Republic of the Philippines
Supreme Court
Manila

EN BANC

THE SUBIC BAY FREEPORT CHAMBER OF COMMERCE, INC. and BENJAMIN E. ANTONIO, III,	**G.R. No. 266016**
Petitioners,	Present:
- versus -	GESMUNDO, *Chief Justice*, LEONEN, CAGUIOA, HERNANDO, LAZARO-JAVIER, INTING, ZALAMEDA, LOPEZ, M., GAERLAN, ROSARIO, LOPEZ, J., DIMAAMPAO, MARQUEZ, KHO, JR., and SINGH, *JJ.*[*]
DEPARTMENT OF FINANCE, DEPARTMENT OF TRADE AND INDUSTRY, BUREAU OF INTERNAL REVENUE, REVENUE DISTRICT OFFICE NO. 19 OF SUBIC BAY FREEPORT ZONE, and SUBIC BAY METROPOLITAN AUTHORITY,	
Respondents.	
	Promulgated: February 4, 2025

x----------x

D E C I S I O N

M. LOPEZ, *J.*:

This is a Petition[1] for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the Order[2] of the Regional Trial Court (RTC) that

---

[*] On leave.

[1] *Rollo*, pp. 10–74.

[2] *Id.* at 79–81. The Order dated March 16, 2023 in Civil Case No 2023-0-02 was penned by Presiding Judge Melanie Fay V. Tadili of Branch 97, Regional Trial Court, Olongapo City.

dismissed petitioners Subic Bay Freeport Chamber of Commerce, Inc. (SBFCC) and Benjamin E. Antonio III's (Antonio) Petition[3] for Declaratory Relief for lack of jurisdiction.

Antecedents

Section 12 of Republic Act No. 7227,[4] or the Bases Conversion Development Act of 1992, created the Subic Special Economic Zone, which shall be operated and managed as a separate customs territory.[5] The Subic Bay Metropolitan Authority (SBMA) served as an operating and implementing arm of the Bases Conversion and Development Authority.[6] Pursuant to the law, the SBMA issued a Certificate of Registration and Tax Exemption to qualified enterprises. These entities were granted tax incentives and exemptions, subject to certain conditions.[7] The implementing rules[8] provide:

> **SECTION 43. Tax Exemption.** — SBF Enterprises shall be exempted from all national and local taxes, including but not limited to the following:
>
> a. Customs and import duties and national internal revenue taxes, such as VAT, excise[,] and ad valorem taxes on foreign articles;
>
> b. Internal revenue taxes, such as VAT, ad valorem[,] and excise taxes on their sales of goods and services for which they are directly liable;
>
> c. Income tax on all income from sources within the SBF and foreign countries, Export Processing Zones, Bonded Warehouses[,] and other Special Economic Zones within the Philippines, as well as all other areas that may now or hereafter be considered to be outside the Customs Territory, whether or not payment of such income is actually received; made or collected within such areas; provided, that SBF Enterprises shall, as withholding agents for the National Government, withhold tax on compensation and income payments to persons or individuals subject to expanded withholding tax; and
>
> d. Franchise, common carrier or value added taxes and other percentage taxes on public and service utilities and enterprises within the SBF. In lieu of paying taxes, all SBF Enterprises shall pay a final tax of five (5%) percent of gross income earned in accordance to the breakdown specified and defined under Section 57 hereunder.

---

3 *Id.* at 82–97.

4 An Act Accelerating the Conversion of Military Reservations into Other Productive Uses, Creating the Bases Conversion and Development Authority for this Purpose, Providing Funds Therefor and for Other Purposes (1992).

5 Republic Act No. 7227 (1992), sec. 12(b).

6 Republic Act No. 7227 (1992), sec. 13.

7 Republic Act No. 7227 (1992), secs. 12(b) and 12(c).

8 Rules and Regulations Implementing the Provisions Relative to the Subic Special Economic and Freeport Zone and the Subic Bay Metropolitan Authority Under Republic Act No. 7227, otherwise known as the "Bases Conversion and Development Act Of 1992" (1992).

Because of the incentives and benefits, SBFCC registered with the SBMA as a freeport enterprise to conduct business within the Subic Bay Freeport Zone (SBFZ).[9]

On March 26, 2021, former President Rodrigo R. Duterte signed into law Republic Act No. 11534 or the Corporate Recovery and Tax Incentives for Enterprises Act (CREATE Act). Under Sections 294(E)[10] and 295(D)[11] of the CREATE Act, registered business enterprises (RBEs) are entitled to VAT exemption on importation and VAT zero-rating on local purchases of goods and services directly and exclusively used in the registered project or activity of the RBEs. Republic Act No. 11534 defines an RBE as follows:

> (M) Registered business enterprises refers to any individual, partnership, corporation, Philippine branch of a foreign corporation, or other entity organized and existing under Philippine laws and registered with an Investment Promotion Agency excluding service enterprises such as those engaged in customs brokerage, trucking or forwarding services, janitorial services, security services, insurance, banking, and other financial services, consumers' cooperatives, credit unions, consultancy services, retail enterprises, restaurants, or such other similar services, as may be determined by the Fiscal Incentives Review Board, irrespective of location, whether inside or outside the zones, duly accredited or licensed by any of the Investment Promotion Agencies and whose income delivered within the economic zones shall be subject to taxes under the [Tax Code.]"[12]

An RBE may be a domestic market enterprise (DME) or a registered export enterprise (REE):

> (D) Domestic market enterprise refers to any enterprise registered with the Investment Promotion Agency other than export enterprise;[13]
>
> (E) Export enterprise refers to any individual, partnership, corporation, Philippine branch of a foreign corporation, or other entity organized and existing under Philippine laws and registered with the Investment Promotion Agency to engage in manufacturing, assembling or processing activity, and services such as information technology (IT) activities and business process outsourcing (BPO), and resulting in the direct exportation, and/or sale of its manufactured, assembled or processed product or IT/BPO services to another registered export enterprise that will form part of the final export product or export service of the latter, of at least seventy percent (70%) of its total production or output;[14]

---

9 *Rollo*, p. 84.

10 SEC. 294. *Incentives.* — Subject to the conditions and period of availment in Sections 295 and 296, respectively, the following types of tax incentives may be granted to registered projects or activities:

. . . .

(E) Value-Added Tax (VAT) exemption on importation and VAT zero-rating on local purchases.

11 SEC. 295. *Conditions of Availment.* — The tax incentives in the preceding Section shall be governed by the following rules:

. . . .

(D) The VAT exemption on importation and VAT zero-rating on local purchases shall only apply to goods and services directly and exclusively used in the registered project or activity by a ***registered business enterprise.*** (Emphasis supplied)

12 Republic Act No. 11534, sec. 293(M), Corporate Recovery and Tax Incentives for Enterprises Act (CREATE Act).

13 *Id.*, sec. 293(D).

14 *Id.*, sec. 293(E).

Subsequently, the Department of Trade and Industry (DTI) and the Department of Finance (DOF) issued Implementing Rules and Regulations of the CREATE Act (CREATE IRR). Rule 2, Section 5 of the CREATE IRR limited the entitlement on VAT zero-rating on local purchases to REEs:

> **SECTION 5. Value-Added Tax (VAT) Zero-Rating and Exemption.** — The VAT exemption on importation and ***VAT zero-rating on local purchases shall only apply*** to goods and services directly and exclusively used in the registered project or activity of ***export enterprises***, during the period of registration of the said registered project or activity with the concerned IPA; *Provided*, That transactions falling under Section 106(A)(2) (a)(3), (4), and (5) and Section 108 (B)(1) and (5) of the Code, as amended, shall be subject to the twelve percent (12%) VAT pursuant to Revenue Regulations 09-2021. Provided, further, That excess input taxes attributable to zero-rated sales by VAT-registered RBEs, may at the RBEs option, be refunded or applied for a tax credit, subject to the guidelines provided under Revenue Regulations No. 13-2018, as amended.
>
> The direct and exclusive use in the registered project or activity refers to raw materials, inventories, supplies, equipment, goods, services[,] and other expenditures necessary for the registered project or activity without which the registered project or activity cannot be carried out.[15] (Emphasis supplied.)

On December 2, 2021,[16] Rule 18, Section 5 of the CREATE IRR, which implements Section 311[17] of the CREATE Act was amended as follows:

> **SECTION 5.** ***Non-income related tax incentives.*** — All registered ***EXPORT AND DOMESTIC MARKET*** enterprises that will continue to avail of their existing tax incentives subject to Sections 1, 2[,] and 3 of this Rule, may continue to enjoy the duty exemption, ***VAT EXEMPTION ON IMPORTATION, AND VAT ZERO-RATING ON LOCAL PURCHASES AS PROVIDED IN THEIR RESPECTIVE IPA REGISTRATIONS; provided, that the DUTY EXEMPTION***, VAT exemption on importation, and VAT zero-rating on local purchases shall only apply to goods and services directly ***ATTRIBUTABLE TO*** and exclusively used in the

---

15 Implementing Rules and Regulations of Republic Act No. 8424, as Amended by Republic Act No. 11534 (2021), Rule 2, sec. 5.

16 *See rollo*, p. 103. Assailed IRR in the Petition for Declaratory Relief filed with the RTC.

17 SEC. 311. *Investments Prior to the Effectivity of this Act.* — Registered business enterprises with incentives granted prior to the effectivity of this Act shall be subject to the following rules:
(A) Registered business enterprises whose projects or activities were granted only an income tax holiday prior to the effectivity of this Act shall be allowed to continue with the availment of the income tax holiday for the remaining period of the income tax holiday as specified in the terms and conditions of their registration: *Provided*, That for those that have been granted the income tax holiday but have not yet availed of the incentive upon the effectivity of this Act, they may use the income tax holiday for the period specified in the terms and conditions of their registration;
(B) Registered business enterprises, whose projects or activities were granted an income tax holiday prior to the effectivity of this Act and that are entitled to the [5%] tax on gross income earned incentive after the income tax holiday, shall be allowed to avail of the [5%] tax on gross income earned incentive based on Subsection (C); and
(C) Registered business enterprises currently availing of the five percent [5%] tax on gross income earned granted prior to the effectivity of this Act shall be allowed to continue availing the said tax incentive at the rate of [5%] for [10] years.

> registered project or activity ***OF SAID REGISTERED*** export enterprises ***LOCATED INSIDE THE ECOZONES AND FREEPORTS UNTIL THE EXPIRATION OF THE TRANSITORY PERIOD; PROVIDED, FURTHER, THAT IMPORTATION OF CAPITAL EQUIPMENT, SPARE PARTS, AND ACCESSORIES BY EXISTING EXPORT ENTERPRISES AND DOMESTIC MARKET ENTERPRISES REGISTERED WITH THE BOI PRIOR TO THE EFFECTIVITY OF THE ACT SHALL CONTINUE TO BE SUBJECT TO DUTY EXEMPTION FOR A PERIOD OF FIVE (5) YEARS FROM THE DATE OF REGISTRATION.*** (Emphasis in the original)

On December 3, 2021, the Secretary of Finance issued Revenue Regulations (RR) No. 21-2021,[18] implementing Sections 294(E) and 295(D), Title XIII of the 1997 National Internal Revenue Code (Tax Code), as amended by the CREATE Act. Thereafter, the Bureau of Internal Revenue (BIR) issued Revenue Memorandum Circular (RMC) No. 24-2022[19] dated February 23, 2022 and RMC No. 49-2022[20] dated April 19, 2022. These BIR issuances clarified that the VAT zero-rating incentive applies only to REEs, excluding DMEs. The pertinent provisions of these BIR issuances read:

> ***RR No. 21-2021***
>
> **SECTION 2. ZERO-RATED SALE OF GOODS OR PROPERTIES.** — Section 4.106-5 of RR No. 16-2005, as amended by RR Nos. 4-2007, 13-2018, 26-2018, and 9-2021, shall now be read as follows:
>
> > "**SEC. 4.106-5. Zero-Rated Sales of Goods or Properties.** — A zero-rated sale of goods or properties by a VAT-registered person is a taxable transaction for VAT purposes but shall not result in any output tax. However, the input tax on purchases of goods, properties, or services, attributable to such zero-rated sale, shall be available as tax credit or refund in accordance with these Regulations.
> >
> > ***The following sales by VAT-registered persons shall be subject to zero-percent (0%) rate:***
> >
> > . . . .
> >
> > (c) ***Sale*** of raw materials, inventories, supplies, equipment, packaging materials, and goods, to a ***registered export enterprise***, to be used directly and exclusively in its registered project or activity pursuant to Sections 294 (E)

---

18 Revenue Regulations No. 21 (2021), Amending Certain Provisions of Revenue Regulations (RR) No. 16-2005, as Amended by RR Nos. 4-2007, 13-2018, 26-2018, and 9-2021 to Implement Sections 294(E) And 295(D), Title XIII of the National Internal Revenue Code Of 1997 (Tax Code), as Amended by Republic Act No. 11534 (CREATE Act), and Section 5, Rule 2 and Section 5, Rule 18 of the CREATE Act Implementing Rules and Regulations.

19 BIR Revenue Memorandum Circular No. 24 (2022). Clarifying Issues Relative to Revenue Regulations (RR) No. 21-2021 Implementing the Amendments to the Value-Added Tax (VAT) Zero-Rating Provisions Under Sections 106 and 108 of the National Internal Revenue Code of 1997 (Tax Code), in Relation to Sections 294(E) and 295(D), Title XIII of the Tax Code, Introduced by Republic Act (R.A.) No. 11534 (CREATE Act), and Section 5, Rule 2 and Section 5, Rule 18 of the CREATE Act Implementing Rules and Regulations (CREATE IRR).

20 BIR Revenue Memorandum Circular No. 49 (2022), Amending Pertinent Portion of the Questions and Answers (Q&A) in Revenue Memorandum Circular (RMC) No. 24-2022 to Align Them with the Provisions of CREATE Act and Its Implementing Rules and Regulations (IRR).

> and 295 (D) of Republic Act No. 11534 or the "Corporate Recovery and Tax Incentives for Enterprise Act" ("CREATE Act"), and Section 5, Rule 2 of its IRR for a maximum period of seventeen (17) years from the date of registration, unless otherwise extended under the SIPP; Provided, That ***the term "registered export enterprise" shall refer to an export enterprise as defined under Section 4 (M), Rule 1 of the CREATE Act IRR***, that is also a registered business enterprise as defined in Section 4 (W) of the same IRR: Provided further, That the above-described sales to existing ***registered export enterprises*** located inside ecozones and freeport zones shall also be qualified for VAT zero-rating under this sub-item until the expiration of the transitory period.[21] (Emphasis supplied)

RMC No. 24-2022

Q3: What rules govern the enjoyment of VAT exemptions and VAT 0% incentives for ***registered business enterprises (RBEs)*** with the passage of the CREATE Act?

A3: Business enterprises duly registered with the concerned Investment Promotion Agencies (IPAs) under the CREATE Act shall now be governed by the CREATE provisions with respect to their availment of tax incentives, including VAT exemption of ***RBEs*** enjoying the 5% gross income earned (GIE) or special corporate income tax (SCIT), VAT exemption on importation and ***VAT zero-rating on local purchases of goods and services by registered export enterprises***.

In addition, enterprises registered prior to the effectivity of the CREATE Act shall continue to enjoy the foregoing VAT exemptions and VAT zero-rating on local purchases of goods and services subject to the rules as provided in Rule 18, Section 5 of the CREATE IRR, that is: "VAT-exemption on importation, and ***VAT zero-rating on local purchases shall only apply to goods and services directly attributable to and exclusively used in the registered project or activity of the export enterprises*** during the period of registration of the said registered project or activity of the export enterprises" until the expiration of the transitory period under Section 311 of the Code.

. . . .

Q16: ***Are there RBEs not entitled to avail the VAT zero-rating on their purchases of goods and/or services?***

A16: ***Yes. RBEs which are categorized as Domestic Market Enterprises are not entitled to VAT zero-rating on local purchases. Sale of goods or services to a registered domestic market enterprise shall be subject to VAT at 12%.***

. . . .

Q17: What is the treatment on the sales by registered non-export enterprises or DMEs located in Ecozones and Freeport Zones to registered export enterprises and non-RBEs?

---

[21] Revenue Regulations No. 21 (2021), sec. 2.

A17: The DME under the 5% Gross Income Tax (GIT) or Special Corporate Income Tax (SCIT) regime, ***registered as a VAT exempt entity***, shall treat its revenues as VAT exempt. The VAT passed on to it by its VAT-registered local suppliers shall form part of its cost or expenses.[22] (Emphasis supplied)

RMC No. 49-2022

II. Entitlements of ***registered non-export*** locators (prior to CREATE Act) or ***domestic market enterprises*** (DMEs as introduced in CREATE Act) located in Ecozones and Freeport Zones differ if they are registered prior to or during the effectivity of the CREATE Act. Hence, Q & A No. 17 of RMC No. 24-2022 is revised to read as follows:

Q17: What is the treatment on the sales by ***registered non-export locators or domestic market enterprises (DMEs)*** located in Ecozones and Freeport Zones?

A17: The following rules shall apply to the DME's sale of goods and services:

a. The seller is registered prior to CREATE:

1. If the non-export locator is under the 5% Gross Income Tax (GIT) regime, the locator is a VAT-exempt entity; hence, shall treat its sales, whether inside the Ecozones or Freeport Zones as well as from the customs territory, as VAT-exempt only to the extent of the registered activity. ***The VAT passed on by its VAT-registered local suppliers shall form part of its cost or expenses.***[23] (Emphasis supplied)

SBFCC and Antonio, as taxpayer, filed a Petition for Declaratory Relief with Application for Writ of Temporary Restraining Order and/or Preliminary Injunction[24] against the respondents DOF, DTI, BIR Revenue District Office (RDO) No. 19 - SBFZ, and SBMA before the RTC. They alleged that the CREATE IRR, particularly Rule 18, Section 5, RR No. 21-2021, RMC No. 24-2022, and RMC No. 49-2022, are unconstitutional because the DTI and the DOF performed a legislative act and the BIR unjustly excluded DMEs from availing of tax incentives.[25] Further, they alleged that these issuances effectively limited the application of VAT zero-rating for local purchases only to REEs, excluding DMEs, such as SBFCC. They added that there is no distinction between DMEs and REEs under the CREATE Act. Thus, as long as an enterprise is a registered business, like SBFCC, it enjoys a 5% tax on gross income and VAT-zero rating on local purchases. Hence, they prayed that (1) Rule 18, Section 5 of the CREATE IRR and the subject BIR issuances be declared invalid and unconstitutional, and (2) BIR RDO No. 19 – SBFZ and SBMA be ordered to desist from implementing the subject BIR issuances.[26]

---

22 BIR Revenue Memorandum Circular No. 24 (2022).
23 BIR Revenue Memorandum Circular No. 49 (2022).
24 *Rollo*, pp. 82–97.
25 *Id.* at 93.
26 *Id.* at 94–96.

In an Order[27] dated March 16, 2023, the RTC ruled that it does not have jurisdiction over the case. The RTC explained that the Court of Tax Appeals (CTA) has jurisdiction over cases involving the constitutionality or validity of tax laws and regulations. The RTC elucidates:

> In *Banco De Oro v. Republic*, G.R. No. 198756, August 16, 2016, the Supreme Court overturned the ruling in *British American Tobacco v. Camacho*, G.R. No. 163583, August 20, 2008, that the regular courts have jurisdiction to pass upon the constitutionality or validity of tax laws and regulations. It held that the Court of Tax Appeals has exclusive jurisdiction to determine the constitutionality or validity of tax laws, rules and regulations, and other administrative issuances of the Commissioner of Internal Revenue.
>
> . . . .
>
> When a case is filed with a court which has no jurisdiction over the action, the court shall *motu proprio* dismiss the case. (*Non v. Office of the Ombudsman,* G.R. No. 251177, September 08, 2020).
>
> **WHEREFORE**, the petition is ordered **DISMISSED.**
>
> SO ORDERED.[28] (Emphasis in the original)

Hence, this recourse.

Petitioners allege that the RTC erroneously dismissed its Petition for Declaratory Relief because of lack of jurisdiction. They maintain that the CTA is vested only with appellate jurisdiction over all tax, customs, and real estate assessment cases. Only the final decisions of the Commissioner of Customs are appealable to the CTA. Since the case involves a matter that does not fall under Section 7 of Republic Act No. 9282, the RTC has jurisdiction. Petitioners pray that Rule 18, Section 5 of the CREATE IRR, RR No. 21-2021, and RMC Nos. 24-2022 and 49-2022 be declared unconstitutional.[29]

In their Comment, respondents, through the Office of the Solicitor General (OSG), aver that the Order of the RTC is not appealable under Rule 45 of the Rules of Court as it was not a final order or judgment on the merits. Respondents add that even if an appeal is a legally viable remedy, the petition lacks merit because the RTC correctly ruled that it does not have jurisdiction to determine the constitutionality or validity of tax laws and rules. Further, respondents postulate that the case is moot with the amendment of Rule 18, Section 5 of the CREATE IRR on August 8, 2023.

Ruling

---

27 *Id.* at 79–81.
28 *Id.* at 80–81.
29 *Id.* at 59.

The CTA has jurisdiction over cases involving the validity of tax laws, rules, regulations, and administrative issuances; Doctrine of exhaustion of administrative remedies

The subject matter of this case involves the validity of: (1) Rule 18, Section 5 of the CREATE IRR; (2) RR No. 21-2022; (3) RMC No. 24-2022; and (3) RMC No. 49-2022.

In *Banco De Oro v. Republic,*[30] the Court already settled that the CTA has jurisdiction to rule on the constitutionality or validity of a tax law, tax regulation, or administrative issuance:

> The Court of Tax Appeals has undoubted jurisdiction 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. It is only in the lawful exercise of its power to pass upon all matters brought before it, as sanctioned by Section 7 of Republic Act No. 1125, as amended.
>
> 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.[31]

Within the judicial system, the law intends for the CTA to have exclusive jurisdiction in resolving all tax problems. Direct and indirect challenges to the validity of tax regulations or administrative issuances, as in

---

[30] 793 Phil. 97 (2016) [Per J. Leonen, *En Banc*].
[31] *Id.* at 123–125. (Citations omitted)

this case, should be filed before the CTA.[32] This is the prevailing rule, as the Court has declared in *Confederation for Unity, Recognition and Advancement of Government Employees v. Commissioner, Bureau of Internal Revenue*,[33] *St. Mary's Academy of Caloocan City, Inc. v. Henares*,[34] and *Commissioner of Internal Revenue v. Court of Tax Appeals (First Division)*.[35]

It should be stressed, however, that the CTA's authority to rule on the validity or constitutionality of a tax law or regulation "does not do away with the requirement of exhausting the available administrative remedies."[36] "Parties are generally precluded from immediately seeking the intervention of courts when 'the law provides for remedies against the action of an administrative board, body, or officer.'"[37]

With respect to the challenge on the validity of RR No. 21-2022, RMC No. 24-2022, and RMC No. 49-2022, petitioners should have first elevated it to the Secretary of Finance before going to the courts. Section 4[38] of the Tax Code empowers the Commissioner of Internal Revenue to interpret tax laws, which may be in the form of implementing rules and revenue issuances,[39] subject to review by the Secretary of Finance.

The doctrine of exhaustion of administrative remedies is not without exceptions.[40] The Court allows direct resort to it when strong public interest is involved, as in this case. In *Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue*,[41] We ruled:

---

32 *Oceanagold (Philippines), Inc. v. Commissioner of Internal Revenue*, G.R. No. 234614, June 14, 2023 [Per J. Dimaampao, Third Division] at 6. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website. *See also Commissioner of Internal Revenue v. Court of Tax Appeals (First Division)*, 898 Phil. 131, 195 (2021) [Per J. Perlas-Bernabe, Second Division].

33 835 Phil. 297 (2018) [Per J. Caguioa, *En Banc*].

34 893 Phil. 798 (2021) [Per J. Leonen, Third Division].

35 898 Phil. 131 (2021) [Per J. Perlas-Bernabe, Second Division].

36 *Oceanagold (Philippines), Inc. v. Commissioner of Internal Revenue*, G.R. No. 234614, June 14, 2023 [Per J. Dimaampao, Third Division] at 7. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website. *See also Commissioner of Internal Revenue v. Court of Tax Appeals (First Division)*, 898 Phil. 131 (2021) [Per J. Perlas-Bernabe, Second Division].

37 *Aala v. Uy*, 803 Phil. 36, 59 (2017) [Per J. Leonen, *En Banc*].

38 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.

39 *See Oceanagold (Philippines), Inc. v. Commissioner of Internal Revenue*, G.R. No. 234614, June 14, 2023 [Per J. Dimaampao, Third Division] at 7. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

40 *The Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301, 331–335 (2015) [Per J. Leonen, *En Banc*]. *See also Alliance of Quezon City Homeowners' Association, Inc. v. Quezon City Government*, 840 Phil. 277, 289–290 (2018) [Per J. Perlas-Bernabe, *En Banc*]. The exceptions are: (1) there are genuine issues of constitutionality that must be addressed at the most immediate time; (2) the issues involved are of transcendental importance, such that the imminence and clarity of the threat to fundamental constitutional rights outweigh the necessity for prudence; (3) in cases of first impression; (4) the constitutional issues raised are better decided by this court; (5) the time element presented in this case cannot be ignored; (6) when the subject of review is an act of a constitutional organ; (7) when petitioners rightly claim that they had no other plain, speedy, and adequate remedy in the ordinary course of law that could free them from the injurious effects of respondents' acts in violation of their right to freedom of expression; and (8) when the petition includes questions that are "dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy."

41 792 Phil. 751 (2016) [Per J. Perez, Third Division].

At the outset, although it is true that direct recourse before this Court is occasionally allowed in exceptional cases without strict observance of the rules on hierarchy of courts and on exhaustion of administrative remedies, we find the imperious need to first determine whether or not this case falls within the said exceptions, before we delve into the merits of the instant petition.

We thus find the need to look back at the dispositions rendered in *Asia International Auctioneers, Inc., et al. v. Parayno, Jr.*, wherein we ruled that revenue memorandum circulars are considered administrative rulings issued from time to time by the CIR. It has been explained that these are actually rulings or opinions of the CIR issued pursuant to her power under Section 4 of the NIRC of 1997, as amended, to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws, including ruling on the classification of articles of sales and similar purposes. Therefore, it was held that under [Republic Act] No. 1125, which was thereafter amended by [Republic Act] No. 9282, such rulings of the CIR (including revenue memorandum circulars) are appealable to the Court of Tax Appeals (CTA), and not to any other courts.

In the same case, we further declared that "failure to ask the CIR for a reconsideration of the assailed revenue regulations and RMCs is another reason why a case directly filed before us should be dismissed. It is settled that the premature invocation of the court's intervention is fatal to one's cause of action. If a remedy within the administrative machinery can still be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must first be exhausted before the court's power of judicial review can be sought. The party with an administrative remedy must not only initiate the prescribed administrative procedure to obtain relief but also to pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to the court."

Then, in *The Philippine American Life and General Insurance Company v. Secretary of Finance*, we had the occasion to elucidate that the CIR's power to interpret the provisions of the Tax Code and other tax laws is subject to the review by the Secretary of Finance; and thereafter, the latter's ruling may be appealed to the CTA, having the technical knowledge over the subject controversies. Also, the Court held that "the power of the CTA includes that of determining whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the [regional trial court] in issuing an interlocutory order in cases failing within the exclusive appellate jurisdiction of the tax court. It, thus, follows that the CTA, by constitutional mandate, is vested with jurisdiction to issue writs of certiorari in these cases." Stated differently, the CTA "can now rule not only on the propriety of an assessment or tax treatment of a certain transaction, but also on the validity of the revenue regulation or revenue memorandum circular on which the said assessment is based."

From the foregoing jurisprudential pronouncements, it would appear that in questioning the validity of the subject revenue memorandum circular, petitioner should not have resorted directly before this Court considering that it appears to have failed to comply with the doctrine of exhaustion of administrative remedies and the rule on hierarchy of courts, a clear indication that the case was not yet ripe for judicial remedy. ***Notably,***

> ***however, in addition to the justifiable grounds relied upon by petitioner for its immediate recourse (i.e., pure question of law, patently illegal act by the BIR, national interest, and prevention of multiplicity of suits), we intend to avail of our jurisdictional prerogative in order not to further delay the disposition of the issues at hand, and also to promote the vital interest of substantial justice. To add, in recent years, this Court has consistently acted on direct actions assailing the validity of various revenue regulations, revenue memorandum circulars, and the likes, issued by the CIR.*** The position we now take is more in accord with latest jurisprudence. Upon the exercise of this prerogative, we are ushered into the merits of the case.[42] (Emphasis supplied, citations omitted)

Petitioners claim that the exclusion of DMEs on the VAT zero-rating incentive on local purchases of goods and services directly attributable to the registered project or activity by the CREATE IRR and the subsequent issuances by the BIR, and limiting it to export enterprises unduly caused irreparable injury to DMEs, including SBFCC, as they would absorb the VAT passed on to them by local suppliers as part of their cost or expenses.[43] In addition, DMEs will not be issued VAT Zero-Rate Certificates,[44] hence, their sales shall be subject to the regular 12% VAT rate. Indeed, the shift from zero-rate to the regular 12% VAT rate on local purchases made by DMEs triggers a strong public interest as it indisputably affects all DMEs registered with the SBMA as freeport enterprises. Accordingly, the Court exempts this case from the rule on exhaustion of administrative remedies.

Petitioners have the legal capacity to sue

The OSG argues that petitioners have no legal standing as SBFCC's alleged threat of substantial financial damage by limiting the VAT zero-rating incentive to REEs is purely speculative.[45] We do not agree. Petitioners have shown their *locus standi*.

A party is allowed to raise a constitutional question when (1) he or she can show that he or she will personally suffer some actual or threatened injury because of the allegedly illegal conduct of the government; (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable action.[46] We have ruled in *Kilosbayan, Inc. v. Morato*:[47]

> Standing is a special concern in constitutional law because in some cases suits are brought not by parties who have been personally injured by the operation of a law or by official action taken, but by concerned citizens, taxpayers[,] or voters who actually sue in the public interest. Hence the

---

42 Id. at 758–761.
43 *Rollo*, p. 90.
44 *Id.* at 91.
45 Comment, p. 21.
46 *Private Hospitals Association of the Philippines, Inc. v. Medialdea*, 842 Phil. 747, 784 (2018) [Per J. Tijam, *En Banc*].
47 316 Phil. 652 (1995) [Per J. Mendoza, *En Banc*].

> question in standing is whether such parties have "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." (Baker v. Carr, 369 U.S. 186, 7 L. Ed. 2d 633 (1962))[48]

The Certificate of Registration and Tax Exemption[49] issued to SBFCC on May 12, 2022, classified it as a Subic Bay Freeport Enterprise entitled to the following incentives, among others:

> c. The exemption from all local and national taxes, including but not limited to the following: i) Customs and import duties and national revenue taxes, such as VAT, excise and ad valorem taxes on foreign articles; ii) Internal revenue taxes, such as VAT, ad valorem and excise taxes on the Company's sales of goods and services for which the Company is directly liable; iii) Income tax on all income from sources within the Subic Bay Freeport Zone and foreign countries, Export Processing Zones, Bonded Warehouses and other Special Economic Zones within the Philippines, as well as all other areas that may now or hereafter be considered to be outside the Customs Territory, whether or not payment of such income is actually received, made or collected within such areas; provided, that the Company shall, as withholding agents for the National Government, withhold tax on compensation and income payments to persons or individuals subject to expanded withholding tax; and iv) Franchise, common carrier or value taxes and other percentage taxes on public and service utilities and enterprises within Subic Bay Freeport Zone.

In *Executive Secretary v. Southwing Heavy Industries, Inc.*,[50] the Court recognized the SBFZ as a separate customs territory not subject to customs duties and other taxes.[51] Further, Sections 294(E) and 295(D) of the CREATE Act allow VAT zero-rating on local purchases used in the registered project or activity of an RBE. As a domestic corporation registered with the SBMA as a freeport enterprise, SBFCC, therefore, will sustain a direct injury with the implementation of Rule 18, Section 5 of the CREATE IRR, RR No. 21-2022, RMC No. 24-2022, and RMC No. 49-2022.

Rule 18, Section 5 of the CREATE IRR, and RR No. 21-2022, RMC No. 24-2022, and RMC No. 49-2022, in so far as the VAT zero-rating on sale of goods and services applies only to REEs, are unconstitutional

Sections 294(E) and 295(D) of the CREATE Act are clear—all RBEs, which include REEs and DMEs, are entitled to VAT zero-rating on their local purchases of goods and services directly and exclusively used in the

---

48 *Id.* at 695–696.
49 *Rollo*, pp. 99–100.
50 518 Phil. 103 (2006) [Per J. Ynares-Santiago, *En Banc*].
51 *Id.* at 124.

registered project or activity. This rule is consistent with the nature of SBFZ as a separate customs territory.[52] Following the Philippine VAT system's adherence to the Cross Border Doctrine and Destination Principle, the VAT implications are that no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority.[53] Thus, the sales made by suppliers from a customs territory to a purchaser located within the freeport zone are considered exportations;[54] hence, they are subject to zero percent VAT.[55] Section 106(A) of the Tax Code, as amended by Republic Act No. 10963 or the Tax Reform for Acceleration and Inclusion (TRAIN), provides:

> SEC. 106. Value-Added Tax on Sale of Goods or Properties. —
>
> (A) Rate and Base of Tax. — There shall be levied, assessed[,] and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to twelve percent (12%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.
>
> . . . .
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) Export Sales. — The term 'export sales' means:
>
> . . . .
>
> (2) Sale and delivery of goods to:
>
> (i) Registered enterprises within a separate customs territory as provided under special laws[.]

We stress that the power to promulgate rules in the implementation of a statute is necessarily limited to what is provided for in the legislative enactment.[56] Its terms must be followed, for an administrative agency cannot amend an Act of Congress. Thus, the rule-making power must be confined to details for regulating the mode or proceedings to carry into effect the law as it has been enacted, and it cannot be extended to amend or expand the statutory requirements or to embrace matters not covered by the statute. If a discrepancy occurs between the basic law and an implementing rule or regulation, the former prevails.

---

52 Republic Act No. 7227, sec. 12(b).

53 *Coral Bay Nickel Corp. v. Commissioner of Internal Revenue*, 787 Phil. 57, 64 (2016) [Per J. Bersamin, First Division].

54 Republic Act No. 10963 (2018), sec. 106(A)(2)(a)(2)(i).

55 *See Contex Corp. v. Commissioner of Internal Revenue*, 477 Phil. 442, 456 (2004) [Per J. Quisumbing, Second Division].

56 *United BF Homeowner's Association v. BF Homes, Inc.*, 369 Phil. 568, 579 (1999) [Per J. Pardo, First Division], *citing Teoxon v. Members of the Board of Administrators.*, 144 Phil. 592, 597 (1970) [Per J. Fernando, *En Banc*].

Given the foregoing, the Court rules that Rule 18, Section 5 of the CREATE IRR and RR No. 21-2022, RMC No. 24-2022, and RMC No. 49-2022, in so far as they limited the VAT zero-rating on local purchases of goods and services to REEs, are *ultra vires*. They altered the provisions of existing law—the CREATE Act—by carving out DMEs from those entitled to the VAT zero-rating incentive. We repeat the Court's pronouncement in *Bureau of Customs v. Japanese 4 x 4 Export Corp.*:[57]

> Our lawmakers have their reasons and purposes in designating the Subic Bay Freeport Zone as a separate customs entity and in granting privileges and incentives to the enterprises registered with the SBMA. Mainly, their aim is to develop the Subic Bay Freeport Zone into a self-sustaining entity that will generate employment and attract foreign and local investment. To this end, the Court will keep the statute's intent of carving a territory out of the former military reservation in Subic Bay where free flow of goods and capital will always be maintained.

The amendment of the CREATE IRR did not moot the issue raised by petitioners

On August 8, 2023, Rule 18, Section 5 of the IRR of the CREATE Act was amended to read as follows:

> **Section 2.** Rule 18, Section 5 of the CREATE IRR is hereby amended to read as follows:
>
> **RULE 18. Investments prior to the effectivity of this Act.**
>
> **SECTION 5.** ***Non-income related tax incentives.*** – All registered export and domestic enterprises that will continue to avail of their existing tax incentives subject to Sections 1, 2[,] and 3 of this Rule, may continue to enjoy the duty exemption, VAT exemption on importation, and VAT zero-rating on local purchases as provided in their respective IPA registrations; ***PROVIDED, THAT REGISTERED EXPORT ENTERPRISES AS DEFINED UNDER SECTION 293(E) OF THE ACT WHOSE INCOME TAX-BASED INCENTIVES HAVE EXPIRED, MAY CONTINUE TO ENJOY VAT ZERO-RATING ON LOCAL PURCHASES UNTIL THE ELECTRONIC SALES REPORTING SYSTEM OF THE BUREAU OF INTERNAL REVENUE UNDER SECTION 237-A OF THE ACT IS FULLY OPERATIONAL, OR UNTIL THE EXPIRATION OF THE TRANSITORY PERIOD REFFERRED TO IN SECTION 311(C) OF THE ACT, WHICHEVER COMES EARLIER; PROVIDED, FURTHER, THAT AN RBE CLASSIFIED AS DME WHICH IS LOCATED INSIDE THE ECONOMIC OR FREEPORT ZONE DURING THE TRANSITORY PERIOD WILL BE ALLOWED TO REGISTER AS A VAT TAXPAYER;*** Provided, ***FINALLY***, that the duty

---

[57] G.R. No. 227542, May 12, 2021 [Notice, Second Division].

> exemption, VAT exemption on importation, and VAT zero-rating on local purchases shall only apply to goods and services directly attributable to and exclusively used in the registered project or activity of said registered export enterprises. (Emphasis supplied)

Subsequently, on November 10, 2023, the Secretary of Finance issued RR No. 13-2023[58] prescribing the policies and guidelines to implement optional VAT-registration:

> **SECTION 2. Optional VAT-Registration.** — An RBE classified as DME which is located inside the Economic or Freeport Zone may retain the availment of the 5% GIE incentive during the [ten (10)-year] transitory period under Section 311(C) of the CREATE Act and be allowed to register as a VAT taxpayer provided it secures from the concerned IPA a Certification specifically excluding VAT from the 5% GIE in lieu of all taxes incentive granted to it (Certification). The Certification shall expressly state that the five percent (5%) GIE shall be in lieu of all taxes except VAT.
>
> For this purpose, such RBE shall submit to the concerned IPA the following documentary requirements:
>
> . . . .
>
> The waiver of rights to avail of the VAT exemption incentive shall be irrevocable from the time it is made and shall be binding in the remaining transitory period.
>
> Non-VAT registered RBEs that have been issued the Certification shall update their registrations with the concerned Revenue District Office (RDO) to reflect their registration from non-VAT to VAT taxpayer. Consequently, such RBE shall be treated on par with regular corporations insofar as the VAT imposition and compliance is concerned.

The foregoing issuances did not render moot the issue raised by petitioners—Rule 18, Section 5 of the CREATE IRR, RR No. 21-2022, RMC No. 24-2022, and RMC No. 49-2022 unlawfully excluded DMEs from entities entitled to VAT zero-rating on local purchases of goods and services. The amendment to Section 5, Rule 18 of the CREATE IRR and RR No. 13-2023, allowing transitory DMEs to register as VAT taxpayers, is just that, nothing more. Once registered for VAT, "such RBE shall be treated on par with regular corporations insofar as the VAT imposition and compliance is concerned." This means that transitory DMEs may charge output VAT on the domestic sale of goods or services and apply for a refund or tax credit from the BIR on the input VAT directly attributable to their zero-rated sales. However, the fact remains that transitory DMEs' local purchases of goods

---

[58] Revenue Regulations No. 13 (2023), Prescribing Policies and Guidelines for the Optional VAT-Registration of Registered Business Enterprises Classified as Domestic Market Enterprise under the [5%] Tax on Gross Income Earned in Lieu of All Taxes Regime During the Transitory Period Pursuant to Rule 18, Section 5 of the Amended Implementing Rules and Regulations of Republic Act No. 11534 or the "Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act."

and services directly attributable to and exclusively used in their registered project or activity are not subject to VAT zero-rating.

We reiterate the Court's pronouncement in *Purisima v. Lazatin*,[59] which emphasized that the grant and withdrawal of tax exemption is exclusive within the prerogative domain of legislation:

> Finally, the State's inherent power to tax is vested exclusively in the Legislature. We have since ruled that the power to tax includes the power to grant tax exemptions. Thus, the imposition of taxes, as well as the grant and withdrawal of tax exemptions, shall only be valid pursuant to a legislative enactment.
>
> As ... an executive issuance, attempts to withdraw the tax incentives clearly accorded by the legislative to FEZ enterprises, the [respondents] have arrogated upon themselves a power reserved exclusively to Congress, in violation of the doctrine of separation of powers.[60]

ACCORDINGLY, the Petition is **GRANTED**.

Rule 18, Section 5 of the Implementing Rules and Regulations of Republic Act No. 11534 or the Corporate Recovery and Tax Incentives for Enterprises Act, Revenue Regulations No. 21-2021, Revenue Memorandum Circular No. 24-2022, and Revenue Memorandum Circular No. 49-2022, in so far as they limit the VAT zero-rating on local purchases of goods and services directly attributable to and exclusively used in the registered project or activity to registered export enterprises are **DECLARED VOID**, being issued in excess of the Department of Finance's and Bureau of Internal Revenue's jurisdiction.

SO ORDERED.

MARIO V. LOPEZ
Associate Justice

---

59 801 Phil. 395 (2016) [Per J. Brion, *En Banc*].
60 *Id.* at 426.

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice

MARVIC M.V.F. LEONEN
Senior Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

ANTONIO T. KHO, JR.
Associate Justice

On leave
MARIA FILOMENA D. SINGH
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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.

ALEXANDER G. GESMUNDO
Chief Justice

SECOND DIVISION

G.R. No. 266016 – THE SUBIC BAY FREEPORT CHAMBER OF COMMERCE, INC. and BENJAMIN E. ANTONIO III, Petitioners, **v. DEPARTMENT OF FINANCE, DEPARTMENT OF TRADE AND INDUSTRY, BUREAU OF INTERNAL REVENUE DISTRICT OFFICE NO. 19 OF SUBIC BAY FREEPORT ZONE, and SUBIC BAY METROPOLITAN AUTHORITY,** Respondents.

Promulgated:

February 4, 2025

x----------x

CONCURRING OPINION

LEONEN, *J.*:

I concur. Section 5, Rule 18 of Republic Act No. 11534's Implementing Rules and Regulations, Revenue Regulations No. 21-2021, Revenue Memorandum Circular No. 24-2022, and Revenue Memorandum Circular No. 49-2022 (assailed issuances) should be declared void. These issuances carved out qualifications for zero-rating of Value Added Tax (VAT) more than what the law provides, and are thus *ultra vires*.

The petition before this Court questions the Regional Trial Court's Order dismissing Subic Bay Freeport Chamber of Commerce, Inc.'s (petitioner) Petition for Declaratory Relief for lack of jurisdiction.[1] Petitioner maintains that the assailed issuances should be declared void for excluding Domestic Market Enterprises from enjoying zero-rated VAT on "local purchases on goods and services directly and exclusively used in the registered project or activity of the [registered business enterprises]."[2]

The *ponencia* correctly granted the petition. I offer the following discussion to support the *ponencia's* reasoning.

I

I agree with exempting the present recourse from the doctrine of exhaustion of administrative remedies given the strong public interest involved in this case.[3]

---

1 *Ponencia*, pp. 1–2.
2 *Id.* at 3.
3 *Id.* at 10–12.

Bloomberry Resorts and Hotels, Inc. v. BIR[4] upheld petitioner's judicial recourse despite the availability of administrative remedies to contest a revenue memorandum circular:

> At the outset, although it is true that direct recourse before this Court is occasionally allowed in exceptional cases without strict observance of the rules on hierarchy of courts and on exhaustion of administrative remedies, we find the imperious need to first determine whether or not this case falls within the said exceptions, before we delve into the merits of the instant petition.
>
> We thus find the need to look back at the dispositions rendered in *Asia International Auctioneers, Inc., et al. v. Parayno, Jr.*, wherein we ruled that revenue memorandum circulars are considered administrative rulings issued from time to time by the CIR. It has been explained that these are actually rulings or opinions of the CIR issued pursuant to her power under Section 4 of the NIRC of 1997, as amended, to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws, including ruling on the classification of articles of sales and similar purposes. Therefore, it was held that under R.A. No. 1125, which was thereafter amended by RA No. 9282, such rulings of the CIR (including revenue memorandum circulars) are appealable to the Court of Tax Appeals (CTA), and not to any other courts.
>
> In the same case, we further declared that "failure to ask the CIR for a reconsideration of the assailed revenue regulations and RMCs is another reason why a case directly filed before us should be dismissed. It is settled that the premature invocation of the court's intervention is fatal to one's cause of action. If a remedy within the administrative machinery can still be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must first be exhausted before the court's power of judicial review can be sought. The party with an administrative remedy must not only initiate the prescribed administrative procedure to obtain relief but also to pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to the court."
>
> Then, in *The Philippine American Life and General Insurance Company v. Secretary of Finance*, we had the occasion to elucidate that the CIR's power to interpret the provisions of the Tax Code and other tax laws is subject to the review by the Secretary of Finance; and thereafter, the latter's ruling may be appealed to the CTA, having the technical knowledge over the subject controversies. Also, the Court held that "the power of the CTA includes that of determining whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the [regional trial court] in issuing an interlocutory order in cases failing within the exclusive appellate jurisdiction of the tax court. It, thus, follows that the CTA, by constitutional mandate, is vested with jurisdiction to issue writs of certiorari in these cases." Stated differently, the CTA "can now rule not only on the propriety of an assessment or tax

[4] *Bloomberry Hotels and Resorts, Inc. v. BIR*, 792 Phil. 753 (2016) [Per J. Perez, Third Division].

> treatment of a certain transaction, but also on the validity of the revenue regulation or revenue memorandum circular on which the said assessment is based."
>
> *From the foregoing jurisprudential pronouncements, it would appear that in questioning the validity of the subject revenue memorandum circular, petitioner should not have resorted directly before this Court considering that it appears to have failed to comply with the doctrine of exhaustion of administrative remedies and the rule on hierarchy of courts, a clear indication that the case was not yet ripe for judicial remedy. Notably, however, in addition to the justifiable grounds relied upon by petitioner for its immediate recourse (i.e., pure question of law, patently illegal act by the BIR, national interest, and prevention of multiplicity of suits), we intend to avail of our jurisdictional prerogative in order not to further delay the disposition of the issues at hand, and also to promote the vital interest of substantial justice.* To add, in recent years, this Court has consistently acted on direct actions assailing the validity of various revenue regulations, revenue memorandum circulars, and the likes, issued by the CIR. The position we now take is more in accord with latest jurisprudence. Upon the exercise of this prerogative, we are ushered into the merits of the case.[5] (Emphasis supplied, citations omitted)

Confederation for Unity, Recognition and Advancement of Government Employees v. Commissioner, Bureau of Internal Revenue,[6] citing *Bloomberry*,[7] later reiterated how "strong public interest" and the "urgent need for judicial intervention"[8] are recognized exceptions to the rule on exhaustion of administrative remedies:

> Nevertheless, despite the procedural infirmities of the petitions that warrant their outright dismissal, the Court deems it prudent, if not crucial, to take cognizance of, and accordingly act on, the petitions as they assail the validity of the actions of the CIR that affect thousands of employees in the different government agencies and instrumentalities. *The Court, following recent jurisprudence, avails itself of its judicial prerogative in order not to delay the disposition of the case at hand and to promote the vital interest of justice.*[9] (Emphasis supplied)

I submit that the foregoing jurisprudence, which similarly involves contentions regarding the validity of internal revenue issuances, supports the *ponencia's* conclusion that the petition's procedural infirmities may be set aside in pursuit of its merits.

---

5 *Id.* at 758–761.

6 *Confederation for Unity, Recognition and Advancement of Government Employees v. Commissioner, Bureau of Internal Revenue*, 835 Phil. 304 (2018) [Per J. Caguioa, *En Banc*].

7 *Bloomberry Hotels and Resorts, Inc. v. BIR*, 792 Phil. 753, 760–761 (2016) [Per J. Perez, Third Division].

8 *Castro v. Sec. Gloria*, 415 Phil. 648, 651–652 (2001) [Per J. Sandoval-Guttierez, Third Division].

9 *Confederation for Unity, Recognition and Advancement of Government Employees v. Commissioner, Bureau of Internal Revenue*, 835 Phil. 304, 323 (2018) [Per J. Caguioa, *En Banc*].

II

Further, I fully concur with the *ponencia* that the assailed issuances and the assailed provision under the Implementing Rules and Regulations of Republic Act No. 11534 are *ultra vires* for carving out qualifications for zero-rating of VAT beyond what the law provided.

The *ponencia* aptly points out the relevant provisions within Republic Act No. 11534, which illustrate the absence of distinction between Registered Export Enterprises and Domestic Market Enterprises, as Registered Business Enterprises in terms of their entitlement to VAT zero-rating incentives.[10] The *ponencia* also highlights the purpose of creating the Subic Special Economic Zone as a separate customs territory, with special tax incentives and exemptions for registered enterprises, to emphasize the extent to which succeeding rules, regulations, and issuances may seek to implement the cited law.[11]

I concur that in implementing a statute, the administrative agency is limited to what is provided in the legislative enactment and it was beyond the issuing agencies' authority to exclude Domestic Market Enterprises from the scope of VAT zero-rating under Republic Act No. 11534. Therefore, the assailed issuances must be struck down.

ACCORDINGLY, I vote to **GRANT** the Petition.

MARVIC M.V.F. LEONEN
Senior Associate Justice

---

10 *Ponencia*, pp. 3–4.
11 *Id.* at 2.