> dated October 22, 2014.

After some time, the BOC and the Collector filed a Motion for Issuance of a Status *Quo Ante* Order<sup>38</sup> dated March 28, 2017, seeking the suspension of CTA Case No. 8535 in light of the Court's July 15, 2015 Decision in G.R. No. 207843,<sup>39</sup> entitled *Commissioner of Internal Revenue v. Court of Tax Appeals and Petron Corporation (Petron)*, which originated from CTA Case No. 8544 and involved a challenge to the validity of CMC No. 164-2012, which is a related issuance to Document No. M-059-2012. In *Petron*, the Court held that any challenge to an administrative issuance must be brought to the regular courts, and not the CTA, and that the taxpayer's petition was premature for failing to observe the protest procedures under the TCCP. Based on this, the BOC and the Collector argued that the CTA should have suspended its own proceedings in CTA Case No. 8535 pending the final resolution of the motion for reconsideration in *Petron*. In a Manifestation and Comment,<sup>40</sup> PSPC posited that there was substantial distinction between the instant case and the *Petron* case.

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<sup>35</sup> Id. at 3-113.

<sup>36</sup> *Rollo* (G.R. No. 211294), pp. 1715-1717.

<sup>37</sup> Id. at 1722-1725.

<sup>38</sup> Id. at 1789-1802.

<sup>39</sup> 764 Phil. 195 (2015).

<sup>40</sup> *Rollo* (G.R. No. 211294), pp. 1803-1825.

On October 23, 2020, the Office of the Solicitor General (OSG) filed a motion to lift the July 7, 2014 TRO on the ground that the injunction has already caused irreparable injury to the government.<sup>41</sup>

To recount, these cases were re-raffled to a member of the Third Division of the Court on March 9, 2017, following the original *ponente's* retirement. They were again re-raffled to a member of the Court's Second Division in the same year, and was subsequently transferred to the Third Division on January 5, 2019 following a reorganization. On January 28, 2019, it was re-raffled to a member of the First Division of the Court. Finally, the case was re-raffled to a member of the current Second Division on July 10, 2019. After due deliberation on the varying positions in these cases, the Second Division of the Court voted to assign the case to the present *ponente* for final decision only last February 10, 2021.

### The Issues Before the Court

Based on the pleadings, the issues may be summarized as follows:

- (1) Are the CIR, BOC, and the Collector guilty of forum shopping?
- (2) Does the CTA have jurisdiction over the subject matter of CTA Case No. 8535? In conjunction to this issue:
  - a. Is Document No. M-059-2012 a BIR Ruling?
  - b. Does the CTA have jurisdiction over the challenge against the validity of Document No. M-059-2012?
  - c. Was there a violation of the doctrine of non-exhaustion of administrative remedies so as to divest the CTA of its jurisdiction?
  - d. Does the CTA have jurisdiction over the challenge against the October 1, 2012 Demand Letter?
- (3) Does the CTA have jurisdiction to issue Suspension Orders over the assessments against PSPC's subsequent and future alkylate importations, as well as a TRO/WPI against enforcing Document No. M-059-2012?
- (4) Does the CTA *En Banc* have jurisdiction over the BOC and the Collector's Petition for Review assailing the CTA Division's denial of their Omnibus Motion to Dismiss?

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<sup>41</sup> *Rollo* (G.R. No. 210501), pp. 8034-8051.

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## The Court's Ruling

The petitions are without merit.

### *I. The CIR, BOC, and the Collector are guilty of forum shopping.*

Forum shopping exists “when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court.”<sup>42</sup> In order to prove forum shopping, the following must be shown: “(a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amounts to *res judicata* in the action under consideration.”<sup>43</sup>

As applied here, the rights asserted and the relief prayed for by the CIR in **G.R. No. 210501**, *i.e.*, the dismissal of CTA Case No. 8535, is the **very same relief** sought by the BOC and the Collector in their Petition for Review before the CTA *En Banc*, from which the present petition in **G.R. No. 211294** originated. Considering the same tenor of relief, a resolution in one would clearly constitute *res judicata* to the other (*i.e.*, the dismissal/non-dismissal of CTA Case No. 8535).

Likewise, there is an identity of parties in this case. The rule is that absolute identity of parties is not required but only a shared identity of interest.<sup>44</sup> Here, although the BIR and the BOC are separate government agencies, in this particular instance, their functions overlap with respect to the assessment and collection of excise taxes for imported articles.

Undoubtedly, excise taxes are in the nature of internal revenue taxes,<sup>45</sup> thus, falling under the primary jurisdiction of the BIR. However, by the express mandate of Section 12 (a) of the Tax Code, the COC and his subordinates, including the Collector, are **agents of the Commissioner** “with respect to the collection of national internal revenue taxes on imported goods.”

The subject matter of CTA Case No. 8535 solely relates to the imposition of excise taxes on PSPC's alkylate importations. Thus, any

<sup>42</sup> See *Fenix (CEZA) International, Inc. v. Executive Secretary*, G.R. No. 235258, August 6, 2018.

<sup>43</sup> *Heirs of Sotto v. Palicte*, 726 Phil. 651, 654 (2014).

<sup>44</sup> *Grace Park International Corporation v. Eastwest Banking Corporation*, 791 Phil. 570, 578 (2016).

<sup>45</sup> Section 21 (b) of the Tax Code

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attempt on the part of the Collector or the BOC to collect the same must necessarily proceed from their deputization as agents of the BIR. This agency relation was, in fact, confirmed by the Collector during his testimony in one of the suspension hearings, to wit:

Q: Do you confirm Mr. Witness that the authority of the Collector to collect excise tax proceeds from the ATRIGs issued by the BIR?

A: Yes, Sir.

Q: And it is actually the BIR that makes the computation in determining in its ATRIGs the excise tax liability for articles which is deemed excisable?

A: Yes, sir.<sup>46</sup>

In fine, as between G.R. Nos. 210501 and 211294, there is forum shopping. Nevertheless, the Court recognizes that the issue of the CTA's jurisdiction is pertinent to the issue raised in G.R. No. 212490, *i.e.*, whether or not Suspension Orders over the assessments against PSPC's subsequent and future alkylate importations should be issued by the CTA. Hence, since jurisdictional questions may be considered by the Court at any time if such is necessary to the disposition of a case, the Court shall rule on the same.

## ***II. The CTA has jurisdiction over the subject matter of CTA Case No. 8535.***

In order to resolve the issue of whether or not the CTA correctly assumed jurisdiction over the subject matter of CTA Case No. 8535, it is first necessary to determine the exact nature of the challenged issuances, *i.e.*, Document No. M-059-2012 and the October 1, 2012 Demand Letter.

### ***a. Document No. M-059-2012 is a BIR Ruling.***

Much of the parties' arguments on the CTA's jurisdiction rest on whether Document No. M-059-2012 should be classified as a BIR Ruling or a mere internal communication between the BIR and the BOC.

Preliminarily, it bears emphasizing that **BIR rulings "are the official position of the Bureau to queries raised by taxpayers and other stakeholders relative to clarification and interpretation of tax laws**. In this regard, the primary purpose of a BIR Ruling is simply to determine whether a certain transaction, under the law, is taxable or not based on the circumstances provided by the taxpayer."<sup>47</sup>

<sup>46</sup> *Rollo* (G.R. No. 211294), pp. 1401-1402.

<sup>47</sup> See *Commissioner of Internal Revenue v. Lucio L. Co.*, G.R. No. 241424, February 26, 2020.



What sets apart BIR Rulings from other issuances of the BIR is that it relates to a particular taxpayer's set of facts and circumstances and a consequent determination of taxability or tax exemption, when applicable. In this regard, **it is readily apparent that the tenor and wording of Document No. M-059-2012 qualify it as a BIR Ruling.** The pertinent portions thereof are herein reproduced for reference:

Dear Commissioner Biazon:

We refer to your letter dated 13 June 2012, forwarding the Memorandum dated 04 June 2012 of District Collector Rene M. Benavides of Collection District No. IV — Batangas, seeking our opinion/ruling on the propriety of the demand for payment of the unpaid excise tax and the corresponding Value-added Tax (VAT) against Pilipinas Shell Petroleum Corporation (PSPC) amounting to Php1,384,721,993.00, on its various importations of Alkylate from the year 2010 up to present as declared in twenty eight (28) import entries.

x x x x

### **Ruling**

The subject importations are subject to excise tax and the corresponding VAT on the said excise tax. Hence, we find no legal impediment on the issuance of the demand letter against PSPC for the collection of the excise tax and VAT amounting to Php1,384,721,993.00 on its various importations of Alkylate.

x x x x

As contained in the January 18, 2012 report of the OIC-Chief, BIR Laboratory Section, Excise Taxpayers Regulatory Division, in terms of boiling range, volatility and recovery process, Alkylate qualifies as a product similar to naphtha used as gasoline blending component. Naphtha is produced by (1.) fractional distillation of crude oil or, (2.) by "other refinery processes" and recovered from refinery streams by fractional distillation. Similarly, Alkylate produced by "other refinery process" (which is alkylation) is recovered also by fractional distillation. Alkylate is a very important blending component of today's reformulated motor gasoline because of its relatively low vapour pressure, high octane number, and near-zero content of sulphur, aromatics, and olefins.

In relation thereto, Section 148 (e) of the National Internal Revenue Code (NIRC) of 1997, as amended, imposes an excise tax of four pesos and thirty-five centavos (P4.35) for every liter of volume capacity of naphtha, regular gasoline and other similar products of distillation, to wit:

x x x x

Clearly, alkylate, which is a product of distillation similar to that of naphtha is subject to excise tax under Section 148 (e) of the NIRC of 1997, as amended.

x x x x



In view of all the foregoing, this Office is of the opinion that the importations of the subject article by PSPC are covered by excise tax at the rate of Php 4.35 per liter under Section 148 (e) of the NIRC of 1997, as amended. Accordingly, PSPC should pay the amount of Php1,384,721,993.00 representing the unpaid excise taxes and the corresponding VAT, exclusive of increments, on the importations of Alkylate from 2010 up to the present as declared in the twenty eight (28) import entries.

Please be guided accordingly.

Very truly yours,

[SIGNED]

**KIM S. JACINTO-HENARES**  
Commissioner of Internal Revenue<sup>48</sup>

As may be gleaned from the first paragraphs of Document No. M-059-2012, the query relates to the particular transactions of PSPC and no other taxpayer, particularly with respect to its importations of alkylate from the year 2010 up to 2012. It also calls for an interpretation of whether alkylate can fall under the classification of “similar products of distillation” under Section 148 (e) of the Tax Code. Finally, it concludes with a determination of the taxability of PSPC’s importations.

Hence, although the query originated from the Collector and not the taxpayer in this case, the clarificatory/interpretative tenor of Document No. M-059-2012 relative to the PSPC’s excise tax liability remains. As such, Document No. M-059-2012 is effectively a BIR Ruling issued against PSPC.

***b. The CTA has jurisdiction over challenges to BIR issuances such as Document No. M-059-2012.***

It is relevant to note that during the pendency of the proceedings, the issue anent the *certiorari* jurisdiction of the CTA over direct challenges to the validity of tax issuances was not yet definitively settled. Accordingly, the parties cited conflicting jurisprudence in their numerous pleadings before the CTA and this Court.

However, on August 16, 2016, the Court *En Banc* promulgated *Banco De Oro v. Republic of the Philippines (Banco De Oro)*,<sup>49</sup> wherein it was definitively settled that the CTA has jurisdiction over challenges to the validity of tax issuances. Notably, this overturned the previous doctrine in

<sup>48</sup> *Rollo* (G.R. No. 211294), pp. 313-317.

<sup>49</sup> *Banco De Oro v. Republic*, 793 Phil. 97 (2016).



*British American Tobacco v. Camacho (British American Tobacco)*,<sup>50</sup> which held that such jurisdiction lies in the regular courts, and not the CTA.

To recount, in *Banco De Oro*, the Court held that the CTA's power to issue writs of *certiorari* in order to strike down tax issuances is inherent in the exercise of its appellate jurisdiction as derived from the CTA Law, which – being the special and later law – should take precedence over the general provisions of Batas Pambansa Bilang 129, *viz.*:

This Court, however, declares that the Court of Tax Appeals may likewise take cognizance of cases **directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance** (revenue orders, revenue memorandum circulars, rulings).

Section 7 of Republic Act No. 1125, as amended, is explicit that, except for local taxes, appeals from the decisions of quasi-judicial agencies (Commissioner of Internal Revenue, Commissioner of Customs, Secretary of Finance, Central Board of Assessment Appeals, Secretary of Trade and Industry) on tax-related problems must be brought exclusively to the Court of Tax Appeals.

In other words, within the judicial system, **the law intends the Court of Tax Appeals to have exclusive jurisdiction to resolve all tax problems. Petitions for writs of certiorari against the acts and omissions of the said quasi-judicial agencies should, thus, be filed before the Court of Tax Appeals.**

Republic Act No. 9282, a special and later law than Batas Pambansa Blg. 129 provides an exception to the original jurisdiction of the Regional Trial Courts over actions questioning the constitutionality or validity of tax laws or regulations. Except for local tax cases, **actions directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance may be filed directly before the Court of Tax Appeals.**<sup>51</sup>

(Emphases and underscoring supplied)

In this case, PSPC, in its Amended Petition in CTA Case No. 8535, directly challenged the validity of Document No. M-059-2012, alleging, among others, that it lacked factual basis, violated its right to due process, as well as the rule on non-retroactivity of rulings. Thus, following the rule that jurisdiction is determined by the allegations of the initiatory pleading,<sup>52</sup> this necessarily falls within the ambit of the CTA's *certiorari* jurisdiction as pronounced in the *Banco De Oro* ruling.

<sup>50</sup> 584 Phil. 489 (2008).

<sup>51</sup> *Banco De Oro v. Republic*, supra note 49, at 124-125.

<sup>52</sup> “[J]urisdiction is conferred by law and determined from the nature of action pleaded as appearing from the material averments in the complaint and the character of the relief sought.” (*Ignacio v. Office of the City Treasurer of Quezon City*, 817 Phil. 1133, 1143 [2017])

*c. Although there was a violation of the non-exhaustion of administrative remedies, the exceptions are applicable in this case.*

“Under the doctrine of exhaustion of administrative remedies, recourse through court action cannot prosper until after all such administrative remedies have first been exhausted. If remedy is available within the administrative machinery, this should be resorted to before resort can be made to courts. It is settled that non-observance of the doctrine of exhaustion of administrative remedies results in lack of cause of action, which is one of the grounds in the Rules of Court justifying the dismissal of the complaint.”<sup>53</sup> As case law illumines, the rule on exhaustion of administrative remedies emanates from the policy of allowing administrative agencies to tackle matters within the specialized areas of their respective competence, which, in turn, is based on comity and convenience.<sup>54</sup>

In the matter of tax issuances, such as BIR Rulings, the power of the CIR to interpret the provisions of the Tax Code and other tax laws is subject to the administrative remedy of a direct review of the Secretary of Finance (SOF).<sup>55</sup> Failure to raise the matter to the SOF constitutes a violation of the exhaustion doctrine.<sup>56</sup>

The doctrine of exhaustion of administrative remedies, however, admits of certain exceptions.<sup>57</sup> With respect to challenges against tax issuances, *Banco De Oro* recognized the following exceptions: “[the] question involved is **purely legal**; the urgency of judicial intervention x x x; and the futility of an appeal to the Secretary of Finance as the latter appeared to have adopted the challenged Bureau of Internal Revenue rulings.” This was reiterated more recently by the Court in *Association of Non-Profit Clubs, Inc. v. Bureau of Internal Revenue*,<sup>58</sup> when it allowed a direct challenge to the tax issuance assailed therein on the ground that “the issue involved is purely a legal question x x x, or when there are circumstances indicating the urgency of judicial intervention.”

Indeed, the validity of Document No. M-059-2012 is clearly a legal question that is best left for the courts to resolve. Furthermore, the necessity of judicial intervention was shown when the CTA granted the Suspension Orders through its October 22, 2012 and July 15, 2013 Resolutions. In fact, this Court itself recognized the urgency of judicial intervention when it issued its July 7, 2014 TRO. As such, the above-exceptions to the exhaustion doctrine similarly attend in this case.

<sup>53</sup> *Teotico v. Baer*, 523 Phil. 670, 676 (2006).

<sup>54</sup> *Id.* at 675.

<sup>55</sup> Section 4 of the Tax Code.

<sup>56</sup> See *Banco De Oro v. Republic*, *supra* note 49; and see *Association of Non-Profit Clubs, Inc. v. Bureau of Internal Revenue*, G.R. No. 228539, June 26, 2019.

<sup>57</sup> *Maglalang v. Philippine Amusement and Gaming Corp.*, 723 Phil. 546, 557 (2013).

<sup>58</sup> See G.R. No. 228539, June 26, 2019.

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***d. The CTA has jurisdiction over the October 1, 2012 Demand Letter.***

Based on the facts on record, it should be noted that PSPC's original petition filed before the CTA was later amended to include the October 1, 2012 Demand Letter sent by the Collector for the payment of deficiency excise taxes in the amount of ₱1,994,500,677.47 for January 2010 to June 2012. Thus, based on PSPC's allegations (which is – as mentioned – determinative of subject matter jurisdiction), there is a concurrent challenge to the validity of a tax issuance coupled with a specific appeal over the tax assessments proceeding therefrom.

Contrary to the CTA's opinion, its jurisdiction is not based on its jurisdiction "over matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue", as found in Section 7 of the CTA Law, but rather, from its appellate jurisdiction over a decision involving a disputed final assessment, which is the nature of the October 1, 2012 Demand Letter.

The October 1, 2012 Demand Letter issued by the Collector states that it is based on Document No. M-059-2012, the COC's August 31, 2012 Letter to the CIR asking for the latter's computation of deficiency excise taxes against PSPC, and the CIR's letter-reply thereto, while simultaneously attaching the said documents.<sup>59</sup> In fact, the said attachments reveal that the computation amounting to ₱1,994,500,677.47 came from the CIR herself.<sup>60</sup> It is therefore clear that the assessment against PSPC, as contained in the October 1, 2012 Demand Letter, did not really come from the Collector, but actually from the COC and the CIR. It has already been held that the designation of the demand letter is not the real test on whether it should constitute the final decision of the taxing authority which is ripe for judicial appeal; rather, the language and tenor should likewise be examined.<sup>61</sup>

Thus, having established the CTA's jurisdiction in this case, the Court now proceeds to the issue of whether or not the CTA has jurisdiction to issue Suspension Orders for PSPC's subsequent alkylate importations, which has not yet been subjected to a definite tax assessment.

***III. The CTA did not have jurisdiction to issue Suspension Orders over the assessments against PSPC's alkylate importations beyond the period covered by its Amended Petition for Review.***

<sup>59</sup> *Rollo* (G.R. No. 211294), pp. 308-309.

<sup>60</sup> *Id.* at 318-322.

<sup>61</sup> *Allied Banking Corporation v. Commissioner of Internal Revenue*, 625 Phil. 530 541 (2010).

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Due to the confusion on the matter, the Court takes this opportunity to clarify the CTA's power to issue general injunctive reliefs vis-à-vis its power to issue Suspension Orders under the CTA Law, which ancillary provisional remedies PSPC both availed of in this case.

*a. The CTA has both the power to issue injunctive reliefs, i.e., TRO/WPI, in aid of its appellate jurisdiction to enjoin the implementation of tax laws or issuances, and the power to suspend the collection of taxes for a specific assessment or collection suit against taxpayers.*

Since the Court, through *Banco De Oro*, has now recognized that petitions meant to question the constitutionality or validity of a tax statute or issuance should be filed before the CTA and not the regular courts, it may thus be possible for the said challenge to be concurrently instituted together with an appeal from an actual assessment (should there be one) proceeding from the implementation of the same assailed tax statute or issuance also before the tax court. Technically speaking, **these are two separate causes of action which may**, however, be joined in one petition due to the absence of a specific prohibition under the CTA's own rules. On this score, it is apt to mention that the Rules of Court suppletorily apply to the Revised Rules of the CTA:<sup>62</sup>

#### RULE 1

SECTION 3. *Applicability of the Rules of Court.* — The Rules of Court in the Philippines shall apply suppletorily to these Rules.

It goes without saying, however, that if a taxpayer has not yet been issued a tax assessment, he may – barring *locus standi* issues – directly challenge a tax issuance or statute before the CTA, as pronounced in *Banco De Oro*. In the same vein, a taxpayer may question a tax assessment against him without necessarily raising the validity or constitutionality of the tax statute or issuance from which the said tax assessment was predicated on.

That being said, in whichever cause of action the taxpayer wishes to pursue, it must be highlighted that provisional remedies to effectively restrain the collection of taxes may be availed of. These provisional remedies are ancillary to the tax court's exercise of jurisdiction relative to the cause/s of action alleged by the taxpayer.

As PSPC availed of in this case, a taxpayer may seek the following provisional remedies before the CTA: (a) **a motion to suspend** the direct enforcement of the tax assessment pursuant to the special provision of the

<sup>62</sup> A.M. No. 05-11-07-CTA, approved on November 22, 2005.



CTA law; and/or (b) **the ordinary injunctive writs** (TRO/WPI) based on the suppletory application of the Rules of Court *against the implementation of the tax statute or issuance assailed*. To note, since the latter remedy (TRO/WPI) is meant to enjoin the implementation of a tax statute or issuance, a successful application thereof will *indirectly result in the suspended implementation of a tax assessment or demand for payment of taxes, if any, springing from the tax statute or issuance*.

The first provisional remedy mentioned finds basis in Section 11 of the CTA Law,<sup>63</sup> to wit:

SECTION 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

x x x x

**No appeal taken to the CTA from the decision of the Commissioner of Internal Revenue or the Commissioner of Customs or the Regional Trial Court, provincial, city or municipal treasurer or the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture, as the case may be, shall suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law: Provided, however, **That when in the opinion of the Court the collection by the aforementioned government agencies may jeopardize the interest of the Government and/or the taxpayer the Court any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court.****

x x x x (Emphases and underscoring supplied)

As may be gleaned from this provision, the **provisional remedy of a Suspension Order contemplates the existence of – and thus, has for its object – a “tax liability;”** as such, for the said order to issue, it is required that a tax assessment or an adverse decision, ruling, or inaction effectively mandating the payment of taxes had already been issued against the taxpayer. Conversely, without any such tax assessment, decision, ruling or inaction, an order to suspend the collection of taxes under Section 11 of the CTA Law should not be issued since there is effectively no “tax liability” as

<sup>63</sup> Republic Act No. 9282 entitled “AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP. AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES,” approved on March 30, 2004.

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of yet. In fact, the necessity of an existing “tax liability” in order to avail of a Section 11 Suspension Order is bolstered by the requirement of a surety bond which must be “double the amount.” Without such “tax liability,” there is no definite amount to which the required surety bond would be based on as equally required by Section 11.

Aside from the requisite tax liability, Section 11, as worded, further requires the taxpayer to prove that the “collection by the aforementioned government agencies may jeopardize the interest of the Government and/or the taxpayer.” It is only when all of these requirements are satisfied that the CTA may issue a Suspension Order, which remedy is **ancillary to the CTA’s exercise of its appellate jurisdiction to review “any decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts”** as provided under the first paragraph of Section 11.

However, the remedy of a Suspension Order under Section 11 of the CTA Law must be differentiated from the ordinary injunctive writs (*i.e.*, TRO/WPI), which are, on the other hand, **ancillary to the CTA’s jurisdiction to rule upon the constitutionality or validity of tax statutes and issuances and thus, has for its object the enjoinder of the same tax statute or issuance.** Aside from being traditionally recognized as general auxiliary writs which are necessary for a court to carry out its jurisdiction,<sup>64</sup> these provisional remedies find procedural anchorage from the suppletory application of the Rules of Court pursuant to Rule 1, Section 3 of the Revised CTA Rules. Accordingly, in view of its suppletory application, Rule 58 of the Rules of Court<sup>65</sup> and its governing principles may be resorted to when a taxpayer seeks to temporarily enjoin the implementation of a tax statute or issuance pending resolution of the main action challenging the constitutionality or validity of the same.

It is well-settled that for a TRO/WPI to issue, the following must be proven: “(1) there exists a clear and unmistakable right to be protected; (2) this right is directly threatened by an act sought to be enjoined; (3) the

<sup>64</sup> See Section 6, Rule 135 of the Rules of Court.

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RULE 58

Preliminary Injunction

SECTION 1. *Preliminary Injunction Defined; Classes.* — A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts. It may also require the performance of a particular act or acts, in which case it shall be known as a preliminary mandatory injunction.

SECTION 2. *Who May Grant Preliminary Injunction.* — A preliminary injunction may be granted by the court where the action or proceeding is pending. If the action or proceeding is pending in the Court of Appeals or in the Supreme Court, it may be issued by said court or any member thereof.

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invasion of the right is material and substantial; and (4) there is an urgent and paramount necessity for the writ to prevent serious and irreparable damage.”<sup>66</sup> However, when the injunctive relief sought is to forestall the implementation of a statute or issuance, the applicant “bears the added burden of overcoming the presumption of validity inhering in such laws or issuances.”<sup>67</sup>

It is apt to mention that the availability of a TRO/WPI to affected taxpayers was explicitly recognized in *Banco De Oro*, wherein it was held that the CTA’s jurisdiction includes the power to “**prohibit or restrain** the performance of any act which might interfere with the proper exercise of its rightful jurisdiction in cases pending before it.”<sup>68</sup> Consequently, part and parcel of the CTA’s jurisdiction to resolve controversies involving the constitutionality or validity of a tax statute or issuance is the power to issue provisional remedies such as TROs and WPIs.

As earlier intimated, the effect of a TRO/WPI in such cases is to enjoin the implementation of a tax statute or issuance. **Thus, once the implementation of a tax statute or issuance is enjoined, the practical consequence is that any tax assessment or demand for collection of taxes which finds legal basis from the enjoined tax statute or issuance, should likewise be suspended.** As a result, while the TRO/WPI subsists, there can be no enforcement of any tax liability springing from the enjoined tax statute or issuance.

The distinctions between these two remedies are necessary to resolve the question on whether the CTA correctly declined to issue a Suspension Order for PSPC’s subsequent alkylate importation as assailed in G.R. No. 212490.

***b. The CTA cannot issue a Suspension Order for the assessments against PSPC’s subsequent and future alkylate importations.***

In this case, PSPC: (1) sought the issuance of a **sixty (60)-day TRO and/or WPI to enjoin the implementation of Document No. M-059-2012** pending issuance of a longer suspension order to cover all further assessments and collection of taxes borne from the same tax issuance;<sup>69</sup> and (2) moved for the issuance of a Suspension Order against the collection of the amount covered by the October 1, 2012 Demand Letter and for all future alkylate importations (1<sup>st</sup> Motion for Suspension).

<sup>66</sup> *Australian Professional Realty, Inc. v Municipality of Padre Garcia, Batangas Province*, 684 Phil. 283, 292 (2012)

<sup>67</sup> *Executive Secretary v. Forerunner Multi Resources, Inc.*, 701 Phil. 64, 69 (2013).

<sup>68</sup> *Banco De Oro v Republic*, supra note 49, citing *The City of Manila v. Judge Grecia-Cuerdo*, 726 Phil. 9, 26-27 (2014).

<sup>69</sup> *Rollo* (G.R. No. 212490) pp. 19-20.

In a Resolution<sup>70</sup> dated October 5, 2012, the CTA **denied** PSPC's 1<sup>st</sup> Motion for Suspension, opining that nothing in Section 11 of the CTA Law empowers it to issue a Suspension Order against a BIR Ruling, and that the said remedy was limited to enjoining assessments or collection suits. **However, it appears that the CTA did not explicitly rule on PSPC's application for a TRO/WPI against the implementation of Document No. M-059-2012.**

In a Resolution dated October 22, 2012, the CTA reconsidered its earlier denial of the 1<sup>st</sup> Motion for Suspension Order. Accordingly, it issued a Suspension Order covering the amount of ₱1,994,500,677.47, which is the tax liability of PSPC as stated in the October 1, 2012 Demand Letter alleged in its main Amended Petition in CTA Case No. 8535.

Subsequently, PSPC filed in the same proceeding several motions for Suspension Orders seeking that the CTA suspend the collection of excise taxes for its incoming shipments from October 2012 until March 2014. Among these subsequent motions was the *Urgent Verified Motion for the Issuance of a Suspension Order Against the Collection of Excise Taxes and Value Added Tax Thereon on the Shipment of 80,162 Barrels of Alkylate as Delivered by the Vessel MT Marine Express* dated March 18, 2014 (**March 18, 2014 Motion for Suspension**).

The March 18, 2014 Motion for Suspension was denied by the CTA in a Resolution dated April 2, 2014, holding that: (1) it has no jurisdiction to issue Suspension Orders on incoming importations not covered by the Amended Petition for Review, i.e., assessments for shipments after June 2012; (2) jeopardy was not proven; and (3) there must first be a prior protest proceeding. **Overall, the CTA refused to issue a Suspension Order for "further or incoming shipments" by virtue of the implementation of Document No. M-059-2012.** This was then elevated by PSPC to the Court through **G.R. No. 212490**.

As above-mentioned, PSPC argued that the CTA itself recognized its jurisdiction over incoming alkylate importations even if not specifically covered by the Amended Petition when it granted its 1<sup>st</sup> Motion for Suspension in a Resolution dated July 15, 2013. Moreover, since the CTA affirmed its jurisdiction over the main action, PSPC submits that the CTA likewise has jurisdiction "over each and every incident related [thereto]", including all assessments which emanate from the contested Document No. M-059-2012.<sup>71</sup> Accordingly, PSPC prayed that the Court declare that it is entitled to "**suspension orders against the collection of excise taxes on its incoming [a]lkylate importations**, and the Honorable Court of Tax

<sup>70</sup> *Rollo* (G.R. No. 211294), pp. 323-339.

<sup>71</sup> *Rollo* (G.R. No. 212490), pp. 77-77-A.

Appeals' jurisdiction to issue the same, upon a bond posted in accordance with its Revised Rules during the pendency of CTA Case No. 8535."<sup>72</sup>

PSPC's arguments are untenable.

The CTA's issuance of a Suspension Order over the alkylate importations covered by the tax liability stated in the October 1, 2012 Demand Letter, on the one hand, vis-à-vis its non-issuance of a Suspension Order over subsequent and future alkylate importations, on the other, finds basis in no other than Section 11 of the CTA Law.

As mentioned, the October 1, 2012 Demand Letter is in the nature of a decision on a final assessment that is ripe for judicial review. Having been squarely raised and alleged in PSPC's Amended Petition, the CTA validly acquired jurisdiction over the same, which necessarily means that it could issue the ancillary remedy of a Suspension Order to enjoin the collection of the taxes therein demanded. However, this is not the case with PSPC's subsequent alkylate importations.

To recall, in arguing for the CTA's jurisdiction to issue a Suspension Order for its subsequent alkylate importations, PSPC echoed the CTA First Division's previous Resolution wherein it held that the IEIRD already constitutes an assessment contemplated under Section 11 of the CTA Law. In response thereto, the CIR, BOC, and the Collector all argued that the IEIRD is not an assessment per se but a mere formal declaration by the taxpayer of the duties and taxes due on the imported articles. However, the parties' assertions are inaccurate. While the IEIRD does constitute a formal declaration by the taxpayer, it also contains corrections and the recomputed amounts of the taxes and custom duties due on the imported articles as determined by agents or representatives of the BOC. In fact, it is the filing and acceptance of the IEIRD, accompanied by the payment of the amounts indicated therein, which constitute the official entry of imported articles in the country.<sup>73</sup> Thus, the corrections and re-computations, if any, by the Collector, or his agents, on the IEIRD, at least in the context of this case, **would be akin to a preliminary assessment which does not yet contain a formal demand to pay from the government.**

In general, a preliminary assessment constitutes only an initial finding of the taxing authority of the liabilities of a taxpayer.<sup>74</sup> If the taxpayer contests the same and initiates a formal protest in the form of a request for reconsideration or reinvestigation, then the assessment becomes disputed.<sup>75</sup> If the IEIRD is considered as the preliminary assessment, any protest thereto

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<sup>72</sup> Id. at 101.

<sup>73</sup> *Chevron Philippines, Inc. v. Commissioner of the Bureau of Customs*, 583 Phil. 706, 718-720 (2008).

<sup>74</sup> See *Commissioner of Internal Revenue v. Transitions Optical Philippines, Inc.*, 821 Phil. 664 (2017).

<sup>75</sup> See *Commissioner of Internal Revenue v. Isabela Cultural Corp.*, 413 Phil. 376 (2001).

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should be filed with the Collector.<sup>76</sup> As pointed out by public petitioners, the Collector's ruling on the protest may then be reviewed by the COC,<sup>77</sup> and then it is the latter's decision which may be elevated to the CTA.<sup>78</sup> It is also error to assume that the IEIRD can constitute a final assessment for the sole reason that the non-filing thereof and non-payment of the taxes and duties contained therein would result in the abandonment or forfeiture of the imported article.<sup>79</sup> In fact, in one case, the Court had already clarified that an IEIRD, (such as that presented by PSPC in G.R. No. 212490), cannot be considered as the Collector's final assessment that could be the proper subject of review, and that in any case, such assessment must still be reviewed by the COC before it is brought to the CTA.<sup>80</sup>

As above discussed, the wording of Section 11 of the CTA Law is clear in requiring the existence of a "tax liability" before a Suspension Order may be availed of. However, more than just proof of an issued assessment, the said assessment must be properly assailed and elevated to the CTA for it to acquire jurisdiction to issue any and all kind of ancillary remedies in favor of the taxpayer, *e.g.*, a Suspension Order. This is a necessary consequence of the CTA's jurisdiction as outlined in Section 7 of the CTA Law. The CTA only has **appellate jurisdiction** over the CIR or COC's **decision or inaction on disputed assessments**,<sup>81</sup> or **original and appellate jurisdiction** in tax collection cases for **final and executory assessments**.<sup>82</sup> In other words, the object of the CTA's appellate jurisdiction should be a final assessment coupled with a formal demand to pay the taxes by the government and ***not a mere preliminary assessment, or worse, an inchoate future assessment.*** With no such final assessment and formal demand, there is no proper object of an appeal and, hence, there is nothing to trigger the CTA's appellate jurisdiction. In this case, the tax liabilities anent the subsequent alkylate importations were not covered by disputed assessments nor a final and executory assessment, but at most, only preliminary assessments. Considering that a Suspension Order is a mere ancillary remedy to the CTA's appellate jurisdiction, the tax court could not have validly issued the said order over PSPC's subsequent alkylate importations which are either covered by preliminary assessments that were not properly elevated to the CTA or future assessments based on an anticipation of a similar demand by the tax authority in this case.

Overall, based on the contours of the CTA's powers as herein clarified, the CTA was ultimately correct when it did not issue a Suspension Order to enjoin the implementation of Document No. M-059-2012 and the collection of taxes stemming from PSPC's subsequent importations of alkylate. As herein explained, the peculiar remedy of a Suspension Order

<sup>76</sup> Section 2308, Tariff and Customs Code of the Philippines.

<sup>77</sup> Section 2313, Tariff and Customs Code of the Philippines.

<sup>78</sup> Section 2402, Tariff and Customs Code of the Philippines.

<sup>79</sup> See Concurring and Dissenting Opinion of Associate Justice Amy C. Lazaro-Javier, pp. 28 and 31.

<sup>80</sup> *Commissioner of Internal Revenue v. Court of Tax Appeals*, 764 Phil. 195 (2015).

<sup>81</sup> Section 7 (a) (1), (2), and (4) of Republic Act No. 1125, as amended (CTA Law).

<sup>82</sup> Section 7 (c) of the CTA Law.

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under Section 11 of the CTA Law is not the appropriate remedy to temporarily enjoin the implementation of a tax statute or issuance, but rather a TRO/WPI pursuant to the CTA's jurisdiction over their validity as pronounced in the *Banco De Oro* case; likewise, a Suspension Order is issued only relative to an existing tax liability based on a disputed tax assessment, decision, ruling or inaction mandating the payment of taxes, which is not present with respect to subsequent importations of alkylate asserted by PSPC.

This notwithstanding, it is observed that the CTA failed to rule on PSPC's distinct prayer for a TRO/WPI intended to enjoin the implementation of Document No. M-059-2012. As above discussed, this provisional remedy is separate and distinct from the Suspension Orders provided under Section 11 of the CTA Law. To reiterate, when a taxpayer questions the constitutionality or validity of a tax statute or issuance – as PSPC in this case – it may also seek the issuance of a TRO/WPI in order to restrain its implementation in the interim. Concurrently, **when in the same petition, the taxpayer appeals a tax assessment, decision, ruling or inaction mandating the payment of taxes** – which PSPC likewise did in this case – **it may also file a motion for a Suspension Order in order to suspend the collection of the specific amount of taxes stated in such assessment or demand for the collection of taxes.**

Indeed, the different spheres of application corresponding to Suspension Orders and ordinary injunctive writs should have been discerned in this case. As this was not accounted for, the CTA's Resolution dated October 22, 2012 was only limited to PSPC's 1<sup>st</sup> Motion for Suspension, leaving out PSPC's distinct prayer for a TRO/WPI against Document No. M-059-2012. Notably, as it was earlier discussed, the issuance of a TRO/WPI – if found to be meritorious – would practically result into suspending the collection of all taxes borne from Document No. M-059-2012, which PSPC ultimately desires in this case. Thus, since the CTA failed to resolve PSPC's prayer for TRO/WPI, the matter should be remanded. However, the Court notes that the main proceeding in CTA Case No. 8535 has continued in parallel with the resolution of the instant consolidated cases. Not having been informed of the exact stage of the proceedings below, it is possible that the CTA First Division would have already rendered a judgment on the main prior to the promulgation of this Decision. Hence, this directive should be contingent on whether or not the case remains pending before the CTA First Division. If a judgment has already been rendered, then this directive would be moot and academic but without prejudice to the party seeking the same relief should the case be elevated to the CTA *En Banc*.

At this juncture, it should be clarified that the CTA's previous issuance of a Suspension Order relative to PSPC's 1<sup>st</sup> Motion for Suspension does not automatically warrant the issuance of a TRO/WPI in its favor. At

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the risk of belaboring the point, the subject matters of these two remedies are separate and distinct; hence, **the issuance of one does not necessarily result into or preclude the other.** However, when a TRO/WPI is issued enjoining the implementation of a tax statute or issuance, the practical effect is to suspend the assessment or collection of all taxes stemming from the same. In this regard, the TRO/WPI may thus be considered as a broader relief which renders unnecessary further Suspension Orders covering future assessments/collection of taxes stemming from such tax statute or issuance.

***IV. The CTA En Banc correctly denied due course to the BOC and the Collector's Petition for Review assailing the CTA in Division's denial of their Omnibus Motion to Dismiss.***

On the correctness of the BOC and the Collector's appeal to the CTA *En Banc* in G.R. No. 211294, the Court finds that the CTA *En Banc* correctly denied due course to their petition since, as per *Commissioner of Internal Revenue v. Court of Tax Appeals*,<sup>83</sup> it is already settled that "the CTA [*En Banc*] has jurisdiction over final order or judgment but not over interlocutory orders issued by the CTA in division."

Indeed, the Resolution from which the BOC and the Collector appealed was the CTA Second Division's denial of their Omnibus Motion. This was undeniably an interlocutory order given that it did not finally dispose of the case.<sup>84</sup> The BOC and the Collector cannot rely on the CTA *En Banc*'s Resolution granting their motion for extension to file their petition for review before it. Notably, motions for extension are normally granted without prejudice to the court's subsequent determination that the petition to be filed should be denied due course. Ultimately, the BOC and the Collector availed of the wrong remedy in appealing an interlocutory order of the CTA's Second Division to the CTA *En Banc*.

***V. The Motion for the Issuance of a Status Quo Ante Order and the Motion to Lift the Temporary Restraining Order filed by public petitioners have been rendered moot and academic.***

Given the Court's final disposition herein, the Motion for the Issuance of a Status *Quo Ante* Order and the Motion to Lift the Temporary Restraining Order have already been rendered moot and academic. The said motions are ancillary interim reliefs which were rendered *functus officio* by the ruling on the main. As case law states, when injunction is sought as mere ancillary remedy, it "cannot exist except only as part or an incident of an independent action or proceeding" and exists only "until it is dissolved or

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<sup>83</sup> 765 Phil. 140 (2015).

<sup>84</sup> See *Denso (Phils.), Inc. v. The Intermediate Appellate Court*, 232 Phil. 256 (1987).

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until the termination of the action without the court issuing a final injunction.”<sup>85</sup> Upon the promulgation of this Decision, the main action is deemed terminated. Necessarily, the ancillary remedy issued by the Court likewise ceases to have effect.

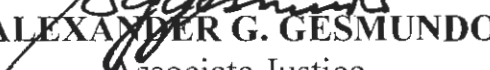
**WHEREFORE**, the petitions in G.R. Nos. 210501 and 211294 are **DENIED**, while the petition in G.R. No. 212490 is **PARTLY GRANTED** in that the case is hereby **REMANDED** to the Court of Tax Appeals, First Division to resolve the issue on the propriety of issuing a Temporary Restraining Order and/or Writ of Preliminary Injunction to enjoin the implementation of Document No. M-059-2012 during the pendency of CTA Case No. 8535 in accordance with this Decision.

In view of the foregoing final dispositions, the Temporary Restraining Order dated July 7, 2014 issued by the Court is hereby **DISSOLVED**, and the Motion for Issuance of a Status *Quo Ante* Order filed by public petitioners is **DENIED** on the ground of mootness.

**SO ORDERED.**

  
**ESTELA M. PERLAS-BERNABE**  
Senior Associate Justice

**WE CONCUR:**

  
**ALEXANDER G. GESMUNDO**  
Associate Justice

*Pls. see Concurring  
& Dissenting Opinion*

  
**AMY C. LAZARO-JAVIER**  
Associate Justice

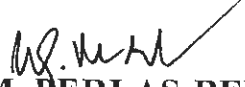
  
**MARIO V. LOPEZ**  
Associate Justice

  
**RICARDO R. ROSARIO**  
Associate Justice

<sup>85</sup> *Bacolod City Water District v. Labayan*, 487 Phil. 335, 346-347 (2004).


**A T T E S T A T I O N**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ESTELA M. PERLAS-BERNABE**  
Senior Associate Justice  
Chairperson, Second Division

**C E R T I F I C A T I O N**

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**DIOSDADO M. PERALTA**  
Chief Justice