SECOND DIVISION

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

Promulgated:

February 4, 2025

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CONCURRING OPINION

LEONEN, *J.*:

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

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

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

I

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

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

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

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

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

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

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

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

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

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5 *Id.* at 758–761.

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

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

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

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

II

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

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

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

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

MARVIC M.V.F. LEONEN
Senior Associate Justice

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