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SECOND DIVISION

[G.R. No. 210501; March 15, 2021]

COMMISSIONER OF INTERNAL REVENUE, *Petitioner, v.* **COURT OF TAX APPEALS (FIRST DIVISION) and PILIPINAS SHELL PETROLEUM CORPORATION,** *Respondents.*

[G.R. No. 211294; March 15, 2021]

THE BUREAU OF CUSTOMS and COLLECTOR OF CUSTOMS OF THE PORT OF BATANGAS, *Petitioners, v.* **PILIPINAS SHELL PETROLEUM CORPORATION,** *Respondent.*

[G.R. No. 212490; March 15, 2021]

PILIPINAS SHELL PETROLEUM CORPORATION, *Petitioner, v.* **COURT OF TAX APPEALS (FIRST DIVISION), COMMISSIONER OF INTERNAL REVENUE, BUREAU OF CUSTOMS and COLLECTOR OF CUSTOMS OF THE PORT OF BATANGAS,** *Respondents.*

APPEARANCES OF COUNSEL

Cruz Marcelo and Tenefrancia for Pilipinas Shell Petroleum Corp.

Office of the Solicitor General for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

These three (3) consolidated[1] cases originated from Court of Tax Appeals (CTA) Case No. 8535, wherein respondent

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

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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,[2] 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.[3] 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."[4] 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,[5] 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

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[2] Entitled "AN ACT PROVIDING FOR A COMPREHENSIVE AIR POLLUTION CONTROL POLICY AND FOR OTHER PURPOSES," approved on June 23, 1999.

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

[4] Id. at 356.

[5] Id. at 356-358.

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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,[6] 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 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;[7] 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).[8] 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.[9]

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.

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[6] Id. at 359.

[7] Id. at 364-365.

[8] Id. at 365.

[9] Id. at 365-366.

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Based on this, it opined that **alkylate importations are subject to excise tax**[10] and corresponding value-added tax (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.[11]

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.[12] 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 implementing Document No. M-059-2012 for PSPC's subject and future alkylate importations. The BOC and the Collector opposed the same.[13]

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.[14] On September 5, 2012, the CIR issued a letter-reply containing the requested computation in the aggregate amount of ₱1,994,500,677.47.[15]

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[10] 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.

[11] *Rollo* (G.R. No. 210501), pp. 510-515.

[12] Id. at 371-419.

[13] *Rollo* (G.R. No. 212490), pp. 19-21.

[14] *Rollo* (G.R. No. 211294), pp. 311-312.

[15] Id. at 318-322.

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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.[16] 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.[17] **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

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[16] Id. at 308-309.

[17] *Rollo* (G.R. No. 212490), pp. 22-24.

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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 Suspension Order.[18] 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.[19]

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.[20]

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.[21]

Meanwhile, in a Resolution[22] 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**

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[18] *Rollo* (G.R. No. 211294), pp. 411-456.

[19] Id. at 463.

[20] Id. at 1651-1670.

[21] *Rollo* (G.R. No. 212490), pp. 25-27.

[22] *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.

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)[23] in a Resolution[24] 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[25] dated February 10, 2014, the CTA *En Banc* denied due course 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*[26] 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,[27] this time presenting the Import Entry and Internal Revenue

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[23] Notably, during the interim, CTA Case No. 8535 was transferred from the CTA Second Division to the CTA First Division following a reorganization.

[24] *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.

[25] 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.

[26] Id. at 20-77.

[27] 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.)

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Declaration (IEIRD) and the ATRIG corresponding to its importation to prove an existing assessment against it.[28] 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.[29]

In a Resolution[30] 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[31] dated October 14, 2013, prompting it **to file a Petition for *Certiorari*** [32] **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.[33]

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

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[28] Id. at 30-32.

[29] *Rollo* (G.R. No. 210501), p. 42.

[30] Id. at 39-44.

[31] Id. at 48-56.

[32] Id. at 3-36.

[33] *Rollo* (G.R. No. 212490), pp. 32-35.

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CTA First Division in a Resolution[34] 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 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[35] 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[36] 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[37] dated October 22, 2014.

After some time, the BOC and the Collector filed a Motion for Issuance of a Status *Quo Ante* Order[38] dated March 28, 2017,

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[34] 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.

[35] Id. at 3-113.

[36] *Rollo* (G.R. No. 211294), pp. 1715-1717.

[37] Id. at 1722-1725.

[38] Id. at 1789-1802.

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seeking the suspension of CTA Case No. 8535 in light of the Court's July 15, 2015 Decision in G.R. No. 207843,[39] 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,[40] PSPC posited that there was substantial distinction between the instant case and the *Petron* case.

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.[41]

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.

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[39] 764 Phil. 195 (2015).

[40] *Rollo* (G.R. No. 211294), pp. 1803-1825.

[41] *Rollo* (G.R. No. 210501), pp. 8034-8051.

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?

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

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adversely by some other court."[42] 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."[43]

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.[44] 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,[45] 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."

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[42] See *Fenix (CEZA) International, Inc. v. Executive Secretary*, G.R. No. 235258, August 6, 2018.

[43] *Heirs of Sotto v. Palicte*, 726 Phil. 651, 654 (2014).

[44] *Grace Park International Corporation v. Eastwest Banking Corporation*, 791 Phil. 570, 578 (2016).

[45] Section 21 (b) of the Tax Code.

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The subject matter of CTA Case No. 8535 solely relates to the imposition of excise taxes on PSPC's alkylate importations. Thus, any 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.[46]

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.

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[46] *Rollo* (G.R. No. 211294), pp. 1401-1402.

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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."[47]

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.

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Ruling

The subject importations are subject to excise tax and the corresponding VAT on the said excise tax. Hence, we find no legal

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[47] See *Commissioner of Internal Revenue v. Lucio L. Co*, G.R. No. 241424, February 26, 2020.

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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 (₱4.35) 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 Php4.35 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.

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Very truly yours,

[SIGNED]
KIM S. JACINTO-HENARES
Commissioner of Internal Revenue[48]

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)*,[49] 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 *British American Tobacco*

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[48] *Rollo* (G.R. No. 211294), pp. 313-317.

[49] *Banco De Oro v. Republic*, 793 Phil. 97 (2016).

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v. Camacho (British American Tobacco),[50] 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**.[51]
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> (Emphases and underscoring supplied)

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[50] 584 Phil. 489 (2008).

[51] *Banco De Oro v. Republic*, supra note 49, at 124-125.

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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,[52] this necessarily falls within the ambit of the CTA's *certiorari* jurisdiction as pronounced in the *Banco De Oro* ruling.

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."[53] 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.[54]

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

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[52] "[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])

[53] *Teotico v. Baer*, 523 Phil. 670, 676 (2006).

[54] Id. at 675.

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of the Secretary of Finance (SOF).[55] Failure to raise the matter to the SOF constitutes a violation of the exhaustion doctrine.[56]

The doctrine of exhaustion of administrative remedies, however, admits of certain exceptions.[57] 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*,[58] 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.

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

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[55] Section 4 of the Tax Code.

[56] 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.

[57] *Maglalang v. Philippine Amusement and Gaming Corp.*, 723 Phil. 546, 557 (2013).

[58] See G.R. No. 228539, June 26, 2019.

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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 Code 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.[59] In fact, the said attachments reveal that the computation amounting to ₱1,994,500,677.47 came from the CIR herself.[60] 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.[61]

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

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[59] *Rollo* (G.R. No. 211294), pp. 308-309.

[60] Id. at 318-322.

[61] *Allied Banking Corporation v. Commissioner of Internal Revenue*, 625 Phil. 530, 541 (2010).

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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.

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:[62]

RULE I

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

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[62] A.M. No. 05-11-07-CTA, approved on November 22, 2005.

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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 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,[63] to wit:

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[63] 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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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 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

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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 enjoinment 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,[64] 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[65] and its governing principles

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[64] See Section 6, Rule 135 of the Rules of Court.

[65] 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.

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 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."[66] 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."[67]

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."[68] 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**

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.

[66] *Australian Professional Realty, Inc. v. Municipality of Padre Garcia, Batangas Province*, 684 Phil. 283, 292 (2012).

[67] *Executive Secretary v. Forerunner Multi Resources, Inc.*, 701 Phil. 64, 69 (2013).

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

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is enjoined, the practical consequence is that <u>any tax assessment or demand for collection of taxes which finds legal basis from the enjoined tax statute or issuance</u>, 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;[69] and **(2)** moved for the issuance of a Suspension Order against the collection of the amount covered by the October 1, 2012 Demand Letter <u>and for all future alkylate importations</u> (1st Motion for Suspension).

In a Resolution[70] dated October 5, 2012, the CTA **denied** PSPC's 1st 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 1st Motion for Suspension Order.

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[69] *Rollo* (G.R. No. 212490), pp. 19-20.

[70] *Rollo* (G.R. No. 211294), pp. 323-339.

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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 1st 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.[71] 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**

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[71] *Rollo* (G.R. No. 212490), pp. 77-77-A.

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importations, and the Honorable Court of Tax Appeals' jurisdiction to issue the same, upon a bond posted in accordance with its Revised Rules during the pendency of CTA Case No. 8535."[72]

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

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[72] Id. at 101.

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official entry of imported articles in the country.[73] 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.[74] 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.[75] If the IEIRD is considered as the preliminary assessment, any protest thereto should be filed with the Collector.[76] As pointed out by public petitioners, the Collector's ruling on the protest may then be reviewed by the COC,[77] and then it is the latter's decision which may be elevated to the CTA.[78] 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.[79] 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.[80]

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[73] *Chevron Philippines, Inc. v. Commissioner of the Bureau of Customs*, 583 Phil. 706, 718-720 (2008).

[74] See *Commissioner of Internal Revenue v. Transitions Optical Philippines, Inc.*, 821 Phil. 664 (2017).

[75] See *Commissioner of Internal Revenue v. Isabela Cultural Corp.*, 413 Phil. 376 (2001).

[76] Section 2308, Tariff and Customs Code of the Philippines.

[77] Section 2313, Tariff and Customs Code of the Philippines.

[78] Section 2402, Tariff and Customs Code of the Philippines.

[79] See Concurring and Dissenting Opinion of Associate Justice Amy C. Lazaro-Javier, pp. 28 and 31.

[80] *Commissioner of Internal Revenue v. Court of Tax Appeals*, 764 Phil. 195 (2015).

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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**,[81] or **original and appellate jurisdiction** in tax collection cases for **final and executory assessments**.[82] 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

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[81] Section 7 (a) (1), (2), and (4) of Republic Act No. 1125, as amended (CTA Law).

[82] Section 7 (c) of the CTA Law.

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PSPC's subsequent importations of alkylate. As herein explained, the peculiar remedy of a Suspension Order 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 1st 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

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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 1st Motion for Suspension does not automatically warrant the issuance of a TRO/WPI in its favor. At 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*,[83] it is already settled that "the CTA [*En Banc*] has

[83] 765 Phil. 140 (2015).

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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.[84] 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 until the termination of the action without the court issuing a final injunction."[85] 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.

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[84] See *Denso (Phils.), Inc. v. The Intermediate Appellate Court*, 232 Phil. 256 (1987).

[85] *Bacolod City Water District v. Labayen*, 487 Phil. 335, 346-347 (2004).

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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.

Gesmundo, M. Lopez, and *Rosario, JJ.*, concur.

Lazaro-Javier, J., see concurring and dissenting opinion.

CONCURRING AND DISSENTING

LAZARO-JAVIER, *J.*:

The Cases

In **G.R. No. 210501**, the Commissioner of Internal Revenue (CIR), *via certiorari*, assails the following issuances of the Court of Tax Appeals (CTA) First Division in CTA Case No. 8535 entitled "*Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue, Collector of Customs of Port of Batangas and the Bureau of Customs*," *viz.*:

1. ***Resolution***[1] dated July 15, 2013 denying the CIR's Motion to Dismiss, upholding the CTA's jurisdiction over the controversy, including its authority to issue Suspension Orders against the collection of excise taxes

[1] *Rollo*, G.R. No. 210501, Vol. I, p. 39.

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on the Alkylate importations of Pilipinas Shell Petroleum Corporation (PSPC); and

2. ***Resolution***[2] dated October 14, 2013 denying the CIR's motion for reconsideration.

On the other hand, in **G.R. No. 211294**, the Bureau of Customs (BOC) and the Collector of Customs of the Port of Batangas (the Collector) appeal from the CTA *En Banc's* Resolution[3] dated February 10, 2014 in CTA EB Case No. 1047 entitled "*Bureau of Customs and Collector of Customs of the Port of Batangas v. Pilipinas Shell Petroleum Corporation*."

In the aforesaid Resolution, the CTA *En Banc* declined jurisdiction over the appeal of BOC and the Collector from the Resolutions dated January 28, 2013[4] and June 24, 2013[5] of the CTA Second and First Division in Case No. 8535 which, in turn, denied their Omnibus Motion and Motion for Reconsideration, respectively.

In **G.R. No. 212490**, PSPC, *via certiorari* with prayer for injunctive relief, assails the CTA's Resolution[6] dated April 2, 2014 in CTA Case No. 8535 denying its Urgent Verified Motion dated March 18, 2014 seeking the issuance of a Suspension Order.

Antecedents

By Amended Petition for Review[7] dated October 5, 2012 filed before the CTA, PSPC essentially alleged:

It is a corporation engaged in the manufacture and distribution of petroleum products. Given the nature of its business, it had

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[2] *Id.* at 48.

[3] *Rollo*, G.R. No. 211294, Vol. I, p. 78.

[4] *Id.* at 457.

[5] *Id.* at 509.

[6] *Rollo*, G.R. No. 212490, Vol. I, p. 121.

[7] *Id.* at 670.

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to comply with Republic Act No. (RA) 8749,[8] otherwise known as the Clean Air Act, and the Philippine National Standards (PNS), among others, before it could offer its products to the public. Both regulations prohibit the distribution and sale of fuels whose specifications fall below those prescribed by law.[9]

In May 2010, it started importing Alkylate, a blending component which it mixes with other substances to produce regulation-compliant petroleum products. From May 2010 until August 2011, the Bureau of Internal Revenue (BIR) issued twenty-one (21) Authorities to Release Imported Goods (ATRIGs) corresponding to its Alkylate importations. As borne by the ATRIGs, it was not charged excise taxes for its importations since Alkylate "is not among those articles enumerated under Title VI of NIRC 1997."[10]

Despite the categorical statement in the ATRIGs that Alkylate was not subject to excise taxes, the BOC still wanted to test the specifications of Alkylate as part of its Run After The Smugglers (RATS) initiative. It agreed to the proposal and engaged the services of *Societe Generale de Surveillance* (SGS), an independent third party, to determine the actual nature of Alkylate through sampling and testing. In April 2011, SGS tested Alkylate in the presence of its representatives and the BOC's. In its Certificate of Analysis dated May 4, 2011, SGS reported that Alkylate did not meet the PNS specifications for premium plus, premium, or regular gasoline.[11]

On August 26, 2011, then Customs Commissioner Angelito Alvarez issued a statement in relation to the SGS test results, thus:

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[8] AN ACT PROVIDING FOR A COMPREHENSIVE AIR POLLUTION CONTROL POLICY AND FOR OTHER PURPOSES.

[9] *Rollo*, G.R. No. 212490, Vol. I, p. 681.

[10] *Id.* at 682-684.

[11] *Id.* at 684-686.

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Unfortunately, the testing certificate issued by Brian Bailey, Division Manager of SGS Oil, Gas and Chemicals, indicated that the sample did not pass the PNS (Philippine National Standard) for premium plus, premium and regular gasoline on the 10% volume recovered distillation test, and on the Octane Number test for premium plus gasoline.

And it does not help that the BIR had effectively recognized alkylate as raw material not subject to excise tax when it issued an individual Authority to Release Imported Goods (ATRIG) for all the alkylate importations involved in the subject claim.[12]

Despite the foregoing, the BIR, beginning September 2011, inserted a *colatilla* in the ATRIGs covering its Alkylate importations, *viz.*:[13]

This is 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.

It was initially unaware of the *colatilla* since the BIR issued the ATRIGs directly to the BOC.[14]

On January 5, 2012, the Tariff Commission received a letter from Customs Commissioner Rozanno Rufino Biazon (Commissioner Biazon) formally requesting an opinion on the proper tariff classification of Alkylate.[15] Under Ruling No. 11-056 dated March 14, 2012, the Tariff Commission stated that Alkylate did not pass the PNS specifications and thus, cannot be considered as either regular, premium, or premium plus gasoline.[16] Based on this ruling, Commissioner Biazon made a personal statement on his website that "the Tariff Commission essentially validated

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[12] *Id.* at 686-687.

[13] *Id.* at 687.

[14] *Id.* at 688.

[15] *Id.* at 690.

[16] *Id.* at 691.

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the findings of the SGS and ruled that alkylates are not finished products and therefore subject to 0% taxes."[17]

The Collector also sent a letter request to the Department of Energy (DOE) for a legal opinion on the nature of Alkylate. Through Letter dated June 27, 2012, the DOE responded, thus:[18]

> The DOE is of the position that Alkylate is not a finished product but an intermediate or raw gasoline component used as blendstock in the production of PNS-compliant unleaded gasoline consistent with requirements of the Philippine Clean Air Act. This position is based largely on technical considerations specifically relating to the production, use and chemical properties of Alkylate, to *wit*:
>
> - Refining of crude oil consists of several steps, namely Separation, Conversion, Purification, and Blending.
> - In the Separation process, crude oil is separated through a process called fractional distillation. Various crude components are separated through differences in boiling points in order to produce gases (*e.g.*, for LPG, gasoline stream including butane/isobutene), light distillates (light naphtha for gasoline stream), middle distillates (heavy naphtha for gasoline, kerosene and diesel streams), and bottoms/residue (for bunker fuel/asphalt streams).
> - To meet fuel quality standards, refineries employ the conversion process, such as secondary processes/facilities, to manufacture oil derivatives from the separated crude components in order to produce higher value products, *e.g.*, products with higher octane, by rearranging molecules. The processes include cracking, (*e.g.*, catalytic, hydro, thermal), catalytic reforming, isomerization, catalytic polymerization and alkylation.
> - Alkylate (or iso-octane) is one of the substances produced during this process. Alkylate has high octane (95 minimum) produced by combining butane and iso-butane molecules in the presence of strong sulphuric acid. The butane and iso-butane are gases collected from topping, cracking and reforming units.
> - Purification is usually undertaken to contain/reduce very high sulfur content of crude oils, such as those procured from the

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[17] *Id.* at 691-692.

[18] *Id.* at 682-683.

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Middle East which are high in sulfur. This is intended to finished products and, hence, does not apply to alkylate.

- Blending is the final process where various components are finally blended so that the final mixture completely meets the required specifications in the Philippine National Standards (PNS) for the different types of products for sale in the domestic market. It is during this process that alkylate is used.

Unconvinced, the Collector submitted to Commissioner Biazon a Memorandum dated June 4, 2012, requesting a legal opinion on whether excise taxes may be collected on its Alkylate importations. Commissioner Biazon forwarded the request to the BIR through Letter dated June 13, 2012.[19]

Meantime, it discovered the *colatilla* in the ATRIGs which it claimed were unilaterally, if not surreptitiously inserted. Thus, it wrote the BIR on June 26, 2012, asserting it was deprived of the opportunity to be heard before the *colatilla* was written in the ATRIGs, in violation of its right to due process of law. The condition allegedly subjected the security and stability of its importations to a previously non-existent, surprise, and unfair condition.[20]

Without responding to its letter, the BIR issued a Document dated June 29, 2012 bearing Control No. M-059-2012[21] (Document M-059-2012) and addressed to Commissioner Biazon, *viz.*:

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

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[19] *Id.* at 693.

[20] *Id.* at 693-694.

[21] *Rollo*, G.R. No. 211294, Vol. I, p. 89.

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₱1,384,721,993.00, on its various importations of Alkylate from the year 2010 up to present as declared in twenty-eight (28) import entries.

It appears that District Collector Rene M. Benavides is having an apprehension on the propriety of collecting the Excise Tax and VAT on the subject importations considering that the Tariff Commission has issued Ruling No. 11-056 dated 14 March 2012 and that the importations are covered by Authorities to Release Imported Goods (ATRIG), exempting the subject importation from excise tax.

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 excise tax and VAT amounting to ₱1,384,721,993.00 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 process" 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 (₱4.35) for every liter of volume capacity of naphtha, regular gasoline, **and other similar products of distillation**, to wit:

> **Section 148.** *Manufactured Oils and Other Fuels*. — There shall be collected on refined and manufactured mineral oils and motor fuels, the following excise taxes which shall attach to the goods hereunder enumerated as soon as they are in existence as such:

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x x x

(e) Naphtha, regular gasoline and **other similar products of distillation, per liter of volume capacity, four pesos and thirty-five centavos (₱4.35)**: Provided, however, That naphtha, when used as a raw material in the production of petrochemical products or as replacement fuel for natural-gas-fired-combined-cycle power plant, in lieu of locally-extracted natural gas during the non-availability thereof, subject to the rules and regulations to be promulgated by the Secretary of Energy, in consultation with the Secretary of Finance, per liter of volume capacity, Zero (₱0.00): Provided, further, That the by-product including fuel oil, diesel fuel, kerosene, pyrolysis gasoline, liquefied petroleum gases and similar oils having more or less the same generating power, which are produced in the processing of naphtha into petrochemical products shall be subject to the applicable excise tax specified in this Section, except when such by-products are transferred to any of the local oil refineries through sale, barter or exchange, for the purpose of further processing or blending into finished products which are subject to excise tax under this Section;

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, 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 ₱4.35 per liter under Section 148(e) of the NIRC of 1997, as amended. Accordingly, PSPC should pay the amount of ₱1,384,721,993.00 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,

KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

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As it was, the CIR considered Alkylate as a "motor spirit," another term for gasoline only British in origin. As such, it fell under the ASEAN Harmonized Tariff Nomenclature subheading "2710.11.16B — Other, unleaded."[22]

The CIR also referred to a Report dated January 18, 2012 of the OIC-Chief, BIR Laboratory Section, Excise Taxpayers Regulatory Division which stated that in terms of boiling range, volatility and recovery process, "Alkylate qualifies as a product similar to *naphtha* used as gasoline blending component."[23] It was, therefore, subject to excise taxes of ₱4.35 per liter pursuant to Section 148 (e) of the 1997 NIRC.[24]

Subsequently, Commissioner Biazon issued Customs Memorandum Circular No. 164-2012 implementing Document M-059-2012 and directed the BOC and its officers to take appropriate action.

On August 24, 2012, it (PSPC) filed a petition for review with the CTA, assailing Document M-059-2012, claiming that in reality, it was a BIR Ruling issued against it without due process of law.

Meantime, as shown in the subsequent ATRIGs issued by the BIR, it was already being assessed with excise taxes for its imports of Alkylate beginning August 2012.[25] More, it received a letter[26] dated October 1, 2012 from the Collector, demanding payment for alleged deficiency excise taxes of ₱1,994,500,677.47, inclusive of interests and surcharges, due on its thirty (30) shipments of Alkylates from January 2010 to June 2012, thus:

In view of the foregoing, you are hereby required to pay the deficiency excise tax (basic, surcharge and interest) in the total

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[22] *Id.* at 90.

[23] *Id.* at 91.

[24] *Id.*

[25] *Rollo*, G.R. No. 212490, Vol. I, pp. 695-696.

[26] *Rollo*, G.R. No. 211294, Vol. I, p. 308.

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amount of ₱1,994,500,677.47 within thirty (30) days after receipt hereof.[27]

Hence, it amended its petition to assail the Collector's leter dated October 1, 2012 and enjoin its implementation, as well as the collection of excise taxes on its future importations of Alkylate.[28] Its amended petition raised the following arguments:[29]

I

THE SUBJECT BIR RULING IS LEGALLY AND FACTUALLY INFIRM BECAUSE ALKYLATE, BEING ADMITTEDLY A RAW MATERIAL AND BLENDING COMPONENT, IS NOT SUBJECT TO EXCISE TAX

II

THE SUBJECT BIR RULING IS INVALID BECAUSE IT IS CONTRARY TO, AND DISREGARDS AND IGNORES, APPLICABLE LAW AND JURISPRUDENCE, WHILE THE OFFICIAL ACTIONS AND RULINGS OF THE BIR PRIOR TO ITS ISSUANCE, THAT WAS RELIED UPON BY PETITIONER PSPC, ARE CONSISTENT WITH LAW AND ESTABLISHED JURISPRUDENCE ON THE NATURE OF EXCISE TAXES

III

CONTRARY TO THE SUBJECT BIR RULING, ALKYLATE IS NOT A PRODUCT OF DISTILLATION OR SIMILAR TO NAPHTHA AND, THEREFORE, PETITIONER PSPC'S ALKYLATE IMPORTATIONS ARE NOT SUBJECT TO EXCISE TAX UPON ENTRY UNDER SECTION 148(E) OF THE NIRC

IV

IN REQUIRING PETITIONER PSPC TO PAY EXCISE TAXES TO RESPONDENT BOC ON ITS SUBJECT PAST IMPORTATIONS OF ALKYLATE, AND FUTURE IMPORTATIONS THEREOF UPON ENTRY, THE SUBJECT BIR RULING AMOUNTS TO PROHIBITED DIRECT DUPLICATE TAXATION

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[27] *Id.* at 309.

[28] *Rollo*, G.R. No. 212490, Vol. I, p. 751.

[29] *Id.* at 696-698.

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V

THE CONSEQUENCE OF SUBJECTING PETITIONER PSPC'S ALKYLATE TO UNLAWFUL DOUBLE TAXATION WILL RESULT IN A HIGHER TAX BASE FOR PRODUCERS *VIS-À-VIS* PURE IMPORTERS, THUS, VIOLATING SOUND PUBLIC POLICY TO ENCOURAGE LOCAL INVESTMENTS

VI

THE SUBJECT BIR RULING IS VOID SINCE IT WAS RENDERED WITHOUT NOTICE TO PETITIONER PSPC IN BLATANT VIOLATION OF PETITIONER PSPC'S RIGHT TO DUE PROCESS

A. THE VIOLATION OF PETITIONER PSPC'S RIGHT TO DUE PROCESS IS WORSENED BY THE FACT THAT THE SUBJECT BIR RULING IS RETORACTIVELY MADE TO APPLY, IN VIOLATION OF LAW, TO PETITIONER'S PAST ALKYLATE IMPORTATIONS THAT HAVE BEEN ALLOWED ENTRY WITHOUT ANY ISSUE, AND ON THE STRENGTH OF THE VERY ATRIGS ISSUED BY THE BIR

VII

THE ASSESSMENT OF EXCISE TAX AGAINST PETITIONER PSPC FOR IMPORTING ALKYLATE WITHOUT MAKING THE SAME ASSESSMENT TO A SIMILARLY SITUATED TAXPAYER VIOLATES THE EQUAL PROTECTION CLAUSE OF THE CONSTITUTION

VIII

EVEN ASSUMING FOR THE SAKE OF ARGUMENT THAT PETITIONER PSPC IS LIABLE FOR THE ALLEGED DEFICIENCY EXCISE TAX ON ITS PAST ALKYLATE IMPORTATIONS, THE IMPOSITION OF INTEREST AND SURCHARGES THEREON IS ILLEGAL AND WITHOUT BASIS

The petition was docketed as CTA Case No. 8535, entitled "*Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue, Collector of Customs of Port of Batangas and the Bureau of Customs*." The CIR, on the one hand, and the BOC and the Collector, on the other, adopted different legal strategies in response to the petition. By Resolution dated

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October 22, 2012, the CTA issued a Suspension Order enjoining the collection of its alleged deficiency excise taxes.

The Bureau of Customs (BOC) and the Collector

On November 8, 2012, the BOC and the Collector, through the Office of the Solicitor General (OSG), filed an Omnibus Motion[30] to dismiss the case, lift the Suspension Order, and to require PSPC to explain how it got its hand on Document M-059-2012. They alleged, in the main:

First. The CTA did not have jurisdiction over Case No. 8535. The subject matter of the petition, Document M-059-2012, was a mere internal letter or communication between the BIR and BOC, not an actual BIR Ruling. As it was, RA 1125, as amended did not confer the CTA with jurisdiction over correspondences between two (2) government agencies.[31]

Second. Subject letter was not an assessment since it was not addressed to PSPC, did not demand PSPC to pay taxes within a given period, and was not even mailed or sent to PSPC. It was merely a liquidation or final computation and ascertainment of the customs duties on PSPC's importations of Alkylate.[32]

Third. PSPC failed to exhaust its administrative remedies. It should have first appealed the purported BIR Ruling to the Secretary of Finance pursuant to Section 4 of the 1997 NIRC. As for the Letter dated October 1, 2012, the CTA does not have concurrent jurisdiction with the Commissioner of Customs to review said decision or ruling of the Collector.[33]

Finally. The requisites for the issuance of a Temporary Restraining Order/Suspension Order were not sufficiently complied with.[34]

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[30] *Rollo*, G.R. No. 211294, Vol. I, p. 411.

[31] *Id.* at 417-421, 427-432.

[32] *Id.* at 422-426.

[33] *Id.* at 432-441.

[34] *Id.* at 441-454.

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On December 21, 2012, PSPC filed its Memorandum in Opposition of the Omnibus Motion. It insisted that the CTA had jurisdiction over its petition. The alleged "internal letter" was actually a BIR Ruling since it was directed specifically and exclusively at PSPC. Too, it imposed excise taxes on its importation of Alkylate where none existed before. Clearly, it was issued by the CIR in the exercise of its quasi-judicial powers. Though not an assessment, the BIR Ruling may fall under the classification of "other matters" subject to appellate review by the CTA pursuant to Section 7 of RA 1125, as amended.[35]

By **Resolution**[36] **dated January 28, 2013**, the CTA Second Division denied the Omnibus Motion. On the issue of jurisdiction, the CTA essentially held:

The supposed letter between the BIR and BOC could not be considered a mere inter-government agency communication since it contained findings and ruled on the taxability of PSPC's Alkylate importations pursuant to Section 148(e) of the 1997 NIRC. Hence, it was in the nature of a BIR Ruling.

Under Section 4[37] of the 1997 NIRC and Section 7[38] of RA 1125 as amended, the CTA has jurisdiction not only over appeals

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[35] *Id.* at 463.

[36] *Id.* at 457.

[37] **Section 4.** *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases*. — The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

[38] Section 7. Jurisdiction. — The CTA shall exercise:

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

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

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from decisions of the CIR in cases involving disputed assessments and refunds of internal revenue taxes, fees or other charges, penalties in relation thereto but also decisions on **other matters** arising under the NIRC or other laws administered by the BIR.[39]

Since the BIR Ruling was issued in the CIR's exercise of her quasi-judicial power to decide on "other matters under the [NIRC]," PSPC's appeal therefrom fell within the CTA's exclusive appellate jurisdiction.[40]

The CTA conceded that when the question involves the constitutionality of a tax law, the issue should be brought before the regular courts. But when there is no issue on the constitutionality of the law itself but simply its implementation, the CTA may validly assume jurisdiction. As PSPC's petition assailed the implementation of Section 148 (e) of the 1997 NIRC not the constitutionality of the provision itself, jurisdiction rested with the CTA.[41]

As for the claim that PSPC failed to exhaust administrative remedies, the CTA held that Section 4 of the 1997 NIRC delineates when an appeal should be taken to the Secretary of Finance or the CTA. Considering that the issue fell under the classification of "other matters arising under the [NIRC]," the administrative appeal before the Secretary of Finance was unavailable; it was the CTA which had exclusive jurisdiction.[42]

Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

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

x x x x

[39] *Rollo*, G.R. No. 211294, Vol. I, pp. 469-472.

[40] *Id.* at 472.

[41] *Id.* at 478.

[42] *Id.* at 481.

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Meanwhile, the Letter dated October 1, 2012 was akin to an assessment of internal revenue taxes beyond the competence of the Collector to decide. As stated in the *colatilla* of the ATRIGs, the imposition of excise taxes, penalties, and interests depended "on the final resolution of the **Office of the Commissioner** [of Internal Revenue] on the issue on whether this item is subject to the excise taxes under the NIRC of 1997, as amended."[43]

At any rate, the CIR's previous issuance of ATRIGs which did not impose excise taxes on PSPC's Alkylate importation and later, its decision to subject the same importations to excise taxes, fell within the CTA's jurisdiction over "other matters" arising under the 1997 NIRC or other laws administered by the BIR.[44]

Aggrieved, the BOC and the Collector moved for reconside ration,[45] which was denied by **Resolution dated June 24, 2013** of the CTA First Division.[46] They then elevated the case to the CTA *En Banc*. They moved for a fifteen (15)-day extension[47] to file their petition which was granted under Resolution dated August 2, 2013.[48] Subsequently, the BOC and the Collector filed their Petition for Review[49] *via* Case No. 1047. Prior to this, the BOC and the Collector filed their Answer/Comment dated August 6, 2013 in Case No. 8535.[50]

For its part, PSPC filed its Comment/Opposition *ad Cautelam*[51] in Case No. 1047, arguing that the BOC and the Collector's

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[43] *Id.* at 482.

[44] *Id.*

[45] *Id.* at 485.

[46] *Id.* at 509.

[47] *Id.* at 527.

[48] *Id.* at 532.

[49] *Id.* at 533.

[50] *Rollo*, G.R. No. 212490, Vol. I, p. 32.

[51] *Rollo*, G.R. No. 211294, Vol. II, p. 570.

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assailed resolutions being interlocutory in character were not valid subjects of appeal to the CTA *En Banc*. In any event, the CTA First Division did not err in exercising jurisdiction over the main case.

Through its assailed **Resolution**[52] **dated February 10, 2014**, the CTA *En Banc* denied due course to the petition for review. It agreed with PSPC that the resolution denying the BOC and the Collector's motion to dismiss was interlocutory in nature, thus, inappealable.

Hence, the BOC and the Collector filed their Petition for Review on *Certiorari* dated March 24, 2014 *via* **G.R. No. 211294** entitled "*The Bureau of Customs and Collector of Customs of the Port of Batangas v. Pilipinas Shell Petroleum Corporation*," assailing the CTA *En Banc*'s dismissal of its appeal.

The Commissioner of Internal Revenue (CIR)

By Answer[53] dated November 19, 2012, the CIR, represented by Special Attorneys from the BIR's Legal Department, similarly argued that the CTA did not have jurisdiction over the case considering that what PSPC was appealing from (Document M-059-2012) was a mere internal communication between the BIR and BOC, not a quasi-judicial ruling.[54] In a *catena* of cases, the Court had already held that the CTA had no jurisdiction over administrative issuances rendered pursuant to the CIR's exercise of her rule-making or quasi-legislative function, such as the letter subject of the petition.[55]

Although the CTA has jurisdiction over "other matters arising from under the National Internal Revenue Code," these "other matters" contemplated by law only cover those directly related to a disputed assessment or claim for refund.[56]

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[52] *Rollo*, G.R. No. 211294, Vol. I, p. 78.

[53] *Rollo*, G.R. No. 212490, Vol. III, p. 1651.

[54] *Id.* at 1652-1653.

[55] *Id.* at 1658-1665.

[56] *Id.* at 1656-1657.

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At any rate, PSPC failed to exhaust administrative remedies before seeking judicial relief. PSPC openly admitted in its petition that it did not file a motion for reconsideration of the so-called BIR Ruling before the Secretary of Finance. This was in violation of Department Order No. 23-01 which prescribed the procedure in assailing rulings of the BIR.[57]

The Collector's Letter dated October 1, 2012, even if treated as an assessment, was still insufficient to vest the CTA with jurisdiction over the amended petition. For the Collector's "assessment" should first be protested with the Collector himself and then with the Commissioner of Customs before it may be brought before a court of law.[58]

As the CTA had no jurisdiction over the main action, it could not consequently grant provisional or ancillary remedies such in favor of PSPC.[59]

On the taxability of PSPC's importation of Alkylates, the CIR essentially reiterated the contents of Document M-059-2012.[60]

In its Reply dated December 22, 2012,[61] PSPC offered substantive arguments in support of its petition. As for the procedural issues raised by the CIR, PSPC riposted, in substance:

First. PSPC was not assailing the administrative or quasi-legislative issuance of the CIR. It did not raise as an issue the constitutionality of a statute, provision of law, or of any implementing rules and regulations. What it sought was the reversal of Document M-059-2012 and Letter dated October 1, 2012 which specifically pertained to PSPC's excise tax liability for its Alkylate importations.[62] Considering that these assailed

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[57] *Id.* at 1665-1667.

[58] *Id.* at 1669-1670.

[59] *Id.* at 1670-1671.

[60] *Id.* at 1671-1675.

[61] *Id.* at 1680.

[62] *Id.* at 1703-1704.

issuances imposed a tax burden on PSPC where none existed before, these rulings fell within the class of CIR Rulings on "other matters" arising from the NIRC. Consequently, the CTA has exclusive appellate jurisdiction over PSPC's appeal therefrom pursuant to Section 7 of RA 1125, as amended and Section 4 of the 1997 NIRC.[63]

Further, it was erroneous for the CIR to claim that the CTA's jurisdiction over "other matters" should relate to an assessment. Otherwise, the specific inclusion of "other matters" in its jurisdiction would have been a mere superfluity. In fact, in a string of cases, the Court had already recognized the CTA's jurisdiction over "other matters" which did not deal with disputed assessments or refunds.[64]

Second. The fundamental error in the CIR's position was in classifying the assailed document as a quasi-legislative issuance. It cannot be denied that the document was not merely an interpretative rule or a subordinate legislation which applies to the public in general. The assailed document here was based on a factual finding applicable exclusively and particularly to PSPC alone, hence, a quasi-judicial issuance in nature.[65]

The CIR attempted to mislead the CTA when she claimed that Document M-059-2012 was a mere internal communication between the CIR and BOC. It was indubitably a quasi-judicial ruling since it increased the tax burden of PSPC after resolving the tax treatment of its Alkylate importations.[66]

At any rate, Document M-059-2012 could not be deemed a mere "internal communication" since Commissioner Biazon discussed the contents of said ruling in an interview with ANC's Headstart. More, the Collector and the BIR likewise issued

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[63] *Id.* at 1704.

[64] *Id.* at 1705-1714.

[65] *Id.* at 1718-1724.

[66] *Id.* at 1724-1726.

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certified true copies of the ruling, negating its supposed confidential status.[67]

Third. The ATRIGs covering PSPC's Alkylate importations, as well as the Collector's Letter dated October 1, 2012 provided a computation of PSPC's tax liabilities and demanded payment from it. The ATRIGs even stated that PSPC's importations would not be released to it unless it paid the amount of taxes indicated therein. Thus, these issuances constituted both an assessment and demand for payment which could properly be raised before the CTA.[68]

Finally. The doctrine of exhaustion of administrative remedies was not applicable. For one, there was no appeal to the Secretary of Finance. Department Order No. 23-01 only covered appeals from the interpretative issuances of the BIR; appeals from the issuances of the BIR on "other matters" belong to the CTA's exclusive appellate jurisdiction. In any event, the remedy of appeal to the Secretary of Finance was only available to a taxpayer who actually requested an opinion ruling, not PSPC which was unaware of the BOC's query.

For another, exhaustion of administrative remedies may not be expected here given the matter's extreme urgency and the grave damage and prejudice the PSPC stood to suffer. Too, there was no plain, speedy, or adequate remedy available to PSPC. Immediate judicial intervention was therefore warranted.[69]

PSPC also sought the issuance of Suspension Orders against the Collector's attempts at collecting excise taxes from PSPC's Alkylate importations, claiming that the unlawful assessment and collection would jeopardize its interest.[70]

On June 17, 2013, PSPC filed an Urgent Verified Motion for a Separate Suspension Order for its subsequent Alkylate

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[67] *Id.* at 1727-1729.

[68] *Id.* at 1734-1736.

[69] *Id.* at 1739-1749.

[70] *Id.* at 1749-1753.

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shipments. The BOC and the Collector filed their Comment/ Opposition on June 17, 2013, while the CIR countered with a Motion to Dismiss dated July 1, 2013, reiterating the affirmative defenses in her Answer. She essentially argued that the CTA did not have jurisdiction over the subject matter, much less, the authority to issue ancillary remedies in connection therewith.[71]

By **Resolution**[72] **dated July 15, 2013**, the CTA First Division denied the CIR's motion on ground that its jurisdiction over the main case had already been settled through Resolutions dated January 28, 2013 and June 24, 2013 denying the BOC and the Collector's Omnibus Motion and their Motion for Reconsideration, respectively.[73] Too, PSPC had already established that it would be jeopardized by the collection of excise taxes on its Alkylate importations, thus:[74]

> Moreover, PSPC's quite repetitive contention that it will be gravely injured by the imposition and collection of excise taxes in its Alkylate importation has already been established. As stated in Our Resolution affirming this Court's jurisdiction over the instant case, the previous importation of Alkylate by petitioner PSPC was not subjected to excise tax and the sudden imposition thereof would necessarily affect petitioner PSPC which relied on the exemption given by the government itself. Nonetheless, the government would not be in the losing end since the amount sought to be collected is secured by a surety bond. The act of imposing and collecting taxes which were previously non-existing would result to substantial and grave damage and injury not only to petitioner but also to petitioner's employees and to the general public who are the ultimate consumers of petitioner's products.
>
> Hence, We find merit in PSPC's Motion for the Issuance of a Suspension Order. Consequently, the said Motion to Dismiss is **DENIED**. x x x

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[71] *Rollo*, G.R. No. 210501, Vol. I, p. 42.

[72] *Id.* at 39.

[73] *Id.* at 41.

[74] *Id.* at 42.

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The CTA First Division denied reconsideration by **Resolution**[75] **dated October 14, 2013**.

Hence, the CIR assailed the twin dispositions of the CTA *via* Petition for *Certiorari* docketed as **G.R. No. 210501** entitled "*Commissioner of Internal Revenue v. Hon. CTA (1st Division) and Pilipinas Shell Petroleum Corporation*."

Pilipinas Shell Petroleum Corporation (PSPC)

Throughout the proceedings before the CTA, PSPC had invariably sought the issuance of Suspension Orders against the collection of excise taxes on its Alkylate importations.

On September 18, 2012, PSPC filed a Very Urgent Motion for the Issuance of a Suspension Order with Prayer for Immediate Issuance of a Temporary Restraining Order to enjoin the implementation of the assailed document M-059-2012. The CTA initially denied the motion but granted reconsideration on October 22, 2012[76] despite opposition from the BOC and the Collector as well as the CIR, *viz.*:

x x x x

During the trial on October 15, 2012, in support of its motion, PSPC thru counsel, presented as witness Mr. Rene Benavides, Acting District Collector of Customs for the Port of Batangas, by virtue of a *subpoena ad testificandum et duces tecum* dated October 10, 2012. He testified on direct examination that PSPC had been served the BOC Demand Letter; that excise taxes are actually being collected already on the incoming Alkylate importations of PSPC; that actual payment was made on the excise taxes amounting to ₱137,393,913.00, in the last three (3) Alkylate importations; that ATRIG documents function as an assessment of the excise tax; and that the excise taxes on the last three (3) Alkylate importations were paid under protest, resulting in three (3) protest letters.

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[75] *Rollo*, G.R. No. 210501, Vol. I, p. 48.

[76] *Rollo*, G.R. No. 211294, Vol. I, p. 403.

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WHEREFORE finding merit in PSPC's Motion for the Issuance of a Suspension Order, the same is hereby GRANTED, but only as regards the ₱1,994,500,677.47, as covered by the Demand for Payment of Excise Tax and VAT on the said Excise Tax Re: Importations of Alkylate from January 2010 to June 2012, which was issued by the Bureau of Customs dated October 1, 2012, PROVIDED that PSPC files within ten (10) days from receipt of this Resolution, a surety bond equivalent to ONE AND ONE HALF of the amount sought to be collected or TWO BILLION NINE HUNDRED NINETY ONE MILLION SEVEN HUNDRED FIFTY ONE THOUSAND, SIXTEEN PESOS AND TWENTY CENTAVOS (₱2,991,751,016.20).[77] (Emphasis supplied)

Consequently, the CTA issued a Suspension Order enjoining the collection of the ₱1,994,500,677.47 excise taxes demanded by the Collector in his Letter dated October 1, 2012.[78]

Since the Suspension Order did not cover PSPC's subsequent Alkylate importations, PSPC sought the same remedy for each of its succeeding Alkylate shipments. As it was, PSPC had been importing Alkylate on a regular basis. Consequently, PSPC filed various motions where it reiterated the extreme urgency of the issuance of a suspension order. It argued that under Section 1801[79]

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[77] *Id.* at 404-409.

[78] *Rollo*, G.R. No. 212490, Vol. I, pp. 23-24.

[79] SECTION 1801. *Abandonment, Kinds and Effects of.* — An imported article is deemed abandoned under any of the following circumstances.

a. When the owner, importer, consignee of the imported article expressly signifies in writing to the Collector of Customs his intention to abandon, or

b. When the owner, importer, consignee or interested party after due notice, fails to file an entry within thirty (30) days, which shall not be extendible, from the date of discharge of the last package from the vessel or aircraft, or having filed such entry, fails to claim his importation within fifteen (15) days, which shall not likewise be extendible, from the date of posting of the notice to claim such importation.

Any person who abandons an article or who fails to claim his importation as provided for in the preceding paragraph shall be deemed to have renounced all his interests and property rights therein.

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of the Tariff and Customs Code of the Philippines (TCCP), it only had a non-extendible period of fifteen (15) days from the issuance of an Import Entry and Internal Revenue Declaration (IEIRD) within which to pay the required taxes and duties for its Alkylate imports:[80]

a. Urgent Verified Motion dated October 31, 2012 — PSPC sought the issuance of a Suspension Order against the collection of excise taxes for its Alkylate shipment under ATRIG No. 00061548. The CTA failed to timely rule on the motion. Thus, PSPC was constrained to pay under protest the excise taxes due on its Alkylate importation;[81]

b. Urgent Verified Motion dated December 17, 2012 — this covered PSPC's Alkylate shipment under ATRIG No. ATRBIR0014213. By Resolution[82] dated January 4, 2013, the CTA denied the motion on ground that "*no assessment has been issued by the BOC demanding payment of the excise taxes for PSPC's importations*";[83]

c. Urgent Verified Motion dated January 18, 2013 — this covered PSPC's Alkylate shipment under ATRIG dated January 16, 2013. The CTA failed to timely rule on the motion. Thus, PSPC was constrained to pay under protest the excise taxes due on its Alkylate importation;[84]

Meanwhile, PSPC learned that in Case No. 8544 which involved the collection of excise taxes on Petron Corporation's Alkylate importations, the CTA issued Resolution[85] dated February 13, 2013 wherein it held:

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[80] *Rollo*, G.R. No. 212490, Vol. I, pp. 20-27.

[81] *Id.* at 25-27.

[82] *Rollo*, G.R. No. 212490, Vol. III, p. 1881.

[83] *Id.* at 1889.

[84] *Rollo*, G.R. No. 212490, Vol. I, p. 30.

[85] *Id.* at 518.

x x x there was a final assessment imposing excise tax on petitioner's importation of alkylate in this particular case as it was in the form of Final Computation of the respondent Collector written at the back page of the [IEIRD].[86]

d. Urgent Verified Motion dated June 14, 2013 — upon learning of the development in the Petron case, PSPC attached IEIRD Nos. C-1298-13 and C-1301-13 and ATRIG Nos. ELTRDOIL777 and ELTRDOIL7779 to its motion. The CTA granted PSPC's motion by Resolution dated July 15, 2013, this very same resolution which denied the CIR's Motion to Dismiss;[87]

e. Urgent Verified Motion dated September 9, 2013 — PSPC presented the same pieces of evidence used in its June 14, 2013 motion for which a suspension order was issued. But the CTA failed to timely rule on this motion. Thus, PSPC was constrained to pay under protest the excise taxes due on its Alkylate importation;[88]

f. Urgent Verified Motion dated November 8, 2013 — again, PSPC presented anew these pieces of evidence. But the CTA, too, failed to timely rule on this motion. Thus, PSPC was constrained to pay under protest the excise taxes due on its Alkylate importation;[89]

g. Urgent Verified Motion dated January 29, 2014 — the motion covered Alkylate shipments which were scheduled to arrive in February, March, and April 2014. PSPC withdrew the motion since it was prematurely filed. The withdrawal, however, was without prejudice to refiling once the shipments arrived;[90]

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[86] *Id.* at 525.

[87] *Id.* at 31-32.

[88] *Id.* at 32-33.

[89] *Id.* at 33-34.

[90] *Id.* at 34-35.

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h. Urgent Verified Motion dated February 25, 2014 — this covered PSPC's Alkylate shipment under ATRIG No. ELTRDOIL 19643 and IEIRD No. C636-14. PSPC withdrew the motion for failure of the CTA to timely render a resolution;[91] and

i. Urgent Verified Motion dated March 18, 2014 — this covered 80,162 barrels of Alkylate delivered to PSPC by the vessel MT Marine Express.

Through its assailed **Resolution**[92] **dated April 2, 2014**, the CTA denied PSPC's Urgent Verified Motion dated March 18, 2014. It held:

First. A Suspension Order is simply an ancillary remedy which should relate to the main action. Since the main subject of PSPC's amended petition only pertained to the collection of excise taxes on its Alkylate importations prior to October 1, 2012, PSPC cannot seek the issuance of a Suspension Order for collections beyond said period. The CTA simply had no authority to suspend the collection of excise taxes based on assessments not covered by the Letter dated October 1, 2012. PSPC should have paid separate docket fees for each of the subsequent assessments sought to be enjoined.[93]

Second. Under Section 2309 of the TCCP,[94] protest was the *exclusive* remedy against the BOC's collection of excise taxes on PSPC's Alkylate importation.[95]

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[91] *Id.* at 35.

[92] *Id.* at 121.

[93] *Id.* at 123-126.

[94] SECTION 2309. *Protest Exclusive Remedy in Protestable Case*. — In all cases subject to protest, the interested party who desires to have the action of the Collector reviewed, shall make a protest, otherwise, the action of the Collector shall be final and conclusive against him, except as to matters collectible for manifest error in the manner prescribed in section one thousand seven hundred and seven hereof.

[95] *Rollo*, G.R. No. 212490, Vol. I, p. 128.

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Finally. Under Section 11 of RA 1125, as amended,[96] a Suspension Order may only be issued when, in the opinion of the CTA, the collection of taxes by the BIR or BOC may jeopardize the interest of the government and/or the taxpayer. Unfortunately, PSPC failed to establish that it stood to be jeopardized by the collection of excise taxes on its Alkylate importation. In some instances, PSPC was even able to pay the excise taxes, albeit under protest. The selective manner by which PSPC opted to either pay under protest or seek suspension of the collection showed that PSPC's perceived jeopardy was more imagined than real. If PSPC was indeed financially incapable of meeting its tax liabilities on its importations, then the CTA should have seen more Urgent Verified Motions and fewer payments under protest. At any rate, PSPC may claim a tax refund should the CTA rule against the validity of the assailed document M-059-2012.[97]

Confounded by the CTA's alleged conflicting rulings, PSPC questioned the CTA's Resolution dated April 2, 2014 *via* a Petition for *Certiorari* docketed as **G.R. No. 212480** entitled "*Pilipinas Shell Petroleum Corporation v. Hon. CTA (1st Division), Commissioner of Internal Revenue, Bureau of*

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[96] SECTION 11. Who May Appeal; Mode of Appeal; Effect of Appeal. — x x x

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 and 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

[97] *Rollo*, G.R. No. 212490, Vol. I, pp. 129-132.

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Customs, and Collector of Customs of the Port of Batangas." PSPC likewise sought injunctive relief to stop the CIR, the BOC and the Collector ("government petitioners" collectively) from imposing and collecting excise taxes on its incoming Alkylate importations pursuant to the alleged BIR Ruling, Document No. M-059-2012.

THE PRESENT PETITIONS

G.R. No. 210501: CIR v. PSPC

In **G.R. No. 210501**, the CIR asserts that the CTA's First Division acted with grave abuse of discretion when it denied her Motions to Dismiss and Motion for Reconsideration. She insists that the alleged BIR Ruling was a mere internal communication between her and Commissioner Biazon, thus, beyond the limited power of review of the CTA under RA 1125, as amended.[98]

More, the CTA's jurisdiction over "other matters" cannot be invoked here. The phrase is not a magic ticket that allows taxpayers to question any act of the CIR before the CTA. Neither does it license the CTA to exercise at first instance jurisdiction over a letter just because it involves internal revenue taxes.[99] As the Court *En Banc* held in ***Ollada v. CTA***,[100] "other matters" must still relate to a disputed assessment, thus:

> Note that the law gives to the CTA exclusive appellate jurisdiction to review the decisions of the Collector of Internal Revenue, the Commissioner of Customs, and the provincial or city Boards of Assessment Appeals. Note also that in defining the cases that may be reviewed the law begins by enumerating them and then adds a general clause pertaining to other matters that may arise under the National Internal Revenue Code, the Customs Law and the Assessment Law. **This shows that the "other matters" that may come under the general clause should be of the same nature as those that have preceded them applying the rule of construction known as**

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[98] *Rollo*, G.R. No. 210501, Vol. I, pp. 10-13.

[99] *Id.* at 13.

[100] 99 Phil. 604, 609-610 (1956).

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ejusdem generis. In other words, in order that a matter may come under the general clause, it is necessary that it belongs to the same kind or class therein specifically enumerated. Otherwise, it should be deemed foreign or extraneous and is not included. (Emphasis supplied)

Here, CTA Case No. 8535 does not hinge on a disputed assessment nor a claim for refund.

But even conceding that the CIR's letter to Commissioner Biazon is indeed a BIR Ruling, it is still not subject to appeal before the CTA.[101] Under Section 3 (a) (1), Rule 4 of the Revised Rules of the CTA, only rulings of the CIR in the exercise of its quasi-judicial powers may be appealed to the CTA, *viz.*:

SECTION 3. *Cases within the jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

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

x x x x

As it was, the assailed letter was rendered in the CIR's exercise of its rule-making power, and not in her quasi-legislative capacity. Though it made specific mention of PSPC, the "ruling" was applied to all importers of Alkylate such as Petron. Challenges against the validity and constitutionality of the CIR's quasi-legislative issuances belong to the regular courts.[102]

The CIR, too, reiterates her claim that PSPC failed to exhaust administrative remedies. Under Section 4 of the 1997 NIRC, her power to interpret tax laws is subject to review by the Secretary of Finance, not the CTA at first instance, *viz.*:

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[101] *Rollo*, G.R. No. 210501, Vol. I, pp. 13-22.

[102] *Id.* at 15-18.

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Section 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases*. — The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

In turn, the Secretary of Finance issued Department Order No. 23-01 providing the guidelines for assailing BIR Rulings, thus:

Section 3. *Rulings Adverse to the Taxpayer*. — A taxpayer who receives all adverse ruling from the Commissioner of Internal Revenue may, within thirty (30) days from the receipt of such ruling, seek its reversal by the Secretary of Finance, either by himself/itself or through his/its duly accredited agent or representative. The request for review shall be in writing and under oath, and must:

a) Be addressed to the Secretary of Finance and filed with the Revenue Operations Group, Department of Finance, DOF Building, BSP Complex, Roxas Blvd. corner Pablo Ocampo Street, City of Manila;

b) contain the heading 'Request for Review of BIR Ruling No. _____';

c) allege and show that the request was filed within the reglementary period;

d) allege the material facts upon which the ruling was requested;

e) state that exactly the same set of facts were presented to the BIR;

f) define the issues to be resolved;

g) contain the facts and the law relied upon to dispute the ruling of the Commissioner;

h) be signed by or on behalf of the taxpayer filing the request for review, provided that, only those lawyers engaged by the taxpayer and/or tax agents accredited by the BIR may sign on behalf of the taxpayer;

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i) indicate the Taxpayer Identification Number (TIN) of the taxpayer;

j) be accompanied by a copy of the Commissioner's challenged ruling;

k) contain a statement of the Office of the Commissioner of Internal Revenue, indicating that a request for review of the ruling was received by the Commissioner's Office; and

l) specifically state that the taxpayer does not have a pending assessment or case in any court of justice where the same issues are being considered.

PSPC failed to comply with the foregoing rule. Its precipitate filing of the petition violates the doctrine of exhaustion of administrative remedies.[103]

Since the CTA does not have jurisdiction over Case No. 8535, it consequently lacks authority to issue provisional or ancillary remedies in relation thereto, including the issuance of Suspension Orders. At any rate, Case No. 8535 does not cover PSPC's subsequent importations of Alkylate; these should be the subject of separate assessments which may only be challenged upon separate payment of docket fees.[104]

Consequently, the CIR sought the dismissal of Case No. 8535 and prayed for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction to restrain the conduct of further proceedings therein pending resolution of her petition.[105]

In its Comment/Opposition with Motion to Cite in Contempt,[106] PSPC faults the CIR for trifling with judicial processes and forum shopping.

For one, the CIR filed the petition 287 days late. The CTA's Second Division had already resolved the issue of jurisdiction by Resolution dated January 28, 2013 which the CIR received

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[103] *Id.* at 25.

[104] *Id.* at 27-33.

[105] *Id.* at 33.

[106] *Id.* at 208.

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on January 31, 2013. Said ruling denied the BOC and the Collector's omnibus motion which was apparently adopted by the CIR.[107] The CIR, however, did not move for reconsideration of the ruling and was therefore barred from subsequently filing an appeal therefrom. To cure this procedural misstep, the CIR opposed one of PSPC's motions for issuance of a Suspension Order with a Motion to Dismiss, raising essentially the same arguments against the CTA's exercise of jurisdiction. As it was though, the Motion to Dismiss was a mere underhanded subterfuge to refresh the period to appeal from a ruling that had long attained finality.[108]

For another, the government petitioners are guilty of forum shopping for repeatedly raising the issue of jurisdiction through various pleadings (*e.g.*, the Omnibus Motion and the Motion to Dismiss) and in different venues (*i.e.*, the CTA *En Banc* and this Court) to increase their chances of obtaining a favorable judgment.[109]

For these reasons PSPC seeks the outright dismissal of the present petition.

In any event, the CTA did not err in denying the CIR's motion to dismiss and motion for reconsideration. PSPC reiterates its arguments below in support of the CTA's jurisdiction to resolve Case No. 8535 and issue Suspension Orders and other ancillary writs.[110]

G.R. No. 211294: BOC and the Collector v. PSPC

In **G.R. No. 211294**, the BOC and the Collector argue that CTA *En Banc* has exclusive appellate jurisdiction to review by appeal resolutions of the CTA in Division on Motions for

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[107] *Id.* at 246.

[108] *Id.* at 245-252.

[109] *Id.* at 253-264.

[110] *Id.* at 267-333.

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Reconsideration.[111] They cite Section 18 of RA 1125, as amended, *viz.*:

SECTION 18. *Appeal to the CTA En Banc*. — No civil proceeding involving matter arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.

A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA en banc. (emphasis added)

Sections 1 and 2, Rule 4 as well as Sections 1 and 3, Rule 8 of the Revised Rules of the CTA complement this provision, thus:

RULE 4

Jurisdiction of the Court

SECTION 1. *Jurisdiction of the Court*. — The Court shall exercise exclusive original jurisdiction over or appellate jurisdiction to review by appeal the cases specified in Republic Act No. 1125, Section 7, as amended by Republic Act No. 9282, Section 7.

SECTION 2. *Cases within the jurisdiction of the Court En Banc*. — The Court *En Banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial **of the Court in Divisions** in the exercise of its exclusive appellate jurisdiction over:

x x x x

RULE 8

Procedure in Civil Cases

SECTION 1. *Review of cases in the Court En Banc*. — In cases falling under the exclusive appellate jurisdiction of the Court *En Banc*, the petition for review of a decision or resolution of the Court

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[111] *Rollo*, G.R. No. 211294, Vol. I, p. 31.

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in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.

x x x x

SECTION 3. *Who may appeal; period to file petition.* — x x x

x x x x

> (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

x x x x

As stated, the remedy against a resolution of the CTA sitting in Division is appeal *via* Petition for Review with the CTA *En Banc*. The BOC and the Collector merely adhered to these rules when they filed Case No. 1047 after their Motion for Reconsideration of the denial of their Omnibus Motion also got denied.[112]

The BOC and the Collector were sincere in their effort to comply with the Revised Rules of the CTA. They honestly believed that they availed of the proper remedy. In fact, prior to filing their petition for review before the CTA *En Banc*, they first moved for a fifteen (15)-day extension. At that point, the CTA *En Banc* could have already denied their motion but did not. Instead, it granted the motion, convincing the BOC and the Collector that they availed of the proper remedy.[113]

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[112] *Id.* at 31-34.

[113] *Id.* at 35.

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At any rate, pursuant to the *CTA En Banc*'s appellate jurisdiction, it may review not only questions of fact and law, but even questions pertaining to jurisdiction. As the Court held in ***V.C. Ponce Company, Inc. v. Municipality of Parañaque, et al.***:[114]

> A court with appellate jurisdiction can review both the facts and the law, including questions of jurisdiction. It can set aside an erroneous decision and even nullify the same, if warranted. Appeal is a speedy remedy, as an adverse party can file its appeal from a final decision or order immediately after receiving it. A party, who is alleging that an appeal will not promptly relieve it of the injurious effects of the judgment, should establish facts to show how the appeal is not speedy or adequate. VCPs empty protestations, therefore, fail to impress. There is no reason, and VCP cannot explain, why an appeal would not be speedy and adequate to address its assigned errors. VCP cannot complain of delay because it was guilty of delay itself, and it even waited until the 58th day of its receipt of the CA Decision before taking action. Clearly, petitioner resorted to certiorari as a substitute for its lost appeal. The CA did not err in dismissing the same.

Section 1, Article VIII of the 1987 Constitution[115] even states that judicial bodies are vested with judicial power which includes the power to determine whether there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. Pursuant to the inherent judicial power it possesses, the CTA *En Banc* was duty bound to determine whether the CTA in Division committed grave abuse of discretion when it issued Resolutions dated January 28, 2013 and June 24, 2013, denying the BOC

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[114] 698 Phil. 338, 353 (2012).

[115] SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

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and the Collector's Omnibus Motion to Dismiss and Motion for Reconsideration, respectively.[116]

The BOC and the Collector likewise reiterate their arguments in support of the merits of their Omnibus Motion.[117]

In response to the petition, PSPC filed a Motion to Dismiss[118] dated May 16, 2014, repeating the very arguments for outright dismissal earlier raised in its Comment/Opposition with Motion to Cite in Contempt in **G.R. No. 210501**.

G.R. No. 212490: PSPC v. The CTA's First Division, the CIR, the BOC and the Collector

In **G.R. No. 212490**, PSPC asserts that the CTA's First Division committed grave abuse of discretion when it issued Resolution dated April 2, 2014. To recall, the assailed resolution denied PSPC's Urgent Verified Motion dated March 18, 2014 on three (3) grounds: (1) lack of jurisdiction over excise taxes due on Alkylate importations not covered by the Collector's Letter dated October 1, 2012, (2) failure to protest the collection under Section 2309[119] of the TCCP, and (3) failure to establish that it was going to be jeopardized by the assessment. PSPC argues:

First. The CTA has jurisdiction to issue suspension orders over the collection of taxes on PSPC's incoming Alkylate importations, the same being incidental to Case No. 8535. To be sure, the main petition assails document M-059-2012 which imposed excise taxes on PSPC's past *and incoming* Alkylate

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[116] *Rollo*, G.R. No. 211294, Vol. I, pp. 38-42.

[117] *Id.* at 42-67.

[118] *Rollo*, G.R. No. 211294, Vol. II, p. 688.

[119] SECTION 2309. *Protest Exclusive Remedy in Protestable Case*. — In all cases subject to protest, the interested party who desires to have the action of the Collector reviewed, shall make a protest, otherwise, the action of the Collector shall be final and conclusive against him, except as to matters collectible for manifest error in the manner prescribed in section one thousand seven hundred and seven hereof.

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shipments. Said document served as basis for the BOC's CMC No. 164-2012 and the Collector's Letter dated October 1, 2012. The ATRIGs being issued to PSPC for its subsequent shipments also emanate from document M-059-2012. Considering that the CTA had already assumed jurisdiction over Case No. 8535, it perforce also has jurisdiction over every matter related thereto, including the issuance of Suspension Orders against excise tax collections on PSPC incoming Alkylate importations.[120]

Since the motions for issuance of Suspension Orders were merely ancillary or incidental to the main action, they do not require separate payment of docket fees.[121] At any rate, insufficient payment of docket fees does not automatically divest courts of their jurisdiction over the case absent a clear intent to defraud.[122]

Second. A protest before the Commissioner of Customs does not constitute a speedy and adequate remedy under the circumstances. For one, it is not even a condition *sine qua non* for issuance of a suspension order under Section 11 of RA 1125;[123] the probability of jeopardy being the only requirement. For another, it is precisely

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[120] *Rollo*, G.R. No. 212490, Vol. I, pp. 77-81.

[121] *Id.* at 82.

[122] *Id.* at 83-85.

[123] SECTION 11. *Who May Appeal: Mode of Appeal; Effect of Appeal.* — x x x

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 and 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 at 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.

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this payment under protest which PSPC is claiming to be prejudicial and therefore requires suspension.[124]

In any case, a protest before the Commissioner of Customs was futile and ineffective since the BOC already publicly declared that it would implement the BIR Ruling M-059-2012. Meantime, PSPC has been hemorrhaging massive amounts and suffering staggering losses due to the alleged illegal collections. Resorting to an administrative protest therefore would merely constitute delay and defeat the purpose of a suspension order, which is to prevent jeopardy to the taxpayer's interest.[125]

Finally. To justify the issuance of a Suspension Order, PSPC argues:

I. Under Section 11 of RA 1125, as amended, actual damage is not the standard for issuance of a suspension order; mere probability of damage is sufficient, thus:

SECTION 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* — x x x

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 and 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 at 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.

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[124] *Rollo*, G.R. No. 212490, Vol. I, pp. 85-88.

[125] *Id.* at 88-90.

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In a line of cases, the CTA considered the negative effects of the tax imposed on the taxpayer's cash flow, its inability to pay employees and suppliers on time, and the disruption of its business operations to the prejudice of its financial viability, among others, as grounds for issuance of Suspension Orders.[126]

Here, the CTA mistook PSPC's ability to borrow money and pay its taxes under protest as proof that PSPC is not at risk or in jeopardy. It, too, ignored the context of PSPC's payments under protest. PSPC was merely constrained to borrow money and make payments under protest since the CTA failed to timely resolve its Urgent Verified Motions. Otherwise, its Alkylate shipments worth hundreds of millions would have been deemed abandoned in favor of the government under Section 1801[127] in relation to Section 1508[128] of the TCCP.[129] Though PSPC

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[126] *Id.* at 48-49.

[127] SECTION 1801. *Abandonment, Kinds and Effects of.* — An imported article is deemed abandoned under any of the following circumstances.

a. When the owner, importer, consignee of the imported article expressly signifies in writing to the Collector of Customs his intention to abandon, or

b. When the owner, importer, consignee or interested party after due notice, fails to file an entry within thirty (30) days, which shall not be extendible, from the date of discharge of the last package from the vessel or aircraft, or having filed such entry, fails to claim his importation within fifteen (15) days, which shall not likewise be extendible, from the date of posting of the notice to claim such importation.

Any person who abandons an article or who fails to claim his importation as provided for in the preceding paragraph shall be deemed to have renounced all his interests and property rights therein.

[128] SECTION 1508. *Authority of the Collector of Customs to Hold the Delivery or Release of Imported Articles.* — Whenever any importer, except the government, has an outstanding and demandable account with the Bureau of Customs, the Collector shall hold the delivery of any article imported or consigned to such importer unless subsequently authorized by the Commissioner of Customs, and upon notice as in seizure cases, he may sell such importation or any portion thereof to cover the outstanding account of such importer; *Provided, however*, That at any time prior to the sale, the delinquent importer may settle his obligations with the Bureau of Customs, in which case the aforesaid articles may be delivered upon payment of the

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found a way to deal with the situation, its course of action, however, is not sustainable. The loans which financed PSPC's payments will eventually have to be paid along with interest and finance charges of about three percent (3%) *per annum*.[130]

II. The CTA already recognized the jeopardy when it issued a suspension order in favor of PSPC by Resolution dated July 15, 2013. More, said Resolution granted PSPC's motion for Suspension Order on the collection of excise taxes for an *incoming* shipment of Alkylate. Thus, the CTA acted in grave abuse of discretion in adopting inconsistent standards when resolving PSPC's application for suspension orders.[131]

III. PSPC presented sufficient evidence to establish jeopardy. In the Judicial Affidavit dated February 14, 2014 of Mr. Shaiful Bahari Bin Zainuddin offered during the motion hearings, Zainuddin attested that as of January 31, 2014, PSPC has paid a total of ₱811,459,052.00 in excise and value added taxes, albeit under protest, for thirteen (13) shipments. He also explained that PSPC resorted to short-term borrowings which carry interest expense just to make payments since PSPC had no actual available funds to pay the impositions on its own. To pay for these unprogrammed expenses, PSPC had to divert its funds even though it was already operating at a deficit.[132] It was the only way to avoid the government's confiscation of its Alkylate importations.[133] Clearly, PSPC was jeopardized by the assessment and collection of excise taxes on its Alkylate shipments.

IV. The CTA issued inconsistent and contradictory rulings which deprived PSPC of its right to due process. Legal stability and predictability are fundamental aspects of the Rule of Law.

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corresponding duties and taxes and compliance with all other legal requirements.

[129] *Rollo*, G.R. No. 212490, Vol. I, pp. 44-46.

[130] *Id.* at 47-48.

[131] *Id.* at 51.

[132] *Id.* at 52-57.

[133] *Id.* at 57.

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The CTA, however, violated these principles in its resolutions denying PSPC's Urgent Verified Motions.[134]

To recall, by Resolution dated October 22, 2012, the CTA required that there be at least an ATRIG, which functioned as an assessment, or any other document computing the amount of excise tax covering PSPC's future Alkylate importations before a suspension order may be issued. In compliance with the requirement, PSPC moved for the issuance of Suspension Orders, attaching thereto its ATRIGs covering its subsequent importation of Alkylate. Yet the CTA denied them for lack of assessment.[135]

Meanwhile, in CTA Case No. 8544 (the Petron Case), the CTA ruled that an IEIRD sufficed as an assessment. Relying on this ruling, PSPC sought suspension orders anew, this time attaching copies of IEIRDs to its motions.[136]

By Resolution dated July 15, 2013, the CTA granted PSPC's Urgent Verified Motion dated June 14, 2013, establishing (1) it had jurisdiction to grant the relief, and (2) PSPC was jeopardized by the collection of excise taxes. But in a complete turnabout, the CTA denied PSPC's Urgent Verified Motion dated March 18, 2014 despite having been hinged on the same factual circumstances as its previous motion. Too, in stark contrast to its earlier ruling, the CTA denied PSPC's motion for alleged lack of jurisdiction and failure to establish jeopardy.[137] PSPC was therefore left in the dark as to the CTA's standards for the issuance of a Suspension Order.[138]

In behalf of the government, the OSG filed a Comment[139] reiterating the CTA's alleged lack of jurisdiction over Case No. 8535 as argued in the petitions of the government petitioners

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[134] *Id.* at 62-64.

[135] *Id.* at 65-69.

[136] *Id.* at 69.

[137] *Id.* at 70-72.

[138] *Id.* at 72.

[139] *Rollo*, G.R. No. 212490, Vol. IV, p. 5594.

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in **G.R. Nos. 210501 and 211294**. More, even assuming that the CTA has jurisdiction over Case No. 8535, it still has no jurisdiction to grant ancillary remedies that go beyond the subject matter of the main case, *i.e.*, collection of excise taxes on PSPC's Alkylate importations prior to October 1, 2012. At any rate, PSPC failed to establish the jeopardy it would allegedly suffer from the assessment or collection of excise taxes on its shipments of Alkylate.[140]

THE CONSOLIDATED CASES

By Resolution dated July 7, 2014, the Court consolidated all three (3) petitions and resolved to issue a Temporary Restraining Order in **G.R. No. 210501**, enjoining the CTA and the government petitioners from imposing excise taxes on PSPC's incoming Alkylate shipments, conditioned on the posting of bond in the amount of ₱496,944,000.00.[141]

The BOC and the Collector moved for reconsideration while PSPC posted the required bond. Upon PSPC's compliance with the condition, the Court issued a Temporary Restraining Order on July 30, 2014,[142] thus:

> **WHEREFORE**, effective immediately and continuing until further orders from this Court, You, the respondents, the Court of Tax Appeals, Commissioner of Internal Revenue, Bureau of Customs, and Collector of Customs of the Port of Batangas, their representatives, agents, or other persons acting on their behalf are hereby **RESTRAINED** from imposing excise taxes on the incoming alkylate importations of petitioner under the subject BIR Ruling No. M-059-2012 dated 29 June 2012.
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> x x x x

The BOC and the Collector moved for reconsideration which the Court denied by Resolution[143] dated October 22, 2014.

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[140] *Id.* at 5621-5670.

[141] *Rollo*, G.R. No. 211294, Vol. III, p. 1715.

[142] *Id.* at 1718.

[143] *Id.* at 1720.

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Subsequently, the BOC and the Collector filed a Motion for Issuance of a Status *Quo Ante* Order dated March 28, 2017,[144] seeking the suspension of Case No. 8535. They cited the Court's Decision dated July 15, 2015 in **G.R. No. 207843** entitled "***Commissioner of Internal Revenue v. Court of Tax Appeals and Petron Corporation***" where the Court held:

x x x x

In this case, **Petron's tax liability was premised on the COC's issuance of CMC No. 164-2012, which gave effect to the CIR's June 29, 2012 Letter interpreting Section 148 (e) of the NIRC as to include alkylate among the articles subject to customs duties, hence, Petron's petition before the CTA ultimately challenging the legality and constitutionality of the CIR's aforesaid interpretation of a tax provision.** In line with the foregoing discussion, however, the CIR correctly argues that the CTA had no jurisdiction to take cognizance of the petition as its **resolution would necessarily involve a declaration of the validity or constitutionality of the CIR's interpretation of Section 148 (e) of the NIRC, which is subject to the exclusive review by the Secretary of Finance and ultimately by the regular courts**. In *British American Tobacco v. Camacho*, the Court ruled that the CTA's jurisdiction to resolve tax disputes excludes the power to rule on the constitutionality or validity of a law, rule or regulation, to wit:

> While the above statute confers on the CTA jurisdiction to resolve tax disputes in general, this does not include cases where the constitutionality of a law or rule is challenged. Where what is assailed is the validity or constitutionality of a law, or a rule or regulation issued by the administrative agency in the performance of its quasi-legislative function, the regular courts have jurisdiction to pass upon the same. x x x.

x x x x

As the CIR aptly pointed out, the phrase "other matters arising under this Code," as stated in the second paragraph of Section 4 of the NIRC, should be understood as pertaining to those matters directly related to the preceding phrase "disputed

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[144] *Id.* at 1789.

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assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto" and must therefore not be taken in isolation to invoke the jurisdiction of the CTA. In other words, the subject phrase should be used only in reference to cases that are, to begin with, subject to the exclusive appellate jurisdiction of the CTA, *i.e.*, those controversies over which the CIR had exercised her quasi-judicial functions or her power to decide disputed assessments, refunds or internal revenue taxes, fees or other charges, penalties imposed in relation thereto, not to those that involved the CIR's exercise of quasi-legislative powers.

x x x x

Hence, as the CIR's interpretation of a tax provision involves an exercise of her quasi-legislative functions, the proper recourse against the subject tax ruling expressed in CMC No. 164-2012 is a review by the Secretary of Finance and ultimately the regular courts. x x x

x x x x

Besides, Petron prematurely invoked the jurisdiction of the CTA. Under Section 7 of RA 1125, as amended by RA 9282, what is appealable to the CTA is the decision of the COC over a customs collector's adverse ruling on a taxpayer's protest:

x x x x

In this case, there was even no tax assessment to speak of. While customs collector Federico Bulanhagui himself admitted during the CTA's November 8, 2012 hearing that the computation he had written at the back page of the IEIRD served as the final assessment imposing excise tax on Petron's importation of alkylate, the Court concurs with the CIR's stance that **the subject IEIRD was not yet the customs collector's final assessment that could be the proper subject of review. And even if it were, the same should have been brought first for review before the COC and not directly to the CTA.** It should be stressed that the CTA has no jurisdiction to review by appeal, decisions of the customs collector. The TCC prescribes that a party adversely affected by a ruling or decision of the customs collector may protest such ruling or decision upon payment of the amount due and, if aggrieved by the action of the customs collector on the matter under protest, may have the same reviewed by the COC. It is only after the COC shall have made an adverse ruling on the matter may the aggrieved party file an appeal to the CTA.

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Notably, **Petron admitted to not having filed a protest of the assessment before the customs collector and elevating a possible adverse ruling therein to the COC**, reasoning that such a procedure would be costly and impractical, and would unjustly delay the resolution of the issues which, being purely legal in nature anyway, were also beyond the authority of the customs collector to resolve with finality. **This admission is at once decisive of the issue of the CTA's jurisdiction over the petition. There being no protest ruling by the customs collector that was appealed to the COC, the filing of the petition before the CTA was premature as there was nothing yet to review.**

Verily, the fact that there is no decision by the COC to appeal from highlights Petron's failure to exhaust administrative remedies prescribed by law. Before a party is allowed to seek the intervention of the courts, it is a pre-condition that he avail of all administrative processes afforded him, such that if a remedy within the administrative machinery can be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must be exhausted first before the court's power of judicial review can be sought, otherwise, the premature resort to the court is fatal to one's cause of action. While there are exceptions to the principle of exhaustion of administrative remedies, it has not been sufficiently shown that the present case falls under any of the exceptions. *(Emphases supplied)*

x x x x

According to the BOC and the Collector, G.R. No. 207843 bears striking similarity with Case No. 8535. For one, both cases were filed without a tax assessment to speak of. They involve questions on the validity of issuances which belong to the jurisdiction of regular courts. For another, they invoke the CTA's appellate jurisdiction over alleged customs assessments without going through the procedure under Sections 2308,[145]

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[145] SECTION 2308. *Protest and Payment upon Protest in Civil Matters.* — When a ruling or decision of the Collector is made whereby liability for duties, taxes, fees or other charges are determined, except the fixing of fines in seizure cases, the party adversely affected may protest such ruling or decision by presenting to the Collector at the time when payment of the amount claimed to be due the government is made, or within fifteen (15)

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2309[146] and 2313[147] of the TCCP.[148] G.R. No. 207843 is therefore precedent to Case No. 8535. Accordingly, the Court must issue

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days thereafter, a written protest setting forth his objection to the ruling or decision in question, together with the reasons therefor. No protest shall be considered unless payment of the amount due after final liquidation has first been made and the corresponding docket fee, as provided for in Section 3301.

[146] SECTION 2309. *Protest Exclusive Remedy in Protestable Case*. — In all cases subject to protest, the interested party who desires to have the action of the Collector reviewed, shall make a protest, otherwise, the action of the Collector shall be final and conclusive against him, except as to matters collectible for manifest error in the manner prescribed in section one thousand seven hundred and seven hereof.

[147] SECTION 2313. *Review of Commissioner*. — The person aggrieved by the decision or action of the Collector in any matter presented upon protest or by his action in any case of seizure may, within fifteen (15) days after notification on writing by the Collector of his action or decisions, file a written notice to the Collector with a copy furnished to the Commissioner of his intention to appeal the action or decision of the Collector to the Commissioner. Thereupon the Collector shall forthwith transmit all the records of the proceedings to the Commissioner, who shall approve, modify or reverse the action or decision of the Collector and take such steps and make such orders as may be necessary to give effect to his decision: *Provided*, That when an appeal is filed beyond the period herein prescribed, the same shall be deemed dismissed.

If in any seizure proceedings, the Collector renders a decision adverse to the Government, such decision shall be automatically reviewed by the Commissioner and the records of the case elevated within five (5) days from the promulgation of the decision of the Collector. The Commissioner shall render a decision on the automatic appeal within thirty (30) days from receipts of the records of the case. If the Collector's decision is reversed by the Commissioner, the decision of the Commissioner shall be final and executory. However, if the Collector's decision is affirmed, or if within thirty (30) days from receipt of the record of the case by the Commissioner no decision is rendered or the decision involves imported articles whose published value is five million pesos (₱5,000,000) or more, such decision shall be deemed automatically appealed to the Secretary of Finance and the records of the proceedings shall be elevated within five (5) days from the promulgation of the decision of the Commissioner or of the Collector under appeal, as the case may be: *Provided, further*, That if the decision of the Commissioner or of the Collector under appeal, as the case may be, is affirmed by the Secretary of Finance, or if within thirty (30) days from receipt of the records of the proceedings by the Secretary of Finance, no decision is rendered,

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a Status *Quo Ante* Order suspending the proceedings before the CTA, lest the CTA continue to assume jurisdiction despite the Court's categorical pronouncement in G.R. No. 207843 to the contrary.[149]

In its Manifestation and Comment,[150] PSPC interposed no objection to the suspension of the proceedings in Case No. 8535, but not on the basis of G.R. No. 207843.[151] PSPC differentiated Case No. 8535 from G.R. No. 207843 to explain why the latter cannot be precedent to the former, thus:

G.R. No. 207843 pertained to the propriety of CMC 164-2012 which applies to all importers of Alkylate while Case No. 8535 assailed document M-059-2012 which applies solely to PSPC. More, CMC 164-2012 imposed excise taxes on future importations of Alkylate while document M-059-2012 was applied retroactively to assess PSPC for excise taxes on its past importations, including those covered by ATRIGs which do not bear a *colatilla*.

In contrast with G.R. No. 207843, the assailed BIR Ruling already assessed PSPC with a specific amount of excise tax liability. Too, the Collector had already sent PSPC a Letter dated October 1, 2012 demanding payment.

All told, while PSPC has no objection to the issuance of a Status *Quo Ante* Order, it is not due to the alleged applicability of G.R. No. 207843.

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the decision of the Secretary of Finance, or of the Commissioner, or of the Collector under appeal, as the case may be, shall become final and executory.

In any seizure proceeding, the release of imported articles shall not be allowed unless and until a decision of the Collector has been confirmed in writing by the Commissioner of Customs.

[148] *Rollo*, G.R. No. 211294, Vol. III, pp. 1794-1795.

[149] *Id.* at 1800.

[150] *Id.* at 1803.

[151] *Id.* at 1804-1807.

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Subsequently, on October 26, 2020, the OSG filed a motion to lift the Court-issued Temporary Restraining Order dated July 7, 2014 on ground that the injunction has caused irreparable damage to the government while the damage to PSPC, if any, is capable of pecuniary estimation. It, too, cites the long years the government has been prevented from collecting the much needed taxes which could have funded efforts to combat the COVID-19 pandemic.

THRESHOLD ISSUES

A. Are public petitioners guilty of forum shopping?

B. In **G.R. No. 211294**, did the BOC and the Collector correctly resort to a Petition for Review before the CTA *En Banc* to assail the CTA Division's denial of their Omnibus Motion and Motion for Reconsideration?

C. In **G.R. No. 210501**, does the CTA First Division have jurisdiction over Case No. 8535?

D.

a. Is document M-059-2012 dated June 29, 2012 a BIR Ruling?

b. Did PSPC violate the doctrine of exhaustion of administrative remedies when it failed to appeal the supposed BIR Ruling to the Secretary of Finance?

c. Does the CTA or regular courts have jurisdiction over the PSPC's petition?

d. May PSPC assail the Collector's Letter dated October 1, 2012 before the CTA at first instance?

E. In **G.R. No. 212490**:

a. Does the CTA have jurisdiction to issue Suspension Orders relative to the assessment and collection of excise taxes on PSPC's Alkylate importations subsequent to October 1, 2012?

b. Is PSPC entitled to a Suspension Order against the collection of excise taxes against its Alkylate importations?

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F. Should the Court's Temporary Restraining Order be lifted pending resolution of the main case?

DISCUSSION

A. The CIR, BOC and the Collector are guilty of forum shopping

When the petitions were filed, the 1997 Rules of Civil Procedure was still in force. Rule 7, Section 5 thereof embodied the rule against forum shopping, *viz.*:

> Sec. 5. *Certification against forum shopping.* — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.
>
> Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. **If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.** (emphasis added)

There is forum shopping when a party institutes two (2) or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same or related causes or to grant the same or substantially the same relief, on the supposition that one or the other court would make

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a favorable disposition or increase a party's chances of obtaining a favorable decision or action.[152]

To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another.[153] Otherwise stated, the following elements must concur: (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.[154]

As will be discussed below, government petitioners committed forum shopping when they filed **G.R. Nos. 210501 and 211294**, respectively.

a. <u>There is substantial identity of parties</u>

There is identity of parties not only when the parties in the cases are the same, but also between those in privity with them. Absolute identity of parties is not required. It is sufficient that a shared identity of interest is shown by the identity of relief sought by one person in a prior case and the second person in a subsequent case.

Here, it is undeniable that although both are attached agencies of the Department of Finance, the BIR and the BOC are separate government instrumentalities. The BIR is tasked to assess and collect all national internal revenue taxes, fees, and charges, and to enforce all forfeitures, penalties, and fines connected therewith.[155] Meanwhile, the BOC is charged with assessing

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[152] *Zamora v. Quinan*, 821 Phil. 1009, 1014 (2017).

[153] *Yap v. Chua*, 687 Phil. 392 (2012) [Per J. Reyes, Second Division].

[154] 726 Phil. 651, 654 (2014).

[155] https://www.officialgazette.gov.ph/section/briefing-room/department-of-finance/bureau-of-internal-revenue-department-of-finance/ last accessed on August 15, 2020, 11:37PM.

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and collecting customs revenues, curbing illicit trade and all forms of customs fraud, and facilitating trade through an efficient and effective customs management system.[156]

But insofar as the assessment and collection of customs revenues are concerned, the BOC performs these functions as mere agent of the BIR. Section 12 (A) of the NIRC is categorical:

SECTION 12. *Agents and Deputies for Collection of National Internal Revenue Taxes*. — The following are hereby constituted **agents of the Commissioner**:

(a) The Commissioner of Customs and his subordinates with respect to the collection of national internal revenue taxes on imported goods; (emphases added)

x x x x

To recall, Case No. 8535 involves the imposition, assessment, and collection of excise taxes on PSPC's Alkylate importations pursuant to Section 148 (e) of the NIRC.[157] Excise taxes are,

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[156] https://www.officialgazette.gov.ph/section/briefing-room/department-of-finance/bureau-of-customs/ last accessed on August 15, 2020, 11:36PM.

[157] **Section 148.** *Manufactured Oils and Other Fuels*. — There shall be collected on refined and manufactured mineral oils and motor fuels, the following excise taxes which shall attach to the goods hereunder enumerated as soon as they are in existence as such:

x x x x

(e) Naphtha, regular gasoline and **other similar products of distillation, per liter of volume capacity, Four pesos and thirty-five centavos (₱4.35)**: Provided, however, That naphtha, when used as a raw material in the production of petrochemical products or as replacement fuel for natural-gas-fired-combined cycle power plant, in lieu of locally-extracted natural gas during the non-availability thereof, subject to the rules and regulations to be promulgated by the Secretary of Energy, in consultation with the Secretary of Finance, per liter of volume capacity, Zero (₱0.00): Provided, further, That the by-product including fuel oil, diesel fuel, kerosene, pyrolysis gasoline, liquefied petroleum gases and similar oils having more or less the same generating power, which are produced in the processing of naphtha into petrochemical products shall be subject to the applicable excise tax specified in this Section, except when such by-products are transferred to any of the local oil refineries through sale, barter or exchange, for the purpose

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without question, national internal revenue taxes.[158] Thus, when the BOC and the Collector were collecting these taxes from PSPC, they were doing so as agents of the BIR.

The Collector himself confirmed the agency relation when he testified during the suspension hearings that his authority to collect excise taxes emanate from the ATRIGs issued by the BIR, thus:

Q: Are you aware Mr. Witness that ATRIGs are issued by the BIR upon application by the importer, would you be aware of that procedure?

A: I am aware that you pass the importer.

Q: So that is the procedure that the importer applies for an ATRIG?

A: Yes, sir.

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.[159]

Hence, the CIR, the BOC, and the Collector share a singular if not identical interest in Case No. 8535 — the taxability of PSPC's Alkylate importations. The fact that both the BIR and

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of further processing or blending into finished products which are subject to excise tax under this Section.

[158] **Section 21.** *Sources of Revenue.* — The following taxes, fees and charges are deemed to be national internal revenue taxes:

x x x x

(e) Excise taxes;

x x x x

[159] *Rollo,* G.R. No. 211294, Vol. III, pp. 1401-1402.

the BOC adopted different legal strategies in protecting the same government interest does not diminish their agency relation nor the community of their interest. This persisted despite the subsequent separate filing of G.R. Nos. 210501 and 211294.

b. <u>There is identity of rights asserted and remedies sought</u>

Throughout the proceedings before the CTA Division, CTA *En Banc*, and all the way up to this Court, the familiar refrain of the government petitioners is that the CTA does not have jurisdiction over Case No. 8535. A comparison of their pleadings is *apropos*:

CTA EB Case No. 1047	**G.R. No. 210501**	**G.R. No. 211294**
Petition for Review [160] dated August 16, 2013 filed by the BOC and the Collector	Petition for Certiorari [161] dated January 10, 2014 filed by the CIR	Petition for Review on Certiorari[162] dated March 24, 2014 filed by the BOC and the Collector
GROUND FOR THE ALLOWANCE OF THE PETITION	GROUND FOR ALLOWANCE OF THE PETITION	GROUND FOR THE ALLOWANCE OF THE PETITION
THE HONORABLE COURT ACTED WITH GRAVE ABUSE OF DISCRETION IN AFFIRMING ITS JURISDICTION OVER THE AMENDED PETITION FOR REVIEW	**I. PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AND/OR IN EXCESS OF ITS JURISDICTION WHEN IT RULED THAT IT HAS JURISDICTION**	THE RESOLUTION DATED FEBRUARY 10, 2014 OF THE CTA EN BANC IS NOT IN ACCORD WITH LAW AND APPLICABLE JURISPRUDENCE SINCE: 1) THE CTA *EN BANC* HAS EXCLUSIVE

[160] *Rollo*, G.R. No. 211294, Vol. I, p. 533.

[161] *Rollo*, G.R. No. 210501, Vol. I, p. 3.

[162] *Rollo*, G.R. No. 211294, Vol. I, p. 20.

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DISCUSSION

The [Court of Tax Appeals in Division] gravely abused its discretion when it affirmed its authority to hear and decide the Amended Petition for Review

A. Republic Act No. 1125, as amended, does not confer jurisdiction to the [Court of Tax Appeals] to review an inter-government agency communication.

B. Republic Act No. 1125, as amended, does not vest [the Court of Tax Appeals] with appellate jurisdiction to review the letter dated October 1, 2012 of petitioner District Collector of Customs of the Port of Batangas.

OVER THE SUBJECT MATTER OF THE PETITION WHICH IS AN INTERNAL LETTER BETWEEN HEADS OF GOVERNMENT AGENCIES

II. ASSUMING THAT THE SUBJECT LETTER IS A RULING, STILL PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION WHEN IT RULED THAT IT HAS JURISDICTION WHEN IN FACT THE SUBJECT MATTER DOES NOT FALL UNDER THE SPECIAL JURISDICTION GRANTED BY THE STATUTE TO THE COURT OF TAX APPEALS

III. PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AND/OR IN EXCESS OF ITS JURISDICTION WHEN IT RULED THAT IT HAS JURISDICTION OVER THE PRESENT CASE DESPITE PRIVATE RESPONDENT'S

APPELLATE JURISDICTION TO REVIEW BY APPEAL RESOLUTIONS ON MOTIONS FOR RECONSIDERATION OF THE CTA SITTING IN DIVISIONS;

2) THE CTA *EN BANC* HAS THE INHERENT JUDICIAL POWER TO DETERMINE WHETHER THERE HAS BEEN GRAVE ABUSE OF DISCRETION ON THE PART OF THE CTA SITTING IN DIVISIONS; AND

3) THE CTA HAS NO JURISDICTION TO REVERSE AND NULLIFY BOTH AN INTER-GOVERNMENT AGENCY LETTER AND A DEMAND LETTER

	FAILURE TO EXHAUS ADMINISTRATIVE REMEDIES. IV. PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AND/OR IN EXCESS OF ITS JURISDICTION WHEN IT GRANTED THE APPLICATION FOR TRO AND/OR SUSPENSION OF COLLECTION OF TAXES, AS THE HONORABLE COURT OF TAX APPEALS DOES NOT HAVE JURISDICTION OVER THE MAIN ACTION HENCE IT CANNOT GRANT THE ANCILLARY REMEDY PRAYED FOR BY [PSPC]. V. PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AND/OR IN EXCESS OF ITS JURISDICTION WHEN IT GRANTED THE APPLICATION FOR TRO AND/OR SUSPENSION OF COLLECTION OF TAXES,	

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	CONSIDERING THAT THERE IS NO ASSESSMENT IN THIS CASE, THUS, THE HONORABLE CTA HAS NO JURISDICTION TO ISSUE A TEMPORARY RESTRAINING ORDER/ SUSPENSION OF COLLECTION OF TAX. VI. PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AND/OR IN EXCESS OF ITS JURISDICTION WHEN IT GRANTED THE APPLICATION FOR TRO AND/OR SUSPENSION OF COLLECTION OF TAXES THOUGH THE SUBJECT MATTER OF THE SEVERAL MOTIONS FOR ISSUANCE OF SUSPENSION ORDER FILED BY PRIVATE RESPONDENT IN VARIOUS IMPORTATIONS OF ALKYLATE ARE OUTSIDE THE CLAIM/	

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	SUBJECT MATTER OVER WHICH THE PRESCRIBED DOCKET FEE WAS PAID BY RESPONDENT.	
PRAYER WHEREFORE, it is respectfully prayed: 1) The January 28, 2013 and June 24, 2013 Resolutions of the Second and First Divisions, respectively, [be] REVERSED and SET ASIDE. **2) CTA Case No. 8535 be DISMISSED for lack of jurisdiction.** Other forms of relief just and equitable under the premises are likewise prayed for.	PRAYER WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Court that: 1) A TRO and/or writ of preliminary injunction to restrain public respondent CTA from further conducting trial/ proceeding in CTA Case No. 8535. 2) The instant petition be given due course. 3) The assailed resolutions of the public respondent dated July 15, 2013 and October 14, 2013 be reversed and set aside; **4) An order be issued dismissing the Petition for Review filed by private respondent before the Court of Tax Appeals**	RELIEF WHEREFORE, it is respectfully prayed that the Honorable Court of Tax Appeals En Banc's Resolution dated February 10, 2014 be REVERSED and SET ASIDE. Such further or other forms of relief as may be deemed just and equitable under the premises are likewise prayed for.

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	for lack of jurisdiction by the said court. Other reliefs just and equitable under the premises are likewise prayed for.	

Prior to these cases, the CTA's jurisdiction had already been assailed by the BOC and the Collector in their Omnibus Motion dated November 8, 2012, which was denied by Resolution dated January 28, 2013. Reconsideration also got denied on June 24, 2013.

Despite these rulings, the CIR subsequently filed her own Motion to Dismiss dated July 1, 2013 in response to one of PSPC's motions for the issuance of a Suspension Order. The CIR essentially argued that the CTA did not have jurisdiction to issue ancillary writs and grant auxiliary remedies if it did not have jurisdiction over the main case in the first place. But to stress, the issue of jurisdiction over the main case had already been resolved.

The denial of their motions prompted government petitioners to seek recourse. The BOC and the Collector appealed to the CTA *En Banc via* Case No. 1047 while the CIR filed a Petition for Certiorari before this Court *via* **G.R. No. 210501**. Both these cases simultaneously pended at one point. Both these cases argued that the CTA did not have jurisdiction to review the so called inter-government agency communication M-059-2012 and prayed for the dismissal of Case No. 8535.

Subsequently, the CTA *En Banc* denied due course to Case No. 1047. On appeal to this Court *via* **G.R. No. 211294**, the BOC and the Collector again harped on the CTA's lack of jurisdiction over letters between government agencies.

Verily, the petitions of the CIR, the BOC and the Collector assert the same rights, raise the same arguments, and pray for the same relief.

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c. A judgment in either G.R. No. 210501 or G.R. No. 211294 could constitute *res judicata* in the other

Res judicata refers to the rule that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits. It bars a party from litigating the same issue more than once; that, when a right or fact has been judicially tried and determined by a court of competent jurisdiction, or an opportunity for such trial has been given, the judgment of the court, so long as it remains unreversed, should be conclusive upon the parties and those in privity with them in law or estate.[163]

The doctrine exists for the obvious reasons of justice, fairness, expediency, practical necessity, and public tranquility. Public policy, judicial orderliness, economy of judicial time, and the interest of litigants, as well as the peace and order of society, all require that stability should be accorded judgments, that controversies once decided on their merits shall remain in repose, that inconsistent judicial decision shall not be made on the same set of facts, and that there be an end to litigation which, without the doctrine of *res judicata*, would be endless.[164]

Rule 39, Section 47 of the 1997 Rules of Civil Procedure embodies the doctrine of *res judicata*, *viz.*:

> SEC. 47. Effect of judgments or final orders. — The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:
>
> x x x x
>
> (b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity, and

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[163] *Degayo v. Magbanua-Dinglasan*, 757 Phil. 376, 382 (2015).

[164] *Villanueva v. Court of Appeals*, 349 Phil. 99, 112 (1998).

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(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

The provision contemplates not only bar by prior judgment but also conclusiveness of judgment. ***Degayo v. Magbanua-Dinglasan*** differentiated the two (2) concepts, thus:

> The first aspect is the effect of a judgment as a bar to the prosecution of a second action upon the same claim, demand or cause of action. In traditional terminology, this aspect is known as merger or bar; in modern terminology, it is called claim preclusion.
>
> The second aspect precludes the relitigation of a particular fact of issue in another action between the same parties on a different claim or cause of action. This is traditionally known as collateral estoppel; in modern terminology, it is called issue preclusion.

Considering the allegations, defenses, and relief sought by the government petitioners, a judgment in either G.R. No. 210501 or G.R. No. 211294 would constitute *res judicata* of the second concept in the other.

Here, G.R. No. 210501 was filed by the CIR while G.R. No. 211294, by the BOC and the Collector. G.R. No. 210501, being a *certiorari* petition, ascribed grave abuse of discretion on the part of the CTA First Division while G.R. No. 211294, an appeal by *certiorari*, alleged errors of law on the part of the CTA *En Banc*. G.R. No. 210501 originated from the denial of the CIR's Motion to Dismiss filed in response to PSPC's Urgent Verified Motion while G.R. No. 211294 stemmed from the dismissal of the BOC and the Collector's appeal from the denial of their Omnibus Motion filed directly against PSPC's Amended Petition. Despite these differences, however, there can be no question that the ultimate objective of both G.R. Nos. 210501 and 211294, and Case No. 1047 for that matter, was to oust the CTA of jurisdiction over Case No. 8535. As earlier stated, the pleadings filed in these two (2) cases raised overlapping arguments and even sought similar relief.

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To be sure, a resolution in G.R. No. 210501 on the issue of jurisdiction in favor of the CIR would render G.R. No. 211294 moot. Should the Court rule in G.R. No. 210501 that the CTA did not have jurisdiction to grant ancillary remedies because it did not have jurisdiction over main case, then the issue of whether the CTA *En Banc* has jurisdiction over appeals from interlocutory orders in G.R. No. 211294 would no longer matter. If the proceedings in Case No. 8535 are void for want of jurisdiction, then surely the interlocutory orders issued therein, including the denial of the Omnibus Motion, are also void.

On the other hand, should the Court grant the petition in G.R. No. 211294, Case No. 1047 would be revived and would be pending simultaneously with G.R. No. 201501. Both cases directly deal with motions to dismiss attacking the jurisdiction of the CTA over Case No. 8535.

Verily, a judgment in either G.R. No. 210501 or G.R. No. 211294 could constitute *res judicata* in the other. Given this probability of *res judicata*, the pendency of these cases constitutes *litis pendentia*[165] and their successive filing, forum shopping.

d. Penalty for forum shopping

To reiterate, Rule 7, Section 5 of the 1997 Rules of Civil Procedure states that forum shopping is a ground for summary dismissal. As held in ***Ao-as v. Court of Appeals***:[166]

As the present jurisprudence now stands, forum shopping can be committed in three ways: (1) filing multiple cases based on the same

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[165] See *Zamora v. Quinan*, supra note 152.

Litis pendentia refers to that situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious.

The requisites of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to res judicata in the other.

[166] 524 Phil. 645, 660 (2006).

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cause of action and with the same prayer, the previous case not having been resolved yet (litis pendentia); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (res judicata); and (3) filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either litis pendentia or res judicata). If the forum shopping is not considered willful and deliberate, the subsequent cases shall be dismissed without prejudice on one of the two grounds mentioned above. However, if the forum shopping is willful and deliberate, both (or all, if there are more than two) actions shall be dismissed with prejudice.

Thus, on this ground alone, G.R. Nos. 210501 and 211294 may already be dismissed outright.

But the Court has invariably upheld the theory that rules of procedure are designed to secure and not to override substantial justice. These rules are mere tools to expedite the decision or resolution of cases, hence, their strict and rigid application which would result in technicalities that tend to frustrate rather than promote substantial justice must be avoided.

Here, there is an urgent need to settle the issue of jurisdiction once and for all, lest the CTA be confronted with never ending questions on its jurisdiction over Case No. 8535.

B. <u>The BOC and the Collector availed of the wrong remedy when they filed Case No. 1047</u>

In **G.R. No. 211294**, the BOC and the Collector assail the CTA *En Banc*'s dismissal of their appeal from the CTA Divisions' denial of their Omnibus Motion and Motion for Reconsideration in Case No. 1047. The CTA *En Banc* hinged the dismissal on its lack of jurisdiction over appeals from interlocutory orders rendered by its Divisions.

I agree with the CTA *En Banc*.

Whether the CTA *En Banc* has jurisdiction over interlocutory orders is no longer a novel issue and has in fact been exhaustively discussed in the 2008 landmark case of ***Judy Anne Santos v.***

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People.[167] There, veteran actress Judy Anne Santos was criminally charged before the CTA with substantial under declaration of wealth indicative of a false or fraudulent return under Section 248(B) of the NIRC. She moved to quash the Information, but her motion got denied by the CTA First Division. Aggrieved, she filed a Motion for Extension before the CTA *En Banc* for additional time to file her appeal. But just as she filed her Petition for Review, the CTA *En Banc* denied her motion since the ruling she wanted to appeal from was an interlocutory order, hence, unappealable. Santos therefore elevated the case before this Court which affirmed, *viz.*:

> **Petitioner's primary argument is that** a resolution of a CTA Division denying a motion to quash is a proper subject of an appeal to the CTA *en banc* under Section 18 of Republic Act No. 1125, as amended, because **the law does not say that only a resolution that constitutes a final disposition of a case may be appealed to the CTA *en banc***. If the interpretation of the law by the CTA *en banc* prevails, a procedural void is created leaving the parties, such as petitioner, without any remedy involving erroneous resolutions of a CTA Division.
>
> **The Court finds no merit in the petitioner's assertion.**
>
> x x x x
>
> Petitioner is invoking a very narrow and literal reading of Section 18 of Republic Act No. 1125, as amended.
>
> Indeed, the filing of a petition for review with the CTA *en banc* from a decision, resolution, or order of a CTA Division is a remedy newly made available in proceedings before the CTA, necessarily adopted to conform to and address the changes in the CTA.
>
> There was no need for such rule under Republic Act No. 1125, prior to its amendment, since the CTA then was composed only of one Presiding Judge and two Associate Judges. Any two Judges constituted a quorum and the concurrence of two Judges was necessary to promulgate any decision thereof.
>
> The amendments introduced by Republic Act No. 9282 to Republic Act No. 1125 elevated the rank of the CTA to a collegiate court,

[167] 585 Phil. 337, 346-352 (2008).

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with the same rank as the Court of Appeals, and increased the number of its members to one Presiding Justice and five Associate Justices. The CTA is now allowed to sit *en banc* or in two Divisions with each Division consisting of three Justices. Four Justices shall constitute a quorum for sessions *en banc*, and the affirmative votes of four members of the Court *en banc* are necessary for the rendition of a decision or resolution; while two Justices shall constitute a quorum for sessions of a Division and the affirmative votes of two members of the Division shall be necessary for the rendition of a decision or resolution.

x x x x

Although the filing of a petition for review with the CTA *en banc* from a decision, resolution, or order of the CTA Division, was newly made available to the CTA, such mode of appeal has long been available in Philippine courts of general jurisdiction. Hence, the Revised CTA Rules no longer elaborated on it but merely referred to existing rules of procedure on petitions for review and appeals, to wit:

RULE 7

PROCEDURE IN THE COURT OF TAX APPEALS

SEC. 1. *Applicability of the Rules of the Court of Appeals*. — The procedure in the Court *en banc* or in Divisions in original and in appealed cases shall be the same as those in petitions for review and appeals before the Court of Appeals **pursuant to the applicable provisions of Rules 42, 43, 44 and 46 of the Rules of Court**, except as otherwise provided for in these Rules.

RULE 8

PROCEDURE IN CIVIL CASES

xxx xxx xxx

SEC. 4. *Where to appeal; mode of appeal*. —

xxx xxx xxx

(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review **as provided in Rule 43 of the Rules of Court**. The Court *en banc* shall act on the appeal.

x x x x

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Given the foregoing, the petition for review to be filed with the CTA *en banc* as the mode for appealing a decision, resolution, or order of the CTA Division, under Section 18 of Republic Act No. 1125, as amended, is not a totally new remedy, unique to the CTA, with a special application or use therein. To the contrary, **the CTA merely adopts the procedure for petitions for review and appeals long established and practiced in other Philippine courts. Accordingly, doctrines, principles, rules, and precedents laid down in jurisprudence by this Court as regards petitions for review and appeals in courts of general jurisdiction should likewise bind the CTA, and it cannot depart therefrom.**

x x x x

According to Section 1, Rule 41 of the Revised Rules of Court, governing appeals from the Regional Trial Courts (RTCs) to the Court of Appeals, an appeal may be taken only from a judgment or final order that completely disposes of the case or of a matter therein when declared by the Rules to be appealable. Said provision, thus, explicitly states that no appeal may be taken from an interlocutory order.

x x x x

The rationale for barring the appeal of an interlocutory order was extensively discussed in *Matute v. Court of Appeals*, thus:

> It is settled that an "interlocutory order or decree made in the progress of a case is always under the control of the court until the final decision of the suit, and may be modified or rescinded upon sufficient grounds shown at any time before final judgment . . ." Of similar import is the ruling of this Court declaring that "it is rudimentary that such (interlocutory) orders are subject to change in the discretion of the court." Moreover, one of the inherent powers of the court is "To amend and control its process and orders so as to make them conformable to law and justice. In the language of Chief Justice Moran, paraphrasing the ruling in *Veluz vs. Justice of the Peace of Sariaya*, "since judges are human, susceptible to mistakes, and are bound to administer justice in accordance with law, they are given the inherent power of amending their orders or judgments so as to make them conformable to law and justice, and they can do so before they lose their jurisdiction of the case, that is before the time to appeal has expired and no appeal has been perfected." And in the abovecited *Veluz* case, this Court held

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> that "If the trial court should discover or be convinced that it had committed an error in its judgment, or had done an injustice, before the same has become final, it may, upon its own motion or upon a motion of the parties, correct such error in order to do justice between the parties. . . . It would seem to be the very height of absurdity to prohibit a trial judge from correcting an error, mistake, or injustice which is called to his attention before he has lost control of his judgment." Corollarily, it has also been held "that a judge of first instance is not legally prevented from revoking the interlocutory order of another judge in the very litigation subsequently assigned to him for judicial action."

Another recognized reason of the law in permitting appeal only from a final order or judgment, and not from an interlocutory or incidental one, is to avoid multiplicity of appeals in a single action, which must necessarily suspend the hearing and decision on the merits of the case during the pendency of the appeal. If such appeal were allowed, the trial on the merits of the case would necessarily be delayed for a considerable length of time, and compel the adverse party to incur unnecessary expenses, for one of the parties may interpose as many appeals as incidental questions may be raised by him, and interlocutory orders rendered or issued by the lower court.

As held in ***Santos***, an interlocutory order of the CTA acting in Division is unappealable. A party aggrieved by it, nevertheless, is not without recourse. ***CIR v. CTA and CBK Power Company Limited***,[168] which heavily quoted ***Santos***, teaches that *certiorari* **before this Court** is the remedy against such interlocutory order, thus:

Since the CTA Orders are merely interlocutory, no appeal can be taken therefrom. Section 1, Rule 41 of the 1997 Rules of Civil Procedure, as amended, which applies suppletorily to proceedings before the Court of Tax Appeals, provides:

> Section 1. *Subject of appeal*. — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

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[168] 765 Phil. 140, 152-153 (2015).

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No appeal may be taken from:

xxx xxx xxx

(c) An interlocutory order

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.

Hence, petitioner's filing of the instant petition for *certiorari* assailing the interlocutory orders issued by the CTA is in conformity with the abovequoted provision. (emphases added)

Certiorari before the CTA *En Banc* is improper. ***CIR v. Kepco Ilijan Corporation***[169] elucidates that since a *certiorari* petition is not a continuation of the original case but a separate action focused on whether a tribunal acted in excess or want of jurisdiction, **it cannot be filed in the same tribunal whose actions are being assailed**. Instead, it is cognizable by a **higher tribunal** which, in the case of the CTA, is this Court. As the Court illustrated:

x x x [T]he Supreme Court or the Court of Appeals may sit and adjudicate cases in divisions consisting of only a number of members, and such adjudication is already regarded as the decision of the Court itself. It is provided for in the Constitution, Article VIII, Section 4(1) and BP Blg. 129, Section 4, respectively. **The divisions are not considered separate and distinct courts but are divisions of one and the same court; there is no hierarchy of courts within the Supreme Court and the Court of Appeals, for they each remain as one court notwithstanding that they also work in divisions. The Supreme Court sitting *en banc* is not an appellate court *vis-à-vis* its divisions, and it exercises no appellate jurisdiction over the latter.** As for the Court of Appeals *en banc*, it sits as such only for the purpose of exercising administrative, ceremonial, or other non-adjudicatory functions.

In fine, the proper remedy against an interlocutory order issued by the CTA in Division is a *Petition for Certiorari* before this Court, not a Petition for Review before the CTA *En Banc*, as

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[169] 787 Phil. 698, 705-706 (2016).

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what was filed by the BOC and the Collector in Case No. 1047. Meanwhile, the CIR and PSPC correctly filed petitions for certiorari in G.R. Nos. 210501 and 212490 in assailing the interlocutory orders of the CTA First Division.

The BOC and the Collector nevertheless rely on Resolution dated August 2, 2013 of the CTA *En Banc*, granting their motion for extension. They claim that such act of the CTA *En Banc* is, by itself, an exercise of jurisdiction. Suffice it to state, however, that motions for extension are typically granted without prejudice to subsequently denying due course to the petition to be filed.

C. The CTA First Division did not gravely abuse its discretion when it denied the CIR's Motion to Dismiss

Grave abuse of discretion is defined as such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility. It must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.

In G.R. No. 210501, the CIR charges the CTA's First Division with grave abuse of discretion in denying her Motion to Dismiss dated July 1, 2014. To resolve the issue, we first determine the subject matter of the case, and whether CTA has jurisdiction over the same.

a. Document M-059-2012 dated June 29, 2012 is a Tax Ruling

Section 244[170] of the NIRC authorizes the Secretary of Finance to promulgate all needful rules and regulations for the effective

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[170] **Section 244.** *Authority of Secretary of Finance to Promulgate Rules and Regulations.* — The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code.

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enforcement of the Code. Meanwhile, Section 4[171] of the NIRC grants the Commissioner of Internal Revenue the exclusive and original power to interpret its provisions. The exercise of these functions may come in the form of Revenue Regulations, Revenue Memorandum Orders, Revenue Memorandum Rulings, Revenue Memorandum Circulars, and BIR Rulings, *viz.*:[172]

Revenue Regulations (RRs) are issuances signed by the Secretary of Finance, upon recommendation of the Commissioner of Internal Revenue, that specify, prescribe or define rules and regulations for the effective enforcement of the provisions of the National Internal Revenue Code (NIRC) and related statutes.

Revenue Memorandum Orders (RMOs) are issuances that provide directives or instructions; prescribe guidelines; and outline processes, operations, activities, workflows, methods and procedures necessary in the implementation of stated policies, goals, objectives, plans and programs of the Bureau in all areas of operations, except auditing.

Revenue Memorandum Rulings (RMRs) are rulings, opinions and interpretations of the Commissioner of Internal Revenue with respect to the provisions of the Tax Code and other tax laws, as applied to a specific set of facts, with or without established precedents, and which the Commissioner may issue from time to time for the purpose of providing taxpayers guidance on the tax consequences in specific situations. BIR Rulings, therefore, cannot contravene duly issued RMRs; otherwise, the Rulings are null and void ab initio.

Revenue Memorandum Circular (RMCs) are issuances that publish pertinent and applicable portions, as well as amplifications, of laws, rules, regulations and precedents issued by the BIR and other agencies/ offices.

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[171] **Section 4.** *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.* — The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

x x x x

[172] https://www.bir.gov.ph/index.₱/legal-matters/guide-to-philippines-tax-law-research.html; last accessed on August 18, 2020, 8:39PM.

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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 Case No. 8535, the core issue is whether document M-059-2012 dated June 29, 2012 could be classified as a BIR Ruling as PSPC asserts, or an internal communication between the BIR and the BOC as these offices themselves claim. The pertinent portions of the document are reproduced below for easy 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 ₱1,384,721,993.00, on its various importations of Alkylate from the year 2010 up to present as declared in twenty-eight (28) import entries.

It appears that District Collector Rene M. Benavides is having an apprehension on the propriety of collecting the Excise Tax and VAT on the subject importations considering that the Tariff Commission has issued Ruling No. 11-056 dated 14 March 2012 and the importations are covered by Authorities to Release Imported Goods (ATRIG), exempting the subject importation from excise tax.

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 excise tax and VAT amounting to ₱1,384,721,993.00 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

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crude oil or, **(2.) by "other refinery process" 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 (₱4.35) for every liter of volume capacity of naphtha, regular gasoline, **and other similar products of distillation**, to wit:

> **Section 148.** *Manufactured Oils and Other Fuels*. — There shall be collected on refined and manufactured mineral oils and motor fuels, the following excise taxes which shall attach to the goods hereunder enumerated as soon as they are in existence as such:
>
> x x x
>
> (e) Naphtha, regular gasoline and **other similar products of distillation, per liter of volume capacity, Four pesos and thirty-five centavos (₱4.35)**: Provided, however, That naphtha, when used as a raw material in the production of petrochemical products or as replacement fuel for natural-gas-fired-combined cycle power plant, in lieu of locally-extracted natural gas during the non-availability thereof, subject to the rules and regulations to be promulgated by the Secretary of Energy, in consultation with the Secretary of Finance, per liter of volume capacity, Zero (₱0.00): Provided, further, That the by-product including fuel oil, diesel fuel, kerosene, pyrolysis gasoline, liquefied petroleum gases and similar oils having more or less the same generating power, which are produced in the processing of naphtha into petrochemical products shall be subject to the applicable excise tax specified in this Section, except when such by-products are transferred to any of the local oil refineries through sale, barter or exchange, for the purpose of further processing or blending into finished products which are subject to excise tax under this Section;

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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, as amended.

x x x x

In view of all the foregoing, this Office is of the opinion that the importations of the subject articles by PSPC are covered by excise tax at the rate of ₱4.35 per liter under Section 148(e) of the NIRC, as amended. Accordingly, PSPC should pay the amount of ₱1,384,721,993.00 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,

KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

The document itself reveals that it is, in reality, a tax ruling. Just like a Revenue Memorandum Ruling, it interprets a tax provision (Sec. 148[e] of the NIRC) and applies it to a specific set of facts without established precedent (Alkylate importations and their taxability) for future reference. Thus, it subsequently served as basis for the BOC to collect excise taxes from the Alkylate importations of Petron, albeit Petron was never expressly mentioned in the assailed document.

The document, too, takes the form of a BIR Ruling as it pertains specifically to PSPC and its alleged liability for excise taxes of ₱1,384,721,993.00 for twenty-eight (28) import entries. The specificity of the details on the taxpayer, the amount due, and items taxed leads one to conclude that it was, in reality, a tax ruling, albeit one which the affected taxpayer PSPC did not ask for.

Having ascertained the nature of the assailed document as a Tax Ruling, we now determine the proper remedy therefrom.

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b. Appeals from interpretative rulings of the CIR

Public petitioners claim that Case No. 8535 should be dismissed for PSPC's failure to exhaust administrative remedies. In particular, PSPC failed to avail of an appeal before the Secretary of Finance under the first paragraph of Section 4 of the NIRC which ordains:

> **Section 4.** *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases*. — **The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.**
>
> The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, **or other matters arising under this Code** or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, **subject to the exclusive appellate jurisdiction of the Court of Tax Appeals**. (emphases added)

For its part, PSPC vigorously asserts that the case falls under "other matters" which may be raised before the CTA, without going through the Secretary of Finance, under the second paragraph of the same Section 4.

Where a statute indicates a procedure for administrative review and provides a system of administrative appeal or reconsideration, the courts — for reasons of law, comity and convenience — will not entertain a case unless these administrative remedies have been resorted to. This is the doctrine of exhaustion of administrative remedies. It rests on the principle that the administrative agency, if afforded a complete chance to pass upon the matter again, will decide the same correctly.[173]

In ***Asia International Auctioneers, Inc. v. Parayno, Jr.***,[174] the Court dismissed the petition seeking the nullification of RMC No. 31-2003 for failure to exhaust administrative remedies, thus:

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[173] *Ejera v. Merto*, 725 Phil. 180, 202 (2014).

[174] 565 Phil. 255 (2007).

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x x x It is settled that the premature invocation of the court's intervention is fatal to one's cause of action. If a remedy within the administrative machinery can still be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must first be exhausted before the court's power of judicial review can be sought. The party with an administrative remedy must not only initiate the prescribed administrative procedure to obtain relief but also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to the court.

In ***The Philippine American Life and General Insurance Co. v. The Secretary of Finance***,[175] ***Banco de Oro v. Republic***,[176] and ***Confederation for Unity, Recognition and Advancement of Government Employees v. Commissioner, Bureau of Internal Revenue (COURAGE)***,[177] the Court uniformly applied the first paragraph of Section 4 of the NIRC and held that revenue issuances by the CIR are subject to review by the Secretary of Finance.

In ***Philamlife***, petitioner appealed from BIR Ruling No. 015-12 to the Secretary of Finance before it sought redress from the Court of Appeals. The Court of Appeals dismissed the petition outright on ground that the CIR's ruling was allegedly directly appealable to the CTA. The Court clarified, however, that the CTA's appellate jurisdiction may only be invoked after the assailed ruling was reviewed by the Secretary of Finance.

Banco de Oro assailed Ruling Nos. 370-2011 and DA 378-2011. There, the Court ruled that appeals from these rulings should have been made to the Secretary of Finance were it not for the fact that the questioned BIR Ruling was issued upon request by the Secretary of Finance himself.

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[175] 747 Phil. 811-832 (2014).

[176] 750 Phil. 349-413 (2015).

[177] G.R. Nos. 213446 & 213658, July 3, 2018.

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Meanwhile, in ***COURAGE***, the Court held that the plain, speedy and adequate remedy expressly provided by law from the issuance of the challenged RMO 23-2014 was an appeal with the Secretary of Finance under Section 4 of the NIRC of 1997.

Corollarily, under Department of Finance Department Order No. 007-02,[178] an appeal from the adverse ruling of the CIR may be filed before the said Department within thirty (30) days from notice. Failure to avail of this administrative remedy prior to filing a petition before a judicial body violates the doctrine of exhaustion of administrative remedies.

PSPC nevertheless counters that it could not have complied with the prescribed guidelines in assailing BIR Rulings since it was deprived of due process of law. By definition, BIR Rulings are requested by taxpayers themselves but here, PSPC was not the requesting party. Under the rules prescribed by the Secretary of Finance, an appeal must allege "that the request was filed within the reglementary period" and "the material facts upon which the ruling was requested" which must be "the same set of facts were presented to the BIR." Clearly, these rules are applicable only to a party who actually requested for and received a BIR Ruling, not PSPC.

More, Tax Ruling (document) M-059-2012 allegedly deprived PSPC of due process when it subjected PSPC's Alkylate importations to tax when no tax imposition existed before, in violation of Section 246 of the NIRC, *viz.*:

Section 246. *Non-Retroactivity of Rulings*. — Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers, except in the following cases:

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[178] Providing for the Implementing Rules of the First Paragraph of Section 4 of the National Internal Revenue Code of 1997. Repealing for this Purpose Department Order No. 005-99 and Revenue Administrative Order No. 1-99, DOF Department Order No. 007-02. [May 7, 2002]

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(a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;

(b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or

(c) Where the taxpayer acted in bad faith.

These due process violations purportedly placed Case No. 8535 within the context of "other matters" arising from the NIRC which are subject to appeal before the CTA at first instance, not to the Secretary of Finance, pursuant to the second paragraph of Section 4 of the NIRC.

Allow me to discuss.

The first paragraph of Section 4 specifically states that tax rulings shall be subject to review by the Secretary of Finance. This specific grant of jurisdiction must prevail over CTA's general jurisdiction over "other matters" as mentioned in the second paragraph of the same Section 4. Certainly, the Secretary's power of review includes the power to determine whether PSPC's right to due process was violated in the issuance of tax ruling M-059-2012, and whether said ruling was unlawful for supposedly having retroactive application. Thus, in line with the Court's pronouncement in ***Philamlife***, ***Banco de Oro***, and ***COURAGE***, PSPC ought to have exhausted its administrative remedies available before filing Case No. 8535.

Be that as it may, the rule on exhaustion of administrative remedies is not ironclad, but admits exceptions such as when the question involved is purely legal and will ultimately have to be decided by the courts of justice, and when judicial intervention is urgent.[179] For instance, in ***Banco de Oro***, the

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[179] *Ejera v. Merto*, supra note 173: (a) where there is estoppel on the part of the party invoking the doctrine; (b) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; (c) where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant; (d) where the amount involved is relatively so small as to

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Court ruled that non-compliance with the rules on exhaustion of administrative remedies had been rendered moot by the Court's issuance of the Temporary Restraining Order enjoining the implementation of the assailed BIR Ruling. The Court thereby effectively recognized the urgency and necessity of direct resort to the Court.

Banco de Oro served as basis for the Court's subsequent ruling in ***Association of Non-Profit Clubs, Inc. v. Bureau of Internal Revenue***.[180] There, petitioner assailed the validity of BIR RMC No. 35-2012 *via* declaratory relief before the trial court. The Court held that although the assailed RMC should have first been subjected to the review of the Secretary of Finance, petitioner's non-exhaustion of administrative remedies was excused since the issue involved (*i.e.*, the taxability of clubs organized and operated exclusively for pleasure, recreation, and other non-profit purposes) is a purely legal question and there were circumstances indicating the urgency of judicial intervention (*e.g.*, membership fees, assessment dues, and the like of all recreational clubs would be imminently subjected to income tax and VAT).

Notably here, by Resolution dated October 22, 2012, the CTA issued a Suspension Order in Case No. 8535 enjoining the collection of excise taxes on PSPC's Alkylate importations prior to October 1, 2012. By Resolution dated July 7, 2014, the Court likewise issued a Temporary Restraining Order in **G.R. No. 210501**, enjoining the CTA and the government from imposing excise taxes on the incoming Alkylate importations of PSPC. This injunctive relief could not have been granted unless judicial intervention was urgent. Too, the main issue

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make the rule impractical and oppressive; **(e) where the question involved is purely legal and will ultimately have to be decided by the courts of justice; (f) where judicial intervention is urgent;** (g) where the application of the doctrines may cause great and irreparable damage; (h) where the controversial acts violate due process; (i) where the issue of non-exhaustion of administrative remedies has been rendered moot; (j) where strong public interest is involved; and (l) in quo warranto proceedings. (emphasis added)

[180] G.R. No. 228539, June 26, 2019.

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raised before the CTA — the taxability of PSPC's Alkylate importations, was a pure question of law. Thus, following ***Banco de Oro*** and ***Association of Non-Profit Clubs***, PSPC's failure to exhaust administrative remedies should likewise be excused in this instance.

c. Regular courts no longer have jurisdiction over questions on the validity or constitutionality of tax laws and issuances

Public petitioners nevertheless claim that even though PSPC's non-exhaustion of administrative remedies may be excused, it is the regular courts, not the CTA, which have jurisdiction to annul interpretative rulings of the CIR. For under Section 7 of RA 1125, as amended, the CTA's appellate jurisdiction over rulings of the CIR only extends to tax assessments and claims for refund, not to interpretative issuances of tax laws such as Tax Ruling (document) M-059-2012. Section 7 reads:

Section 7. Jurisdiction. — The CTA shall exercise:

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

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

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

x x x x

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Public petitioners rely on ***British American Tobacco v. Camacho***[181] where the Court held that the CTA's jurisdiction to resolve tax disputes in general does not include cases challenging the constitutionality of a law or rule. Although Section 7 (a)(1) states that the CTA has jurisdiction over "other matter[s] arising from under the National Internal Revenue Code," these "other matters" contemplated by law only cover those directly related to disputed assessments or claims for refund.

The argument must fail.

The doctrine in ***British American Tobacco*** had already been overturned in the *En Banc* case of ***Banco de Oro***. In the latter case, the Court declared in no uncertain terms that the CTA may "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)." For within the judicial system, RA 1125, as amended by RA 9282 intended the CTA to have exclusive jurisdiction to resolve **all** tax problems.

The Court's position in ***Banco de Oro*** was cemented in the subsequent case of ***COURAGE*** which summarized relevant jurisprudence, thus:

> In ***The Philippine American Life and General Insurance Co. v. Secretary of Finance***, the Court held that rulings of the Secretary of Finance in its exercise of its power of review under Section 4 of the NIRC of 1997, as amended, are appealable to the CTA. **The Court explained that while there is no law which explicitly provides where rulings of the Secretary of Finance under the adverted to NIRC provision are appealable, Section 7(a) of RA No. 1125, the law creating the CTA, is nonetheless sufficient, albeit impliedly, to include appeals from the Secretary's review under Section 4 of the NIRC of 1997, as amended.**
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> Moreover, echoing its pronouncements in ***City of Manila v. Grecia-Cuerdo***, that the CTA has the power of *certiorari* within its appellate jurisdiction, the Court declared that "it is now within the power of

[181] 584 Phil. 489 (2008).

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the CTA, through its power of *certiorari*, to rule on the validity of a particular administrative rule or regulation so long as it is within its appellate jurisdiction. **Hence, it 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 regulations or revenue memorandum circular on which the said assessment is based.**"

Subsequently, **in *Banco de Oro v. Republic***, the Court, sitting *En Banc*, further held that **the CTA has exclusive appellate jurisdiction to review, on *certiorari*, the constitutionality or validity of revenue issuances, even without a prior issuance of an assessment. (emphases added)**

This paradigm shift from ***British American Tobacco*** was brought about by a growing trend which the Court noted in ***Philamlife***[182] — both the CTA and the Court of Appeals were disclaiming jurisdiction over tax cases. On the one hand, mere prayer for the declaration of a tax measure's unconstitutionality or invalidity before the CTA would result in a petition's outright dismissal though it may include an appeal from a disputed assessment; on the other hand, the Court of Appeals would have also dismissed the same petition had it found that the primary issue raised was not the validity of the tax measure *per se* but the assessment applying such tax measure. To prevent this double disclaiming of jurisdiction, the Court departed from ***British American Tobacco*** and ruled that the CTA has jurisdiction to determine the validity of the CIR's interpretative issuances upon review by the Secretary of Finance. ***Philamlife*** decreed:

Preliminarily, it bears stressing that there is no dispute that what is involved herein is the respondent Commissioner's exercise of power under the first paragraph of Sec. 4 of the NIRC — the power to interpret tax laws. This, in fact, was recognized by the appellate court itself, but erroneously held that her action in the exercise of such power is appealable directly to the CTA. As correctly pointed out by petitioner, Sec. 4 of the NIRC readily provides that the Commissioner's power to interpret the provisions of this Code and

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[182] Supra note 175.

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other tax laws is subject to review by the Secretary of Finance. The issue that now arises is this — **where does one seek immediate recourse from the adverse ruling of the Secretary of Finance in its exercise of its power of review under Sec. 4?**

Admittedly, there is no provision in law that expressly provides where exactly the ruling of the Secretary of Finance under the adverted NIRC provision is appealable to. However, **We find that Sec. 7(a)(1) of RA 1125, as amended, addresses the seeming gap in the law as it vests the CTA, albeit impliedly, with jurisdiction over the CA petition as "other matters" arising under the NIRC or other laws administered by the BIR.** x x x

x x x x

Even though the provision suggests that it only covers rulings of the Commissioner, We hold that it is, nonetheless, sufficient enough to include appeals from the Secretary's review under Sec. 4 of the NIRC.

It is axiomatic that laws should be given a reasonable interpretation which does not defeat the very purpose for which they were passed. Courts should not follow the letter of a statute when to do so would depart from the true intent of the legislature or would otherwise yield conclusions inconsistent with the purpose of the act. This Court has, in many cases involving the construction of statutes, cautioned against narrowly interpreting a statute as to defeat the purpose of the legislator, and rejected the literal interpretation of statutes if to do so would lead to unjust or absurd results.

Indeed, to leave undetermined the mode of appeal from the Secretary of Finance would be an injustice to taxpayers prejudiced by his adverse rulings. To remedy this situation, We imply from the purpose of RA 1125 and its amendatory laws that the CTA is the proper forum with which to institute the appeal. x x x (emphases added)

Verily, whether an assailed tax ruling was issued in the performance of quasi-legislative or quasi-judicial functions is no longer material. The CTA would have appellate jurisdiction over it just the same. Its exclusive appellate jurisdiction over "other matters" now covers the constitutionality of tax measures. The only requirement is prior review by the Secretary of Finance. But since review by the Secretary of Finance may be excused

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here as earlier discussed, PSPC correctly assailed Tax Ruling M-059-2012 before the CTA rather than the regular courts.

d. The CTA has jurisdiction over PSPC's challenge against the Collector's Letter dated October 1, 2012

Indeed, the CTA's jurisdiction over "other matters" need not pertain to a disputed assessment or claim for refund. As the Court categorically declared in the subsequent *En Banc* cases of ***Banco de Oro*** and ***COURAGE***, the CTA may exercise its jurisdiction to review the constitutionality or validity of tax measures even without a prior issuance of an assessment. Thus, whether the ATRIGs issued by the CIR or the IEIRDs issued by the BOC constituted "assessments" is no longer material; the CTA still validly acquired jurisdiction over Case No. 8535, assailing the validity of Tax Ruling M-059-2012. By extension, therefore, the CTA would also have jurisdiction over the Collector's Letter dated October 1, 2012 which merely implements said tax ruling.

Public petitioners argue otherwise. They claim that under Section 2309 of the TCCP, the exclusive remedy against an action of the Collector is *via* protest before the Commissioner of Customs, *viz.*:

SECTION 2309. *Protest Exclusive Remedy in Protestable Case*. — In all cases subject to protest, the interested party who desires to have the action of the Collector reviewed, shall make a protest, otherwise, the action of the Collector shall be final and conclusive against him, except as to matters collectible for manifest error in the manner prescribed in section one thousand seven hundred and seven hereof.

Further, Section 7(a)(4) of RA 1125, as amended limits the appellate jurisdiction in customs cases over decisions of either the Commissioner of Customs or the Secretary of Finance, thus:

4) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;

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x x x x

6) Decisions of the Secretary of Finance on customs cases elevated to him automatically for review from decisions of the Commissioner of Customs which are adverse to the Government under Section 2315 of the Tariff and Customs Code;

x x x x

I am not convinced.

First. Public petitioners essentially harp on the doctrine of exhaustion of administrative remedies. But again, the recognized exceptions to this doctrine include cases involving purely legal questions that will ultimately have to be decided by the courts of justice, and when judicial intervention is urgent.[183]

Here, PSPC does not deny importing various shipments of Alkylate. The only question to be resolved in Case No. 8535 is a pure question of law — whether these importations are taxable under Section 148(e) of the NIRC. As for the urgency of judicial intervention, the CTA Resolution dated October 22, 2012 and the Court's Resolution dated July 7, 2014 enjoining the collection of excise taxes speak for themselves.

Second. Case No. 8535 assailing Tax Ruling M-059-2012 was already pending when the Collector issued Letter dated October 1, 2012. Thus, any issue regarding the Collector's attempts at collecting excise taxes from PSPC on the basis of Tax Ruling M-059-2012 may be considered as matters incidental to Case No. 8535. ***City of Manila v. Grecia-Cuerdo***[184] elucidated:

x x x **Section 1 of RA 9282 states that the CTA shall be of the same level as the CA and shall possess all the inherent powers of a court of justice.**

Indeed, courts possess certain inherent powers which may be said to be implied from a general grant of jurisdiction, in addition to those expressly conferred on them. **These inherent powers are such powers**

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[183] *Ejera v. Merto*, supra note 173.

[184] 726 Phil. 9 (2014).

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as are necessary for the ordinary and efficient exercise of jurisdiction; or are essential to the existence, dignity and functions of the courts, as well as to the due administration of justice; or are directly appropriate, convenient and suitable to the execution of their granted powers; and include the power to maintain the court's jurisdiction and render it effective in behalf of the litigants.

Thus, this Court has held that "while a court may be expressly granted the incidental powers necessary to effectuate its jurisdiction, a grant of jurisdiction, in the absence of prohibitive legislation, implies the necessary and usual incidental powers essential to effectuate it, and, subject to existing laws and constitutional provisions, **every regularly constituted court has power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction and for the enforcement of its judgments and mandates." Hence, demands, matters or questions ancillary or incidental to, or growing out of, the main action, and coming within the above principles, may be taken cognizance of by the court and determined, since such jurisdiction is in aid of its authority over the principal matter, even though the court may thus be called on to consider and decide matters which, as original causes of action, would not be within its cognizance.** (emphases and underscoring added)

So must it be.

Finally. Judicial economy refers to the efficiency in the operation of the courts and the judicial system; especially the efficient management of litigation so as to minimize duplication of effort and to avoid wasting the judiciary's time and resources.[185] In keeping with this policy, cases challenging the implementation of a law or rule should be tried in the same case involving the same party challenging the validity or constitutionality of said law or rule itself.

A contrary ruling here would simply be impractical. Indeed, it would be too cumbersome for the CTA to require a separate case to be filed by PSPC for each and every Alkylate shipment assessed for excise taxes, especially since there is already a pending challenge against the validity of such imposition.

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[185] *Ren Transport Corp. v. NLRC*, 788 Phil. 234, 244 (2016).

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Public petitioners, nevertheless, bring to fore the Court's ruling in **G.R. No. 207843** entitled ***Commissioner of Internal Revenue v. Court of Tax Appeals and Petron Corporation*** which involved the Alkylate importations of Petron. There, the Court dismissed Petron's petition before the CTA on ground of prematurity, considering a final assessment on its tax liabilities had yet to be issued, and for Petron's failure to protest the collection before the Commissioner of Customs as required under Section 2309 of the TCCP.

Notably though, such pronouncement by the Court's First Division in ***Petron*** was made on July 15, 2015, **prior** to when the Court's *En Banc* resolved ***Banco de Oro*** with finality on August 16, 2016. The prevailing doctrine at that time was still ***British American Tobacco***.

Although ***Philamlife*** was decided earlier than ***Petron***, it could not have served as the First Division's basis for rendering a decision contrary to ***British American Tobacco***. For one, ***Philamlife*** was decided by the Court's Third Division while ***British American Tobacco***, *En Banc*. It is elementary that no doctrine or principle of law laid down by the Court *En Banc* or in division may be modified or reversed except by the Court *En Banc* itself.[186]

At any rate, any doctrinal value ***Petron*** may have had has already been negated by the subsequent rulings in ***Banco de Oro*** and ***COURAGE***. In fact, citing ***Banco de Oro***, the Court's Special First Division **reversed** its ruling in ***Petron***

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[186] Section 4 x x x.

x x x x

(3) Cases or matters heard by a division shall be decided or resolved with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon, and in no case without the concurrence of at least three of such Members. When the required number is not obtained, the case shall be decided *en banc*: *Provided*, that no doctrine or principle of law laid down by the court in a decision rendered *en banc* or in division may be modified or reversed except by the court sitting *en banc*. (CONSTITUTION, Art. VIII; Section 4[3])

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under **Resolution dated February 14, 2018**. In granting reconsideration, the Court held:

> The apparent conflicting jurisprudence on the matter involving the Court's 2008 *En Banc* ruling in *British American Tobacco* and the Court's Third Division Ruling in *Philamlife* has been seemingly settled in the 2016 *En Banc* case of *Banco de Oro v. Republic of the Philippines (Banco de Oro)* wherein it was opined that:
>
> > 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.
>
> Furthermore, with respect to administrative issuances (revenue orders, revenue memorandum circulars, or rulings), these are issued by the Commissioner under its power to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws. Tax rulings, on the other hand, are official positions of the Bureau on inquiries of taxpayers who request clarification on certain provisions of the National Internal Revenue Code, other tax laws, or their implementing regulations. Hence, **the determination of the validity of these issuances clearly falls within the exclusive appellate jurisdiction of the Court of Tax Appeals under Section 7(l) of Republic Act No. 1125, as amended, subject to prior review by the Secretary of Finance, as required under Republic Act No. 8424**.[27]

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The *En Banc* ruling in *Banco de Oro* has since not been overturned and thus, stands as the prevailing jurisprudence on the matter. Accordingly, the Court is prompted to reconsider its ruling in this case with respect to the issue of jurisdiction.

Hence, there is no reason to compare the factual milieu of ***Petron*** vis-à-vis Case No. 8535 as PSPC did. ***Petron*** is simply inapplicable regardless of the similarities or differences of these two (2) cases in light of subsequent jurisprudence.

In fine, the CTA did not commit grave abuse of discretion when it denied the CIR's Motion to Dismiss dated July 1, 2014. On the contrary, I find the CTA's ruling to be in accordance with law and jurisprudence.

C. <u>On the issuance of Suspension Orders</u>

a. <u>A Suspension Order is a remedy distinct and separate from a Temporary Restraining Order</u>

Before resolving **G.R. No. 212490**, the provisional remedies available to PSPC must be clarified. As incisively opined by Senior Associate Justice Estela M. Perlas-Bernabe during the deliberations, **a Temporary Restraining Order is a relief distinct and separate from a Suspension Order**.

As for its **source**, the CTA's power to issue a Temporary Restraining Order stems from its jurisdiction over all matters ancillary to the main action as discussed in ***Banco de Oro***. On the other hand, the CTA's power to issue Suspension Orders is embodied in Section 11 of RA 1125, as amended, *viz.*:

SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. — x x x

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 and Secretary of Agriculture, as the case may be shall suspend the payment, levy,

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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

This provision is complemented by Rule 10, Sections 1 to 3 of the Revised Rules of the Court of Tax Appeals, thus:

RULE 10
SUSPENSION OF COLLECTION OF TAX

SECTION 1. No suspension of collection of tax, except as herein prescribed. — No appeal taken to the Court shall suspend the payment, levy, distraint, or sale of any property of the taxpayer for the satisfaction of his tax liability as provided under existing laws, except as hereinafter prescribed.

SECTION 2. Who may file. — **Where the collection of the amount of the taxpayer's liability, sought by means of a demand for payment, by levy, distraint or sale of any property of the taxpayer, or by whatever means, as provided under existing laws, may jeopardize the interest of the Government or the taxpayer,** an interested party may file a motion for the suspension of the collection of the tax liability.

SECTION 3. When to file. — The motion for the suspension of the collection of the tax may be **filed together with the petition for review or with the answer, or in a separate motion filed by the interested party at any stage of the proceedings**.

These provisional remedies, too, demand different sets of **requirements**. The CTA, as with any other court, may issue an injunctive writ when the applicant shows (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 invasion of the right is material and substantial; and (4) there

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is an urgent and paramount necessity for the writ to prevent serious and irreparable damage.[187]

Meanwhile, a Suspension Order may be applied for when (1) there is a tax collection by means of a demand for payment, levy, distraint or sale of any property of the taxpayer, or other means as provided under existing laws; (2) said collection may jeopardize the interest of the Government or the taxpayer; and (3) the taxpayer either deposits the amount claimed or files a surety bond with the CTA for not more than double the amount.

More, a Temporary Restraining Order differs from a Suspension Order in terms of **scope**. Section 11, RA 1125, as amended and Rule 10 of the Revised Rules of the Court of Tax Appeals are clear when they state that Suspension Orders are only directed against the *collection* of taxes. On the other hand, a Temporary Restraining Order has broader coverage. For it may enjoin not only the *collection* of taxes, but also their *imposition* and *assessment*. If there is nothing to impose and assess, there would be nothing to collect.

Thus, while a Suspension Order may be availed of for *every* collection effort of the government (*i.e.*, for *every* collection of excise taxes for *every* shipment of Alkylate, in this case), a Temporary Restraining Order may enjoin the implementation of a tax measure itself, foreclosing the need to seek the issuance of Suspension Orders in the future.

Given the distinction between the two provisional remedies, they must be discussed separately. After all, PSPC not only seeks the suspension of excise tax collections on its future alkylate shipments, but also the implementation of Tax Ruling M-059-2012 itself.

b. <u>The CTA had jurisdiction to issue Suspension Orders against collections against PSPC based on Tax Ruling M-059-2012</u>

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[187] *Australian Professional Realty, Inc. v. Municipality of Padre Garcia, Batangas*, 684 Phil. 283-295 (2012).

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In **G.R. No. 212490**, the main issue is whether the CTA committed grave abuse of discretion when it denied PSPC's Urgent Verified Motion dated March 18, 2014. Resolving the issue requires determining ***first***, whether the CTA had jurisdiction to issue Suspension Orders against the collection of excise taxes on Alkylate importations subsequent to October 1, 2012, and ***second***, whether PSPC had proven its entitlement to a Suspension Order.

It is beyond dispute that in CTA proceedings, a Suspension Order is a mere ancillary remedy. Nowhere does RA 1125, as amended, expressly vest in the CTA original jurisdiction to issue injunctive writs independently of, and apart from, an appealed case. For this reason, a motion for issuance of a Suspension Order may only be filed "together with the petition for review or with the answer," or in a separate motion "at any stage of the proceedings." In other words, it may only be filed in connection with a main case simultaneously filed or already pending with the CTA.

Here, the CTA denied PSPC's Urgent Verified Motion dated March 18, 2014 for lack of jurisdiction. According to the CTA, the main action, Case No. 8535, only involves PSPC's Alkylate importations prior to October 1, 2012. Thus, it cannot suspend the collection of taxes for importations subsequent thereto. Public petitioners have echoed this sentiment.

It has also been argued that the CTA does not have jurisdiction over PSPC's motions for issuance of Suspension Orders on ground that the assessments on IEIRDs, by themselves, do not constitute the final assessment supposedly required for the issuance of a Suspension Order. This is in view of the administrative remedies available before the Collector and, thereafter, the Customs Commissioner.

I respectfully disagree.

For one. It bears stress that the Court has already pronounced in ***Cuerdo*** that the CTA may take cognizance of matters or questions incidental to, or growing out of, the main action.

Such authority is in aid of its jurisdiction over the principal matter.[188]

Notably, Case No. 8535 assailing Tax Ruling M-059-2012 is already pending before the CTA. Applying ***Cuerdo***, any effort to implement Tax Ruling M-059-2012 against PSPC, prior or subsequent to the filing of the case, should be considered as a matter incidental to Case No. 8535 which the CTA may also enjoin.

A distinction was being made between Alkylate importations before October 1, 2012 and those that came after. While exhaustion of administrative remedies is excusable in the former, there was allegedly no reason to bypass the customs officials for the latter.

But the distinction is more imagined than real. Whether PSPC's Alkylates were imported before or after October 1, 2012, the excise tax assessments thereon are based on Tax Ruling M-059-2012 all the same. In both cases, administrative remedies are available to PSPC. But the Court has already recognized the urgency of judicial intervention as regards the implementation of Tax Ruling M-059-2012 past and present. This urgency subsists as regards future collections as well, so long as the validity of Tax Ruling M-059-2012 remains unresolved with finality. Certainly, the issue regarding the Suspension Order is an offshoot of the main case, an incidental matter that has to be resolved with just as much urgency as the *lis mota*.

What is sauce for the goose must be sauce for the gander. It would be absurd to rule that judicial urgency was urgent prior to October 1, 2012, but not so thereafter. For any argument PSPC raised against the assessment of its Alkylate shipments prior to October 1, 2012 would still be invoked in relation to its subsequent shipments.

Indeed, government petitioners' continued implementation of Tax Ruling M-059-2012 against PSPC has been met with

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[188] *City of Manila v. Grecia-Cuerdo*, supra note 184.

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PSPC's own continued objections. But rather than questioning the propriety of the formula applied or the precision of the Collector's computations, the pivotal issue had always been whether the imposition of tax on its importations was legal. Though there may have been differences in the quantity of Alkylate imported and the amount of taxes assessed in each case, these concerns are rooted in the singular issue of Tax Ruling M-059-2012's validity, hence, incidental matters to Case No. 8535.

In sum, assessments on IEIRDs may be the subject of Suspension Orders so long as there is already a pending action where the proper motion may be filed. Otherwise, administrative remedies before the Collector and Customs Commissioner must first be exhausted, and the motion filed "together with the petition for review or with the answer." Here, in view of the pendency of Case No. 8535 and the urgency of resolving the issue pertaining to the validity of Tax Ruling M-059-2012, PSPC properly invoked the jurisdiction of the CTA for the issuance of Suspension Orders for its Alkylate shipments subsequent to October 1, 2012.

For another, Rule 10, Section 2[189] of the CTA Rules provide that a Suspension Order may issue when there is a "collection of the amount of the taxpayer's liability x x x by means of a demand for payment, by levy, distraint or sale of any property of the taxpayer, **or by whatever means, as provided under existing laws**." The language of the rule does not strictly require a final assessment. The issuance of a suspension order may be warranted against a preliminary or provisional assessment so long as the amount so assessed is already collectible, as here.

Assessments indicated on IEIRDs, though subject to administrative remedies, may already be considered **collectible**

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[189] SECTION 2. Who may file. — Where the collection of the amount of the taxpayer's liability, sought by means of a demand for payment, by levy, distraint or sale of any property of the taxpayer, or by whatever means, as provided under existing laws, may jeopardize the interest of the Government or the taxpayer, an interested party may file a motion for the suspension of the collection of the tax liability.

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and subject to Suspension Orders. This is recognized under Section 2308 of the TCCP which prescribes the protest mechanism before the Collector itself:

SECTION 2308. Protest and Payment upon Protest in Civil Matters. — When a ruling or decision of the Collector is made whereby liability for duties, fees, or other money charge is determined, except the fixing of fines in seizure cases, the party adversely affected may protest such ruling or decision by presenting to the Collector at the time when payment of the amount claimed to be due the Government is made, or within thirty days thereafter, a written protest setting forth his objections to the ruling or decision in question, together with the reasons therefor. **No protest shall be considered unless payment of the amount due after final liquidation has first been made.**

Verily, the assessments on IEIRDs which are required to be paid under protest, by themselves, are already deemed **final liquidations**. Too, it is **mandatory** for the taxpayer to first post payment before its protest may be considered. Otherwise, the taxpayer's imported article will be deemed **abandoned** and **forfeited** pursuant to Section 1801 of the TCCP.[190] This holistic view of the protest mechanism before the Collector shows that the mandatory payment of taxes for purposes of availing administrative remedies could easily be classified as a form of collection.

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[190] SECTION 1801. *Abandonment, Kinds and Effects of*. — An imported article is deemed abandoned under any of the following circumstances:

a. When the owner, importer, consignee of the imported article expressly signifies in writing to the Collector of Customs his intention to abandon, or

b. When the owner, importer, consignee or interested party after due notice, fails to file an entry within thirty (30) days, which shall not be extendible, from the date of discharge of the last package from the vessel or aircraft, or having filed such entry, fails to claim his importation within fifteen (15) days, which shall not likewise be extendible, from the date of posting of the notice to claim such importation.

Any person who abandons an article or who fails to claim his importation as provided for in the preceding paragraph shall be deemed to have renounced all his interests and property rights therein.

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c. Jeopardy as required for the issuance of Suspension Orders

In its Resolution[191] dated April 2, 2014, the CTA erred when it ruled that PSPC was not able to prove the jeopardy it stood to suffer. This is contrary to the preliminary finding of the Court itself in Resolution dated October 22, 2014, where the Court denied the BOC and the Collector's Motion for Reconsideration from the issuance of a Temporary Restraining Order. The Court decreed:

x x x x

Contrary to respondents' claim, the PSPC has sufficiently shown that the collection of taxes would jeopardize its interest. The PSPC's liabilities ballooned from ₱50,648,774,000.00 on January 1, 2012 to ₱66,172,682,000.00 on December 31, 2013. The PSPC incurred loss of ₱912,108,000.00 in 2013 from a profit of ₱5,799,392,000.00 in 2012. The PSPC's short term loans increased by ₱9,220,800,000.00 in 2013. In 2012, PSPC's short term loan was merely ₱26,319,200,000.00 in contrast to the short term loan of ₱35,537,000,000.00 in 2013. Furthermore, its finance expense increased from ₱1,501,635,000.00 in 2012 to ₱2,442,862,000.00 in 2013.

The issuance of a temporary restraining order is warranted in view of the significance of the issues raised and the billions of pesos involved in this case that will indirectly affect the public in general. The Court is likewise mindful that the BIR did not subject alkylate to excise tax and value-added tax on importation prior to the issuance of BIR Ruling No. M-059-2012 on June 29, 2012, and did not previously classify alkylate as a product of distillation.

WHEREFORE, premises considered, we resolve to DENY the Bureau of Customs and the Collector of Customs of the Port of Batangas' motion for reconsideration dated July 30, 2014.

SO ORDERED.[192]

More, PSPC's Urgent Verified Motion dated March 18, 2014 was not its first attempt to enjoin the Collector's collection

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[191] *Rollo*, G.R. No. 212490, Vol. I, p. 121.

[192] *Rollo*, G.R. No. 211294, Vol. III, pp. 1723-1724.

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efforts. By Resolution dated October 22, 2012, the CTA issued a Suspension Order insofar as the amount stated in the Letter dated October 1, 2012 was concerned. Subsequently, by Resolution dated July 15, 2013, the CTA also recognized the jeopardy PSPC stood to suffer and granted the latter's Urgent Verified Motion dated June 14, 2013, *viz.*:

> **Moreover, PSPC's quite repetitive contention that it will be gravely injured by the imposition and collection of excise taxes in its Alkylate importation has already been established.** As stated in Our Resolution affirming this Court's jurisdiction over the instant case, the previous importation of Alkylate by petitioner PSPC was not subjected to excise tax and the sudden imposition thereof would necessarily affect petitioner PSPC which relied on the exemption given by the government itself. Nonetheless, the government would not be in the losing end since the amount sought to be collected is secured by a surety bond. **The act of imposing and collecting taxes which were previously non-existing would result to substantial and grave damage and injury not only to petitioner but also to petitioner's employees and to the general public who are the ultimate consumers of petitioner's products.**
>
> Hence, We find merit in PSPC's Motion for the Issuance of a Suspension Order. x x x[193]

Adhering to these preliminary findings, I am constrained to say that PSPC would have indeed been jeopardized by the collection of excise taxes on its March 2014 Alkylate importation. The CTA should have issued a Suspension Order back then.

But such issuance of a Suspension Order in 2014 would have been merely interlocutory and as such, may be modified or recalled at any time before final judgment. As held in ***Heirs of Dimaampao v. Alug***:[194]

> An interlocutory order is always under the control of the court and may be modified or rescinded upon sufficient grounds shown at any time before final judgment. This prescinds from a court's inherent

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[193] *Rollo*, G.R. No. 210501, Vol. I, p. 42.

[194] 754 Phil. 236, 245 (2015).

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power to control its process and orders so as to make them conformable to law and justice, and a motion for reconsideration thereof was not subject to the limiting fifteen-day period of appeal prescribed for final judgments or orders.

Thus, though PSPC's Urgent Verified Motion was dated March 18, 2014, the Court is not precluded from considering **present conditions** in determining whether the issuance of a Suspension Order is still warranted here and now. In the same way, the Court and the CTA could consider **present conditions** in determining whether injunctive relief or Suspension Orders previously issued should now be recalled.

At present, the jeopardy previously observed by the Court no longer exists. The unprogrammed expenses PSPC was not able to foresee in 2014 should have already become foreseeable, seven (7) years later. It could not use as excuse the Court's issuance of an injunctive relief which, based on its very designation, is merely **temporary** and may be recalled at any time.

At any rate PSPC's jeopardy is not the lone consideration in deciding whether a Suspension Order must issue in its favor. To be sure, Section 2, Rule 10 of the Revised Rules of the Court of Tax Appeals allows any interested party to seek the same remedy to prevent any jeopardy against the interest of the government itself. Thus, just as how jeopardy against the interest of the government is a ground for the issuance of a Suspension Order, so too must it be a ground for cancelling or negating the same relief.

Indeed, the issuance of a Suspension Order necessitates the balancing of interests and jeopardies between the taxpayer and the government. Here, I find that the government stands to suffer greater prejudice when tax collection efforts are restrained, on the one hand, compared to PSPC when taxes are imposed on its Alkylate importations, on the other.

For perspective, it has been almost seven (7) years since the Court restrained the imposition of excise taxes on **all** incoming Alkylate importations of PSPC. This means that for almost seven

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(7) years, PSPC has been importing Alkylate without being assessed excise taxes. At worst, PSPC was merely burdened with posting a bond in the amount of ₱496,944,000.00.

Meanwhile, the government is in dire need of resources in its efforts against the COVID-19 pandemic.

The Court must take judicial notice of the fact that the government had to resort to extraordinary measures to fund its operations during this state of national emergency. Pursuant to Republic Act 11469, the *Bayanihan to Heal as One Act*, the administration discontinued projects and reallocated appropriations to respond to the crisis.[195] As of August 10, 2020, around ₱376 billion has reportedly been allotted for COVID-19 related expenses, of which about ₱360 billion has been released.[196] Indeed, government coffers are being depleted at a rapid rate while the end of the pandemic is nowhere in sight.

To recall, the CIR assessed PSPC for unpaid excise taxes of ₱1,384,721,993.00, exclusive of penalties and interests, for its Alkylate shipments from January 2010 to June 2012 or a span of two and a half years. These taxes could have augmented the funding for our healthcare services and could have very well extended the lives of Filipinos afflicted by the virus. Imagine the sheer quantity of Personal Protective Equipment the government could have procured with this amount. The government could have also increased the incentives for our healthcare workers who are relentless in holding the line against the invisible enemy. Countless families from local government units could have also received additional relief or *ayuda* during the quarantine. The government, nay, the people therefore were deprived, and are continuously being deprived of these benefits as the imposition and collection of taxes are suspended or otherwise restrained.

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[195] Section 4 (v), RA 11469.

[196] https://www.rappler.com/newsbreak/iq/funds-2019-2020-budgets-coronavirus-response last accessed on January 17, 2021, 6:30PM.

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Taxes are the lifeblood of the government and their prompt and certain availability is an imperious need,[197] especially in these abnormal times. Verily, the jeopardy is much greater against the government than it is against PSPC. Thus, I vote that in light of recent events, the collection of taxes against PSPC's alkylate importations ought not be suspended. There is therefore no reason to reverse the Resolution dated April 2, 2014 of the Court of Tax Appeals First Division in Case No. 8535.

D. <u>On the Temporary Restraining Order dated July 7, 2014</u>

Having discussed all the pivotal issues in these consolidated cases, the Temporary Restraining Order dated July 7, 2014 must now be lifted. After all, said order is merely a provisional or ancillary remedy. As Senior Associate Justice Perlas-Bernabe also brought to fore, it cannot exist except only as part or an incident of the present petitions, and is dissolved when the court terminates the proceedings herein.[198] Thus, upon resolution of these consolidated cases, the ancillary injunctive relief shall cease to be effective.

This, however, should not preclude PSPC from availing of the same remedy of injunction before the CTA where the main case is pending. Corollarily, it is noted that on September 18, 2012, PSPC filed a Very Urgent Motion for the Issuance of a Suspension Order **with Prayer for Immediate Issuance of a Temporary Restraining Order to enjoin the implementation of the assailed document M-059-2012**. Though the CTA issued a Suspension Order by Resolution dated October 22, 2012,[199] it appears that the CTA has yet to make a categorical ruling as regards PSPC's prayer for injunctive relief. As earlier discussed, a Suspension Order is a remedy distinct and separate from a

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[197] *Asian Transmission Corporation v. Commissioner of Internal Revenue*, G.R. No. 230861, September 19, 2018.

[198] *BP Philippines, Inc. v. Clark Trading Corporation*, 695 Phil. 481, 491-492 (2012).

[199] *Rollo*, G.R. No. 211294, Vol. I, p. 403.

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Temporary Restraining Order, hence, must be resolved as a separate issue.

SUMMARY

I. Tax rulings and interpretative issuances of the CIR are subject to review by the Secretary of Finance;

II. In turn, the rulings of the Secretary of Finance are appealable to the CTA even without prior assessment. Assessments issued subsequent to the filing of the appeal may be considered incidental matters to the main case;

III. Review by the Secretary of Finance may be dispensed with where circumstances exist to warrant an exception to the doctrine of exhaustion of administrative remedies;

IV. In the same vein, actions of the Collector may also be directly appealed to the CTA should attendant circumstances constitute an exception to the doctrine of exhaustion of administrative remedies;

V. Interlocutory orders issued by the CTA in Division may be assailed *via certiorari* this Court;

VI. The CTA has jurisdiction to issue Suspension Orders not only in relation to the main action, but also to incidental matters; and

VII. Suspension Orders and Temporary Restraining Orders are separate and distinct provisional remedies.

ACCORDINGLY, I vote to:

1. **DISMISS G.R. No. 210501** and **UPHOLD** the Resolutions dated July 15, 2013 and October 14, 2013 of the Court of Tax Appeals First Division in Case No. 8535;

2. **DENY G.R. No. 211294** and **AFFIRM** the Resolution dated February 10, 2014 of the Court of Tax Appeals *En Banc* in Case No. 1047;

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3. **DISMISS G.R. No. 212490** and **UPHOLD** the Resolution dated April 2, 2014 of the Court of Tax Appeals First Division in Case No. 8535; and

4. **LIFT** The Temporary Restraining Order dated July 7, 2020.