

## **SECOND DIVISION**

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

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS.  
COURT OF TAX APPEALS (FIRST DIVISION) AND PILIPINAS  
SHELL PETROLEUM CORPORATION, RESPONDENTS.**

**[G.R. No. 211294]**

**THE BUREAU OF CUSTOMS AND COLLECTOR OF CUSTOMS OF THE  
PORT OF BATANGAS, PETITIONERS, VS. PILIPINAS SHELL  
PETROLEUM CORPORATION, RESPONDENT.**

**[G.R. No. 212490]**

**PILIPINAS SHELL PETROLEUM CORPORATION, PETITIONER, VS.  
COURT OF TAX APPEALS (FIRST DIVISION), COMMISSIONER OF  
INTERNAL REVENUE, BUREAU OF CUSTOMS AND COLLECTOR OF  
CUSTOMS OF THE PORT OF BATANGAS, RESPONDENTS.**

### **D E C I S I O N**

**PERLAS-BERNABE, J.:**

These three (3) consolidated<sup>[1]</sup> cases originated from Court of Tax Appeals (CTA) Case No. 8535, wherein respondent Pilipinas Shell Petroleum Corporation (PSPC) assailed the validity of Document No. M-059-2012 and the consequent Demand Letter dated October 1, 2012 issued by the Collector of the Port of Batangas (Collector) of the Bureau of Customs (BOC) requiring PSPC to pay P1,994,500,677.47 in deficiency excise taxes, inclusive of interest and penalties, for its alkylate importations between January 2010 to June 2012.

#### **The Facts**

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

gasoline but a mere component additive,<sup>[5]</sup> and hence, should not be subject to excise tax.

Despite these findings, records show that the BIR, in September 2011, began inserting a *colatilla* in the ATRIGs it issued for PSPC's alkylate importations, stating that the BIR's tax assessments was "without prejudice to the collection of the corresponding excise taxes, penalties and interests depending on the final resolution of the Office of the Commissioner on the issue on whether this item is subject to the excise taxes under the NIRC of 1997, as amended." Since the ATRIGs were issued directly to the BOC,<sup>[6]</sup> and not to PSPC, the latter only found out about the *colatilla* later in the proceedings. Further, around the same time (September 2011), the Collector also sent a request for a legal opinion to the Department of Energy (DOE) with respect to the nature of alkylate. In a Letter dated June 27, 2012, the DOE likewise held that alkylate was not a finished product but an intermediate product;<sup>[7]</sup> hence, not subject to excise tax.

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

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

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

In August 2012, the BIR began issuing ATRIGs assessing PSPC's alkylate importations for excise tax. As such, PSPC filed a **Verified Urgent Motion for the Issuance of a Suspension Order with a Prayer for Immediate Issuance of a Temporary Restraining Order dated September 17, 2012** (September 17, 2012 Verified Urgent Motion) in CTA Case No. 8535 seeking to enjoin the Collector and the BIR from implementing Document No. M-059-2012 for PSPC's subject and future alkylate importations. The BOC and the Collector opposed the same.<sup>[13]</sup>

On August 31, 2012, Commissioner Biazon sent a letter to the CIR requesting for

assistance in the computation of deficiency excise taxes and applicable interests and penalties for PSPC's previous importations from 2010 to 2012.<sup>[14]</sup> On September 5, 2012, the CIR issued a letter-reply containing the requested computation in the aggregate amount of P1,994,500,677.47.<sup>[15]</sup> As a result, on **October 1, 2012**, the Collector sent a **Demand Letter to PSPC for the deficiency excise taxes, inclusive of interest and penalties, in the amount of P1,994,500,677.47** as computed by the CIR in her September 5, 2012 letter-reply.<sup>[16]</sup> Because of this development, PSPC **amended its Petition for Review in CTA No. 8535 to include the October 1, 2012 Demand Letter (Amended Petition)**.

On October 5, 2012, the CTA Second Division initially denied PSPC's September 17, 2012 Urgent Verified Motion on the ground that **no assessment has yet been issued**. However, on PSPC's motion for reconsideration and upon presenting the October 1, 2012 Demand Letter, **the CTA reversed itself via a Resolution dated October 22, 2012**, and issued a **Suspension Order covering the P1,994,500,677.47 demand by the Collector (October 22, 2012 Suspension Order)**. This notwithstanding, the CTA clarified that it was granting a Suspension Order only on the amounts covered by the assessment contained in the Demand Letter which was for importations from January 2010 to June 2012, and not a general Suspension Order as to future or incoming shipments. Anent these future/incoming shipments, it held that it had no authority to enjoin the collection of taxes sans an actual assessment.<sup>[17]</sup> **Notably, the October 22, 2012 Resolution did not rule on the PSPC's separate prayer** (in the September 17, 2012 Verified Urgent Motion) **for the issuance of a TRO/WPI to enjoin the implementation of Document No. M-059-2012**.

Thereafter, **the CIR, BOC, and the Collector filed an Omnibus Motion to dismiss the case, to lift the October 22, 2012 Suspension Order, and to require PSPC to explain how it obtained Document No. M-059-2012**. Essentially, they argued that: (a) the CTA has no jurisdiction over the case since Document No. M-059-2012 was neither a ruling nor an adverse decision but a mere internal communication between the COC and the CIR; (b) PSPC failed to exhaust the protest procedure under the Tariff and Customs Code of the Philippines (TCCP) in order to properly contest the tax assessment in the October 1, 2012 Demand Letter, thus rendering the same final and executory; and (c) PSPC failed to prove its entitlement to a Suspension Order.<sup>[18]</sup> The Omnibus Motion was opposed by PSPC which maintained that Document No. M-059-2012 was, in fact, a BIR Ruling and was issued by the CIR in the exercise of her quasi-judicial powers. In any event, it would fall under the "other matters" jurisdiction of the CTA.<sup>[19]</sup>

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

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

Meanwhile, in a Resolution<sup>[22]</sup> dated January 28, 2013, the CTA Second Division denied the November 5, 2012 Urgent Verified Motion and the Omnibus Motion. With respect to the Urgent Verified Motion, the CTA reiterated its position in its January 4, 2013 Resolution that no Suspension Order could be issued sans an actual assessment. As to the Omnibus Motion, it held that it has jurisdiction over PSPC's petition since: (a) **the assailed Document No. M-059-2012 was actually in the nature of a BIR Ruling**; and (b) the likewise assailed **October 1, 2012 Demand Letter was a tax assessment** given that liability of the taxpayer was definitively determined. Finally, the CTA held that there was sufficient basis to maintain the Suspension Order over the P1,994,500,677.47 assessment in the October 1, 2012 Demand Letter.

Unperturbed, the BOC and the Collector moved for reconsideration but was denied by the CTA First Division (not the Second Division due to a reorganization)<sup>[23]</sup> in a Resolution<sup>[24]</sup> dated June 24, 2013. The BOC and the Collector then elevated this resolution to the CTA *En Banc* through a Petition for Review, docketed as **CTA EB Case No. 1047**. However, in a Resolution<sup>[25]</sup> dated February 10, 2014, the CTA *En Banc* denied due course to their petition for being the wrong remedy to contest an interlocutory order of the CTA First Division. **Undeterred, the BOC and the Collector filed their Petition for Review on Certiorari<sup>[26]</sup> before this Court assailing the CTA En Banc's Resolution, which was docketed as G.R. No. 211294.**

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

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

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

On March 19, 2014, PSPC filed its **Urgent Verified Motion for the Issuance of a Suspension Order Against the Collection of Excise Taxes and Value Added Tax thereon on the Shipment of 80,162 Barrels of Alkylate as Delivered by**

**the Vessel MT Marine Express.** However, this was denied by the CTA First Division in a Resolution<sup>[34]</sup> dated April 2, 2014, opining that it has **no jurisdiction to issue Suspension Orders on incoming alkylate importations because the same were not covered by the Amended Petition for Review.** Furthermore, it held that the PSPC failed to initiate protest proceedings and that, in any event, jeopardy was not proven. Distressed by the CTA's sudden change of position, **PSPC filed a Petition for *Certiorari* with an application for the issuance of a TRO and/or WPI<sup>[35]</sup> before this Court assailing the April 2, 2014 Resolution of the CTA, which was docketed as G.R. No. 212490.**

### **Proceedings Before this Court**

In a Resolution<sup>[36]</sup> dated July 7, 2014, this Court consolidated all three (3) petitions and assigned the case to a member of the Second Division. It likewise granted PSPC's prayer for injunctive relief in G.R. No. 212490 and **issued a TRO enjoining the customs and taxing authority from imposing excise taxes on the incoming alkylate importations of PSPC under Document No. M-059-2012 upon the posting of an appropriate bond in the amount of P496,944,000.00** (July 7, 2014 TRO).

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

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

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

To recount, these cases were re-raffled to a member of the Third Division of the Court on March 9, 2017, following the original *ponente's* retirement. They were again re-raffled to a member of the Court's Second Division in the same year, and was subsequently transferred to the Third Division on January 5, 2019 following a reorganization. On January 28, 2019, it was re-raffled to a member of the First Division of the Court. Finally, the case was re-raffled to a member of the current