Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

THE DEPARTMENT OF ENERGY,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

G.R. No. 260912

Present:

CAGUIOA, *J., Chairperson*,
INTING,
GAERLAN,
DIMAAMPAO, and
SINGH, *JJ.*

Promulgated:

August 30, 2023

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RESOLUTION

SINGH, *J.*:

Before this Court is a Motion for Reconsideration[1] (**Motion**), dated January 19, 2023, filed by petitioner Department of Energy (**DOE**) of the Court's Decision,[2] dated August 17, 2022, which denied DOE's Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the Decision, dated November 4, 2021, and the Resolution, dated May 24, 2022, of the Court of Tax Appeals (**CTA**) *En banc*, in CTA EB No. 2241 (CTA Case No. 10198). The said CTA *En banc* Decision and Resolution dismissed the petition for review filed by DOE against the Warrants of Distraint and/or Levy and Garnishment issued by the respondent Commissioner of Internal Revenue (**CIR**), for lack of jurisdiction over the dispute involving two national government agencies, namely, the DOE and the Bureau of Internal Revenue (**BIR**).

While a motion for reconsideration, by its nature, may tend to dwell on issues already resolved in the decision or resolution sought to be reconsidered, a circumstance which should not be an obstacle for a reconsideration,

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[1] *Rollo*, pp.170-191.
[2] Id. at 127-144.

petitioners must still raise matters substantially plausible or compellingly persuasive to warrant a reversal of the Court's previous ruling.[3] However, the DOE failed to do so.

On December 7, 2018, the BIR issued a Preliminary Assessment Notice (**PAN**) for deficiency excise taxes amounting to ₱18,378,759,473.44 to the DOE. The DOE was given 15 days to pay the deficiency taxes.[4] On December 17, 2018 or 10 days after the issuance of the PAN, the BIR issued a Formal Letter of Demand or a Final Assessment Notice (**FLD/FAN**) for the assessed amount.[5]

On December 21, 2018, the DOE replied to the BIR and asserted that it is not liable for the assessed amount because it is not an "owner, lessee, concessionaire or operator of the mining claim" liable to pay excise taxes under Section 130(A)(1) of the National Internal Revenue Code (**NIRC**). The DOE posits that it is an agency which merely grants mining rights or service contracts on behalf of the State. The DOE further contends that the subject transactions involve condensates, which are classified as liquified natural gas and as such, are exempt from excise taxes under Item 3.2 of BIR Revenue Regulations No. 1-2018, dated January 5, 2018.[6]

On July 17, 2019, the BIR informed the DOE that the assessment has become final, executory and demandable. According to the BIR, the DOE failed to file a formal protest on the FLD/FAN within the 30-day period prescribed under existing revenue rules and regulations. The BIR likewise informed the DOE that, as confirmed by the Department of Science and Technology, condensates are separate and distinct from natural gas, which is exempt from excise tax.[7]

On July 31, 2019, the DOE replied that it has not yet received FLD/FAN and that, based on its records, the only document or communication it received from the BIR since December 2018 was the PAN.[8]

This notwithstanding, on September 19, 2019, the BIR issued the assailed Warrants of Distraint and/or Levy and Garnishment.[9] This prompted the DOE to write a letter, which the BIR received on October 8, 2019, recounting the exchanges between the two agencies and reiterating that it has yet to received a FLD/FAN, which reckons the period to file a protest. The DOE thus claims that the BIR's premature actions deprived it of due process.

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3 *Shangri-la International Hotel Management, Ltd. v. Developers Group of Companies, Inc.*, 541 Phil. 138, 141 (2007).
4 *Rollo*, p. 58.
5 Id. at 102-103.
6 Id. at 60-61.
7 Id. at 62.
8 Id. at 65-67.
9 Id. at 63-64.

The DOE then reasserts its claims that condensates are exempt from excise tax and that it is not one of the persons liable for excise taxes.[10]

On October 18, 2019, there being no other recourse from the assailed BIR warrants, the DOE filed a Petition for Review (with Urgent Motion for Suspension of Collection of Taxes) before the CTA.

On November 8, 2019, the CTA Second Division dismissed the petition for lack of jurisdiction. Citing the Court's ruling in *PSALM v. CIR* ***(PSALM)***,[11] the CTA Second Division ruled that the CTA is not the proper forum to resolve what it characterized as a purely intra-governmental dispute. The DOE filed its motion for reconsideration, but on January 30, 2020, it was denied for lack of merit.

Consequently, on February 21, 2020, the BIR filed a Money Claim with the Commission on Audit (**COA**) for the assessed deficiency excise tax amounting to ₱18,378,759,473.44, citing the finality of its assessment against the DOE.[12] It was discovered in the proceedings before the COA that the FLD/FAN was indeed served on the DOE, but not through its Records Management Division, which is the DOE's centralized receiving and releasing unit for all communications. The FLD/FAN was served through one of the DOE's employees, who was claimed to be unauthorized to receive the same. Consequently, the document was not routed properly and remained unknown to the concerned officials of the agency until the BIR alluded to the same in subsequent communications.[13]

On February 28, 2020, the DOE filed a Petition for Review before the CTA *En Banc*. On November 4, 2021, the CTA *En Banc* affirmed the Division's Resolutions dismissing the petition for lack of jurisdiction. On May 24, 2022, the CTA *En Banc* denied the DOE's Motion for Reconsideration.

Thus, on June 9, 2022, the DOE filed a Petition for Review[14] under Rule 45 before the Court.

On August 17, 2022, the Court denied the Petition and affirmed the ruling of the CTA *En Banc*, finding that all disputes, claims, and controversies, solely or among executive agencies, including disputes on tax assessments, must perforce be submitted to administrative settlement by the Secretary of Justice or the Solicitor General, as the case may be.

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10 Id. at 68-70.
11 815 Phil. 966 (2017).
12 *Rollo*, pp. 91-101.
13 Id. at 111.
14 Id. at 3-30.

On January 19, 2023, the DOE filed a Motion for Reconsideration. It submits that: (1) the case falls squarely under the appellate jurisdiction of the CTA over disputed assessments of the CIR, pursuant to Section 4 of the NIRC;[15] (2) the *PSALM* case is not applicable because it involved the enforcement of a Memorandum of Agreement among PSALM, BIR and the National Power Corporation (**NPC**) relative to the payment of the alleged deficiency value-added tax out of the NPC's sale of two power plants, while the present case involves disputed assessments and a violation of due process;[16] (3) the warrants issued are void *ab initio* for BIR's failure to observe due process of law when it issued the FLD/FAN prior to the expiration of 15-day period given to the DOE to respond to the PAN and when it irregularly served the FLD/FAN;[17] and (4) condensates are not subject to excise tax and the DOE is not an owner of a mining claim, therefore, it is not liable to pay excise tax.[18]

As earlier pronounced, the Motion must be denied for failing to raise any substantial argument to justify a reversal of the Court's August 17, 2022 Decision.

In this case, the Motion is a mere reiteration of the arguments raised in the Petition, which DOE previously pleaded. The DOE mainly asserts the inapplicability of the Court's ruling in *PSALM*:

> 9. To reiterate, there was neither a decision nor inaction on a disputed assessment, refund of internal revenue taxes, nor violation of due process of law in the *PSALM case*. Rather, the actions of the parties were governed by the MOA entered into. Accordingly, PSALM could not have sought recouse with the CTA, even if it wanted to, as the CTA could have no jurisdiction over the same. Hence, with the execution of the MOA and in accordance with its terms, CIR and PSALM voluntarily submitted to the jurisdiction, power and authority of the DOJ.
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> 10. That is not the situation involved in the instant case where the cause of action of the petitioner is hinged upon a law, specifically Section 7(a)(1) of RA 1125, as amended by RA 9282 and RA 9503 (CTA Law), on the application of the CTA's "other matters" jurisdiction, a law not even considered and discussed with much weight in *PSALM*. Hence, absent any agreement between or among the parties on the voluntary submission of tax issues to the DOJ, the default provision on CTA's exclusive jurisdiction should preval.[19]

The Court first clarifies that the Motion erringly cites a different case title and number for the *PSALM* case. Instead of *PSALM v. CIR*, promulgated in 2017 by the Court sitting *En Banc*, the DOE cited *PSALM v. CA*, which although promulgated in the same year, was decided by the Court's Third Division.

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15 Id. at 173-178.
16 Id. at 171-173.
17 Id. at 178-182.
18 Id. at 183-190.
19 Id. at 173, Motion for Reconsideration.

At any rate, a closer look at the *PSALM* case reveals that while the facts of the present Petition are different, as *PSALM* does not involve any disputed assessment by CIR, the doctrine in *PSALM* harmonizing a general law and a special law still applies. The Court in *PSALM* explained:

> Furthermore, it should be noted that the 1997 NIRC is a general law governing the imposition of national internal revenue taxes, fees, and charges. On the other hand, PD 242 is a special law that applies only to disputes involving solely government offices, agencies, or instrumentalities.[20]

Applying the foregoing by analogy, Republic Act No. 1125,[21] as amended, is the general law governing the appellate jurisdiction of the CTA, which include resolving disputed assessments, that apply equally to all persons involving disputes pertaining to all tax claims arising from all tax laws being implemented by the BIR. On the other hand, Presidential Decree (**P.D.**) No. 242[22] is the special law governing all disputes exclusively between government agencies, offices and instrumentalities, arising from the interpretation and application of statutes, particularly Section 130(A)(1) of the NIRC and Item 3.2 of BIR Revenue Regulations No. 1-2018, dated January 5, 2018.[23]

Being an administrative dispute or a dispute involving two agencies of the Executive Branch of government, the authority to resolve the same vested by P.D. No. 242 upon the President of the Philippines is well within its power of control. Moreover, disputes between or among agencies or offices of the Executive Department requires an understanding of how their different and competing mandates and goals affect one another, a function that is also within the President's expertise as Chief Executive. As explained in the Decision, P.D. No. 242 highlights the practical considerations of administrative settlement to avoid clogging the court dockets and avoid wasting government resources where the ultimately the only party involved is the Government.[24]

Finally, the Court rejects DOE's invocation of the higher interest of substantial justice. The Court has emphasized that jurisdiction is a matter of substantive law and is conferred by the Constitution or the law.[25] Thus, the mere invocation of substantial justice does not automatically suspend the application of the rules, especially when what it seeks to alter is a matter of jurisdiction.

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20 *PSALM v. CIR*, supra note 11, at 1002.

21 Entitled "AN ACT CREATING THE COURT OF TAX APPEALS," approved on June 16, 1954.

22 Entitled "PRESCRIBING THE PROCEDURE FOR ADMINISTRATIVE SETTLEMENT OR ADJUDICATION OF DISPUTES, CLAIMS AND CONTROVERSIES BETWEEN OR AMONG GOVERNMENT OFFICES, AGENCIES AND INSTRUMENTALITIES, INCLUDING GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS, AND FOR OTHER PURPOSES," approved on July 9, 1973.

23 Id. at 134, the Decision.

24 Id. at 138-142.

25 *Non v. Office of the Ombudsman*, G.R. No. 251177, September 8, 2020.

For failing to raise matters compellingly persuasive to warrant the reconsideration of the assailed Resolution, the Motion is denied.

ACCORDINGLY, the Motion for Reconsideration is **DENIED**. The Decision, dated August 17, 2022, of the Court **STANDS**.

SO ORDERED.

MARIA FILOMENA D. SINGH
Associate Justice

WE CONCUR:

I maintain my Concurring Opinion

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

ATTESTATION

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

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third Division

CERTIFICATION

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

ALEXANDER G. GESMUNDO
Chief Justice