



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

OCEANAGOLD (PHILIPPINES), G.R. No. 234614
INC.

Petitioner, Present:

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

- versus -

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

Promulgated:

June 14, 2023

Michael B. Bant

DECISION

DIMAAMPAO, J.:

This Petition for Review on *Certiorari*¹ oppugns the Decision² and Resolution³ of the Court of Tax Appeals (CTA) sitting *en banc* in CTA EB No. 1222, which affirmed the denial of the petition filed by Oceanagold

¹ *Rollo* (Vol. I), pp. 43-93.

² *Id.* at 7-20. The Decision dated June 16, 2016 was penned by Associate Justice Esperanza R. Fabon-Victorino, with the concurrence of Associate Justices Juanito C. Castañeda Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, and Cielito N. Mindaro-Grulla. Presiding Justice Roman G. Del Rosario issued a Dissenting Opinion, which was joined by Associate Justice Ma. Belen M. Ringpis-Liban. Associate Justice Amelia R. Cotangco-Manalastas was on leave, *id.* at 21-27.

³ *Id.* at 28-35. The Resolution dated September 22, 2017 was penned by Associate Justice Esperanza R. Fabon-Victorino, with the concurrence of Associate Justices Juanito C. Castañeda Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, and Cielito N. Mindaro-Grulla. Presiding Justice Roman G. Del Rosario maintained his Dissenting Opinion, which was joined by Associate Justice Catherine T. Manahan. Associate Justice Ma. Belen M. Ringpis-Liban was on leave, *id.* at 36-38.

(Philippines), Inc. (petitioner) before the CTA Second Division for lack of jurisdiction, and which denied its Motion for Reconsideration⁴ and Supplement to Motion for Reconsideration⁵ thereof, respectively.

The material operative facts are as follows:

On June 20, 1994, Climax-Arimco Mining Corporation (then known as Arimco Mining Corporation) entered into a Financial or Technical Assistance Agreement with the Republic of the Philippines for the large-scale exploration, development, and eventual shared commercial utilization of mineral deposits over a certain area spanning the Provinces of Nueva Vizcaya and Quirino.⁶

Thereafter, with the approval of the Secretary of the Department of Environment and Natural Resources (DENR), Climax-Arimco Mining Corporation transferred all its rights under the Financial or Technical Assistance Agreement to petitioner (then known as Australasian Philippines Mining, Inc.).⁷

Petitioner later identified about 975 hectares in Didipio as suitable for the project (Didipio Project), and filed a Partial Declaration of Mining Feasibility, which includes a Mining Project Feasibility Study. Petitioner was then permitted to operate the Didipio Project after the DENR approved its Partial Declaration of Mining Feasibility.⁸

On February 13, 2007, petitioner requested the Commissioner of Internal Revenue (respondent) for a ruling to confirm its tax exemption for excise taxes on minerals during the recovery period, which would commence from the date of commercial operation but not exceeding five (5) years or until the date of actual recovery, whichever came earlier.⁹ In response, respondent issued Bureau of Internal Revenue (BIR) Ruling No. 10-2007,¹⁰ confirming petitioner's tax exemption in accordance with the terms of the Financial or Technical Assistance Agreement, the Philippine Mining Act of 1995,¹¹ and its Implementing Rules and Regulations.¹²

Curiously, on September 3, 2012, the BIR Revenue Region No. 3 issued Mission Order No. 00030182,¹³ authorizing revenue officers to search petitioner's premises for articles subject to excise tax and to detain packages

⁴ *Id.* at 116-139.

⁵ *Id.* at 145-157.

⁶ *Id.* at 8.

⁷ *Id.*

⁸ *Id.* at 9.

⁹ *Id.*

¹⁰ *Id.* at 389-394.

¹¹ Republic Act No. 7942, AN ACT INSTITUTING A NEW SYSTEM OF MINERAL RESOURCES EXPLORATION, DEVELOPMENT, UTILIZATION, AND CONSERVATION, approved on 3 March 1995.

¹² *Rollo* (Vol. I), p. 9.

¹³ *Id.* at 536-537.

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containing excisable articles.¹⁴

Later that year, petitioner commenced the commissioning of the Didipio Project and mined and stockpiled around 800,000 metric tons of ore for processing to produce copper concentrates. However, these mineral ores were detained by the BIR to prevent it from being removed with prepayment of excise tax. This detention was covered by Apprehension Slip No. 00013424. Petitioner lodged a protest to this detention on December 10, 2012.¹⁵

In 2013, petitioner was authorized to make its first sale and delivery of 5,500 metric tons of copper concentrates to a shipping point in Poro Point, La Union. On February 11 and 12, 2013, while petitioner was transporting the copper concentrates from the Didipio mining site, the BIR seized and detained a total of 100 metric tons of copper concentrates with an estimated value of USD 320,000.00. These two apprehensions were covered by Apprehension Slips No. 00013426 and 00013427, respectively.¹⁶

Also on February 12, 2013, petitioner received a letter from respondent denying its letter-protest dated December 10, 2012. A few days later, respondent issued Revenue Memorandum Circular No. 17-2013,¹⁷ which revoked and invalidated BIR Ruling No. 10-2007.¹⁸

Subsequently, on February 20, 2013, the BIR again seized and detained 160 metric tons of copper concentrates with an estimated value of USD 512,000.00 that petitioner was delivering to its buyer.¹⁹

Fearing that it would be found liable for breach of its contractual obligations, petitioner paid under protest the excise taxes allegedly due on the seized copper concentrates and the remaining concentrates awaiting removal in the total amount of 5,500 metric tons, valued at PHP 14,359,922.59. Despite this payment, the BIR again seized and detained 40 metric tons of copper concentrates that were in transit on March 1, 2013.²⁰

Aggrieved, petitioner filed a Petition for Review (with Extremely Urgent Prayer for Issuance of a Suspension Order and Status Quo Ante Order) before the CTA assailing: (1) the seizure and detention of its copper concentrates on February 11, 12 and 20 2013, and March 1, 2013; (2) the alleged illegal collection of excise tax on the 5,500 metric tons of copper concentrates; and (3) the validity of Revenue Memorandum Circular No. 17-2013.²¹

¹⁴ *Id.* at 9.

¹⁵ *Id.* at 9-10.

¹⁶ *Id.* at 10.

¹⁷ *Id.* at 397-399.

¹⁸ *Id.* at 10.

¹⁹ *Id.*

²⁰ *Id.* at 10-11.

²¹ *Id.* at 11.

Incipiently, the CTA Second Division granted petitioner's application for the issuance of a Suspension Order, which took effect after petitioner posted a bond.²²

Before trial proper commenced, respondent filed an Omnibus Motion (to Lift or Dissolve Suspension Order and to Preliminary Determine Issue of Jurisdiction),²³ primarily arguing that the CTA had neither jurisdiction to determine the validity of a statute or an administrative regulation²⁴ nor jurisdiction to determine the propriety of the apprehension and seizure of the copper concentrates extracted by petitioner.²⁵

In its Resolution²⁶ dated March 20, 2014, the CTA Second Division denied the Omnibus Motion. Undeterred, respondent filed a Motion for Clarification and/or Reconsideration.²⁷

In the Resolution²⁸ dated June 13, 2014, the CTA Second Division granted the Motion and set aside its earlier Resolution. Accordingly, petitioner's Petition was denied for lack of jurisdiction and the Suspension Order was lifted.²⁹ On the strength of the doctrine in *British American Tobacco v. Sec. Camacho, et al.*,³⁰ as reiterated in succeeding cases,³¹ the CTA Second Division agreed with the respondent that jurisdiction over a question of the validity and constitutionality of rules and regulations, such as Revenue Memorandum Circular No. 17-2013, lies with the regular courts and not the CTA.³² It also declared that it could not rule on the validity of the BIR's apprehension and detention of petitioner's copper concentrates since this would necessarily depend on the validity or invalidity of the assailed Revenue Memorandum Circular.³³

Petitioner moved for reconsideration,³⁴ but this was denied in the Resolution³⁵ dated September 1, 2014. Thus, petitioner filed an appeal before the CTA *En Banc*.³⁶

²² *Id.*

²³ *Rollo* (Vol. II), pp. 918-928.

²⁴ *Id.* at 920.

²⁵ *Id.* at 921.

²⁶ *Id.* at 970-974. ANNEX "AA".

²⁷ *Id.* at 975-980. ANNEX "BB".

²⁸ *Id.* at 1055-1061. Signed by Associate Justices Juanito C. Castañeda, Jr., Caesar A. Casanova, and Amelia R. Cotangco-Manalastas.

²⁹ *Id.* at 1061.

³⁰ 584 Phil. 489 (2008).

³¹ *See Commissioner of Customs, et al. v. Hypermix Feeds Corp.*, 680 Phil. 681 (2012); and *Carbonilla, et al. v. Board of Airlines Representatives*, 673 Phil. 413 (2011).

³² *Rollo* (Vol. II), pp. 1058-1059.

³³ *Id.* at 1059.

³⁴ *Id.* at 1062-1084. ANNEX "JJ".

³⁵ *Id.* at 1089-1091. Signed by Associate Justices Juanito C. Castañeda, Jr., Caesar A. Casanova, and Amelia R. Cotangco-Manalastas.

³⁶ *Rollo* (Vol. I), pp. 168-199.

In the challenged Decision, the CTA *En Banc* denied petitioner's appeal and affirmed the assailed rulings of its Second Division.³⁷ The CTA *En Banc* declared that with the promulgation of the case of *The Philippine American Life and General Insurance Co. v. The Secretary of Finance*,³⁸ there was no longer any doubt that the CTA, through its power to issue writs of *certiorari*, had appellate jurisdiction to rule on the validity of a particular administrative rule or regulation.³⁹ Nonetheless, the CTA *En Banc* maintained that it could not take proper cognizance of the case for petitioner's failure to exhaust administrative remedies before it sought judicial relief.⁴⁰ Petitioner should have raised the validity of Revenue Memorandum Circular No. 17-2013 before the Secretary of Finance pursuant to the first paragraph of Section 4 of the National Internal Revenue Code (Tax Code);⁴¹ its failure to do so was fatal to its cause. The CTA *En Banc* also echoed the sentiment that the resolution on the validity of the apprehension, seizure, and detention of the copper concentrates in this case cannot be cleaved from the determination of the validity of the assailed Revenue Memorandum Circular.⁴²

Petitioner's bid for reconsideration⁴³ of the foregoing Decision having been denied in the impugned Resolution, it lodged the present Petition before this Court.

Petitioner argues that the true matter elevated for the CTA's resolution is not Revenue Memorandum Circular No. 17-2013 but rather respondent's apprehension, seizure, and detention of its copper concentrates.⁴⁴ Petitioner advances the theory that the BIR revenue officers' act of enforcing the collection of excise taxes by apprehending, seizing, and detaining petitioner's copper concentrates, pursuant to Sections 171 and 172 of the Tax Code, constitutes a decision on "other matters," which is directly appealable to the CTA.⁴⁵ In any event, even assuming that the main issue is the validity of Revenue Memorandum Circular No. 17-2013, the CTA still has jurisdiction over the case pursuant to the Court's pronouncement in *Banco De Oro, et al. v. Rep. of the Phils., et al.*⁴⁶ (*Banco de Oro*). There was also no need to exhaust administrative remedies in this case since what was in issue was not respondent's power to interpret laws, but its decision to collect excise taxes against petitioner's copper concentrates. Additionally, assuming *arguendo* that the rule on exhaustion of administrative remedies was applicable, several exceptions apply in petitioner's favor, including a purported violation of due process, the patent illegality of the BIR's actions, the irreparable injury done

³⁷ *Id.* at 19.

³⁸ 747 Phil. 811 (2014).

³⁹ *Rollo* (Vol. 1), pp. 15-16.

⁴⁰ *Id.* at 16.

⁴¹ *Id.* at 16-18.

⁴² *Id.* at 18-19.

⁴³ *Id.* at 116-139 and 140-157.

⁴⁴ *Id.* at 57-59.

⁴⁵ *Id.* at 59-62.

⁴⁶ 793 Phil. 97 (2016).

on petitioner, the absence of a plain, speedy, and adequate remedy, and the circumstances necessitating urgent judicial intervention.⁴⁷

Issue

The crux of the controversy lies in whether or not the CTA *En Banc* erred in affirming that petitioner's case was properly denied for lack of jurisdiction.

THE COURT'S RULING

The Petition is partly meritorious.

As petitioner pointed out, the issue on the jurisdiction of the CTA to rule on both indirect and direct challenges to the validity of a tax law or regulation has already been settled by the Court *En Banc* in *Banco De Oro*,⁴⁸ to wit:

The [CTA] has undoubted jurisdiction to pass upon the constitutionality or validity of a tax law or regulation when raised by the taxpayer as a defense in disputing or contesting an assessment or claiming a refund. It is only in the lawful exercise of its power to pass upon all matters brought before it, as sanctioned by Section 7 of Republic Act No. 1125, as amended.

This Court, however, declares that the [CTA] 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 ([CIR], 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 [CTA].

In other words, within the judicial system, the law intends the [CTA] 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 [CTA].⁴⁹

This doctrine was subsequently reiterated in *Confederation for Unity, Recognition and Advancement of Government Employees (COURAGE) v. Commissioner, Bureau of Internal Revenue*⁵⁰ (*Courage*).

⁴⁷ *Rollo* (Vol. 1), pp. 64-70.

⁴⁸ *Banco De Oro, et al. v. Rep. of the Phils., et al., supra* note 46.

⁴⁹ *Id.* at 123-124.

⁵⁰ 835 Phil. 297 (2018).

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However, both *Banco de Oro* and *Courage* recognize that this authority flows from the CTA's exercise of its **appellate jurisdiction**. Indeed, the express recognition of the CTA's *certiorari* jurisdiction does not do away with the requirement of exhausting the available administrative remedies.⁵¹

“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.”⁵²

As succinctly summarized by the CTA *En Banc*, petitioner's Petition for Review before its Second Division assailed: (1) the seizure and detention of its copper concentrates on February 11, 12 and 20, 2013, and March 1, 2013; (2) the alleged illegal collection of excise tax on the 5,500 metric tons of copper concentrates; and (3) the validity of Revenue Memorandum Circular No. 17-2013.⁵³

With respect to the challenge on the validity of Revenue Memorandum Circular No. 17-2013, the CTA *En Banc* correctly held that this should have been first elevated to the Secretary of Finance.

Under Section 4⁵⁴ of the Tax Code, the CIR's power to interpret tax laws, which come in the form of various kinds of revenue issuances – including the assailed Revenue Memorandum Circular, is “subject to review by the Secretary of Finance.” As emphasized by the Court in *Courage*, “Department of Finance Department Order No. 007-02 issued by the Secretary of Finance laid down the procedure and requirements for filing an appeal from the adverse ruling of the CIR to the said office. A taxpayer is granted a period of thirty (30) days from receipt of the adverse ruling of the CIR to file with the Office of the Secretary of Finance a request for review in writing and under oath.”⁵⁵

However, it was an error for the CTA *En Banc* to throw out petitioner's case “lock, stock, and barrel” just for this reason. Contrary to its conclusions, the seizure, apprehension, and detention of petitioner's copper concentrates

⁵¹ See *Id.*; see also *Commissioner of Internal Revenue v. Court of Tax Appeals (First Division)*, G.R. Nos. 210501, 211294 & 212490, March 15, 2021.

⁵² *Commissioner of Internal Revenue v. Court of Tax Appeals (First Division)*, *Id.*

⁵³ *Rollo* (Vol. I), p. 11.

⁵⁴ 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.

⁵⁵ *Confederation of Unity, Recognition and Advancement of Government Employees (Courage) v. Commissioner, Bureau of Internal Revenue*, supra note 50 at 315. Underscoring supplied.

are not all hinged on Revenue Memorandum Circular No. 17-2013. Notably, petitioner inveighed against four (4) distinct instances, which were covered by separate Apprehension Slips, *i.e.*, the seizure, apprehension, and detention of copper concentrates on February 11, 12 and 20, 2013, and March 1, 2013.

It bears stressing that Revenue Memorandum Circular No. 17-2013 was only issued on February 15, 2013. Hence, at most, only the seizures on February 20, 2013 and March 1, 2013 would be hinged on the validity of the Revenue Memorandum Circular. Prior thereto, the tax treatment of minerals extracted by petitioner from the Didipio Project would have been governed by BIR Ruling No. 10-2007. Thus, the seizure and detention that occurred on February 11 and 12, 2013, covered by Apprehension Slips No. 00013426 and 00013427, should have been appreciated independently by the CTA in determining whether it still had jurisdiction over the remaining issues of the case. It is an elementary principle that “jurisdiction of the court over a subject matter is conferred only by the Constitution or by law as well as determined by the allegations in the complaint and the character of the relief sought.”⁵⁶

On this score, some clarification is necessary. Although the apprehension and seizure that occurred on February 11 and 12, 2013 should be appreciated as a separate matter from the issue regarding the validity of Revenue Memorandum Circular No. 17-2013, these are likewise covered by the rule on exhaustion of administrative remedies.

The BIR’s power to search vehicles and seize excisable articles flow from Sections 171 and 172 of the Tax Code:

SECTION 171. Authority of Internal Revenue Officer in Searching for Taxable Articles.— Any internal revenue officer may, in the discharge of his official duties, enter any house, building or place where articles subject to tax under this Title are produced or kept, or are believed by him upon reasonable grounds to be produced or kept, so far as may be necessary to examine, discover or seize the same.

He may also stop and search any vehicle or other means of transportation when upon reasonable grounds he believes that the same carries any article on which the excise tax has not been paid.

SECTION 172. Detention of Package Containing Taxable Articles.— Any revenue officer may detain any package containing or supposed to contain articles subject to excise tax when he has good reason to believe that the lawful tax has not been paid or that the package has been or is being removed in violation of law, and every such package shall be held by such officer in a safe place until it shall be determined whether the property so detained is liable by law to be proceeded against for forfeiture; but such summary detention shall not continue in any case longer than seven (7) days without due process of law or intervention of the officer to whom such detention is to be reported.

⁵⁶ See *Steel Corporation of the Philippines v. Bureau of Customs*, 825 Phil. 809, 822 (2018).

The foregoing provisions grant this authority, however, to revenue officers. Indeed, an examination of the Apprehension Slips⁵⁷ subject of this case would reveal that they are signed under the authority of mere revenue officers.

However, only matters decided by respondent or his duly authorized representative⁵⁸ are subject to the exclusive appellate jurisdiction of the CTA. This is clear from the express wording of Section 4 of the Tax Code in relation to Section 7(a)(1), Republic Act (RA) No. 1125,⁵⁹ as amended:⁶⁰

Tax Code

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. (Emphasis and underscoring supplied)

RA No. 1125, as amended

SEC. 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;**

⁵⁷ *Rollo* (Vol. I), pp. 321-333.

⁵⁸ See Section 7 of the Tax Code which reads:

SECTION 7. Authority of the Commissioner to Delegate Power.— The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: Provided, however, That the following powers of the Commissioner shall not be delegated: . . .

⁵⁹ AN ACT CREATING THE COURT OF TAX APPEALS, approved on June 16, 1954.

⁶⁰ Republic Act No. 9282, 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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. . . . (Emphasis supplied)

Rationally, the apprehension and seizure done pursuant to Sections 171 and 172 of the Tax Code would more properly fall under the purview of “other matters” in the aforecited provisions, rather than to be considered some form of assessment or penalty *per se*. Nevertheless, it is only the decision of respondent, or his duly authorized representative, on such matters which is appealable to the CTA, and certainly not the act of the revenue officers in the first instance.

Petitioner itself seemed to recognize this when it protested the detention of its minerals on December 7, 2012, covered by Apprehension Slip No. 00013424, before the Regional Director of the BIR Revenue Region No. 3 and the Revenue District Officer of the BIR Revenue District No. 14.⁶¹

Thus, strictly speaking, petitioner should have first filed a protest for the seizure and detention of its copper concentrates, prior to seeking judicial relief before the CTA.

Despite the foregoing, there is sufficient reason to relax the rule on exhaustion of administrative remedies.

Jurisprudence teaches that the rule on exhaustion of administrative remedies admits of certain exceptions such as:⁶²

- (1) when there is a violation of due process;
- (2) when the issue involved is purely a legal question;
- (3) when the administrative action is patently illegal amounting to lack or excess of jurisdiction;
- (4) when there is estoppel on the part of the administrative agency concerned;
- (5) when there is irreparable injury;
- (6) when the respondent is a department secretary whose acts as an alter ego of the President bears the implied and assumed approval of the latter;
- (7) when to require exhaustion of administrative remedies would be unreasonable;
- (8) when it would amount to a nullification of a claim;
- (9) when the subject matter is a private land in land case proceedings;
- (10) when the rule does not provide a plain, speedy and adequate remedy; or
- (11) when there are circumstances indicating the urgency of judicial intervention.

⁶¹ *Rollo*, (Vol. I), pp. 395-396.

⁶² See *Banco De Oro, et al. v. Rep. of the Phils., et al.*, *supra* note 46 at 111-112.

Several exceptions appear to be present in this case, particularly the first and fourth exceptions which apply to the case arising from the seizure and detention of copper concentrates occurring on February 11 and 12, 2013, as well as the resulting illegal exaction of excise taxes therefrom. The eleventh exception applies with regard to the three causes raised, *i.e.*, the seizure and detention of copper concentrates, the illegal collection of excise taxes, and the validity of Revenue Memorandum Circular No. 17-2013.

As to the first and fourth exceptions, as above discussed, prior to the issuance of Revenue Memorandum Circular No. 17-2013, petitioner had a right to rely on BIR Ruling No. 10-2007. In disregarding this ruling, respondent appears to have effectively applied Revenue Memorandum Circular No. 17-2013 retroactively in contravention of Section 246⁶³ of the Tax Code when it made the seizure and detention on February 11 and 12, 2013. Indeed, petitioner does not seem to have been afforded sufficient due process when the BIR suddenly changed its position anent the taxability of minerals extracted pursuant to Financial or Technical Assistance Agreements with the government during the recovery period. It has also been recognized that the application of Section 246 against the BIR is a form of equitable estoppel.⁶⁴

In relation to the eleventh exception, the potential breach of petitioner's contractual obligations with its buyer owing to every shipment of copper concentrates being detained by the BIR, as a result of applying Revenue Memorandum Circular No. 17-2013, supports the urgency of judicial intervention.⁶⁵

Thus, petitioner's failure to exhaust administrative remedies, with either the challenge against the seizure and detention of its copper concentrates or against Revenue Memorandum Circular No. 17-2013, can be excused in this instance.

As to petitioner's prayer for the reinstatement of a Suspension Order in its favor, suffice to say that this matter is best left to the determination of the CTA.

All in all, the interests of substantive justice would be better served if the assailed rulings of the CTA were set aside and the parties were afforded the opportunity to ventilate and prove their respective claims in a full-blown

⁶³ 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:

- (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.

⁶⁴ See *Hedcor Sibulan, Inc. v. Commissioner of Internal Revenue*, G.R. No. 202093, September 15, 2021.

⁶⁵ *Rollo* (Vol. I), pp. 10-11.

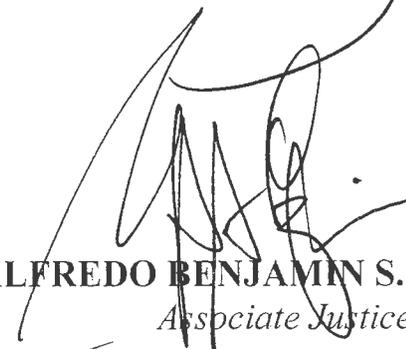
trial.

THE FOREGOING DISQUISITIONS CONSIDERED, the Petition for Review on *Certiorari* is hereby **PARTLY GRANTED**. The Decision dated June 16, 2016 and the Resolution dated September 22, 2017 of the Court of Tax Appeals *En Banc* in CTA EB No. 1222 are **SET ASIDE**. The case is **REMANDED** to the Court of Tax Appeals, which is consequently **DIRECTED** to resolve the same with utmost dispatch on the merits.

SO ORDERED.


JAPAR B. DIMAAMPAO
Associate Justice

WE CONCUR:


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

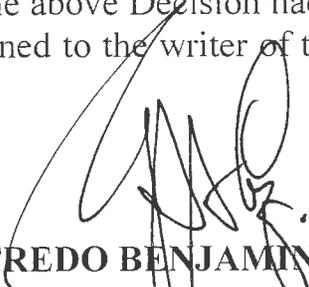

HENRI JEAN PAUL B. INTING
Associate Justice


SAMUEL H. GAERLAN
Associate Justice


MARIA FILOMENA D. SINGH
Associate Justice

ATTESTATION

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


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 Decision had been reached in consultation before the case was assigned to the writer of the opinion of this Court.



MARVIC M.V.F. LEONEN
*Acting Chief Justice**

* Per Special Order No. 2977 dated June 1, 2023.