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COURT OF TAX APPEALS ("CTA") DECISIONS

TAX-EXEMPT PRIVILEGES OF THE FILIPINO EMPLOYEES OF THE ASIAN DEVELOPMENT BANK (ADB) UNDER THE ADB CHARTER MUST YIELD TO MUNICIPAL LAWS OR TO THE PREROGATIVE OF THE PHILIPPINE GOVERNMENT TO TAX ITS NATIONALS. The Philippines has expressly reserved its right to tax the salaries and emoluments paid by ADB to its citizens, as follows: "The Government of the Philippines declares that it retains for itself and its political subdivisions the right to tax salaries and emoluments paid by the Bank to citizens or nationals of the Philippines." The national law on taxation as embodied in the National Internal Revenue Code of 1997 ("1997 NIRC") shall govern the taxability of the compensation earned by the Filipino employees of ADB. ***Aguilar v. Commissioner of Internal Revenue, C.T.A. EB Case No. 2652 (C.T.A. Case No. 9867) dated October 2, 2023.***

SECTION 205 OF THE 1997 NIRC PROVIDES THAT THE JUDGMENT IN A CRIMINAL CASE SHALL NOT ONLY IMPOSE THE PENALTY BUT SHALL ALSO ORDER PAYMENT OF THE TAXES SUBJECT OF THE CRIMINAL CASE AS FINALLY DECIDED BY THE COMMISSIONER. The filing of the criminal case before the CTA also implies the filing of the civil action for the recovery of civil liability for taxes and penalties. Correspondingly, an accused who is *convicted* of a criminal charge could be held civilly liable in the same case when the facts established by the evidence warrant. However, Section 205 of the 1997 NIRC requires that there must be a *final determination of such liability by the Commissioner*. This determination of civil liability for the payment of taxes by the Commissioner refers to a formal assessment or Final Assessment Notice. ***People v. De Guzman, C.T.A. EB Crim. Case Nos. 089 & 092 (C.T.A. Crim. Case Nos. O-690 & O-691) dated October 3, 2023.***

IT IS WELL-SETTLED THAT AN ASSESSMENT IS NOT NECESSARY BEFORE A CRIMINAL CHARGE CAN BE FILED. It is well-settled that an assessment is not necessary before a criminal charge can be filed. Section 222 of the 1997 NIRC explicitly provides that in case of failure to file a return, proceedings in court may be commenced without an assessment. ***People v. De Guzman, C.T.A. EB Crim. Case Nos. 089 & 092 (C.T.A. Crim. Case Nos. O-690 & O-691) dated October 3, 2023.***

THERE IS IMPROPER SERVICE WHERE THE PRELIMINARY ASSESSMENT NOTICE (PAN) AND THE FORMAL LETTER OF DEMAND WITH ASSESSMENT NOTICE (FAN) WERE SENT BY REGISTERED MAIL NOT TO THE TAXPAYER'S *KNOWN ADDRESS*. Under Section 228 of the 1997 NIRC, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise the assessment shall be void. In the instant case, the taxpayer transferred from its *old address* in Pasig City to the new one in Mandaluyong City. As a consequence, the attempts made by the BIR to personally serve the PAN proved *futile* and it had to resort to service by registered mail. However, despite knowing that the old address in Pasig City was no longer used by the taxpayer, the PAN and then the FAN were still sent to the old address. Expectedly, since both the PAN dated October 6, 2016 and the FAN dated October 27, 2016 were sent by registered mail to the old address, they were *not* received by the taxpayer. The taxpayer had already transferred to Mandaluyong City as early as September 1, 2014. The BIR cannot feign ignorance of the taxpayer's *actual* location because as early as October 9, 2014 it was able to visit the taxpayer's *new address* in Mandaluyong City when it conducted its on-site audit. Based on the BIR's own regulations, the taxpayer's location in Mandaluyong City qualifies as a known address, which is defined as "a place other than the registered address where business activities of the party are conducted." Thus, instead of adhering to the *old address* in Pasig City, the BIR should have updated its system to properly serve the assessment in Mandaluyong City and comply with Section 228's mandate. ***Commissioner of Internal Revenue v. Altimax Broadcasting Co., Inc., C.T.A. EB Case No. 2612 (C.T.A. Case No. 10044) dated October 3, 2023.***

THE CTA MAY RESOLVE THE ISSUE ON THE LACK OF AUTHORITY OF THE REVENUE OFFICERS ("RO") WHO CONDUCTED THE AUDIT EVEN IF SAID ISSUE WAS NOT MENTIONED IN THE PETITION FOR REVIEW AND WAS ONLY RAISED IN THE PARTIES' RESPECTIVE MEMORANDUM. The issue on the lack of authority of the ROs who conducted the audit of petitioner is intricately related to the principal issue to be resolved by this Court, i.e., whether or not petitioner is liable for deficiency taxes for taxable year 2007, and is necessary to achieve an orderly and comprehensive disposition of the case. Moreover, the said issue may be resolved by an examination of the evidence on record and would not require the presentation of additional evidence. ***Misnet Education, Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 9941 dated October 3, 2023.***

THE RO WHO CONTINUED THE AUDIT WAS NOT AUTHORIZED BY A VALID LETTER OF AUTHORITY ("LOA") TO PERFORM THE ASSESSMENT FUNCTION; HENCE, THE RESULTING TAX ASSESSMENT IS VOID AB INITIO. There must be a grant of authority in the form of a LOA, before any RO can conduct an examination or assessment. Only the ROs actually named under the LOA are authorized to examine the taxpayer and only the Commissioner of Internal Revenue (CIR) and his/her duly authorized representatives, i.e., Deputy Commissioners, the Revenue Regional Directors, and such other officials as may be authorized by the CIR, may issue the LOA.

Moreover, the reassignment or transfer of an RO requires the issuance of a new or amended LOA that will enable the substitute or replacement RO to continue the audit or investigation. A MOA, referral memorandum, or any equivalent document is not proof of the existence of authority of the substitute or replacement RO. Neither is a Referral Memorandum issued by the Revenue District Officer (RDO) directing another RO to continue with the examination equivalent to a LOA nor does it cure the RO's

lack of authority. In the absence of a new LOA issued in favor of the ROs who recommended the issuance of the deficiency tax assessment against the respondent, the resulting assessment is void. ***VMC Farmers Multi-Purpose Cooperative v. Commissioner of Internal Revenue, C.T.A. Case No. 9859 dated October 4, 2023.***

THE CTA IS NOT BARRED FROM RESOLVING THE ISSUE ON THE ALLEGED INVALIDITY OF ASSESSMENT EVEN IF THIS IS NOT RAISED AT THE ADMINISTRATIVE LEVEL. ***Grand Union Supermarket Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 10299 dated October 25, 2013.***

THE NON-INDICATION OF A DUE DATE IN THE FAN AND FINAL DECISION ON DISPUTED ASSESSMENT (FDDA) RENDERS THE ASSESSMENT VOID. A tax assessment must not only contain a computation of tax liabilities but must also include a demand upon the taxpayer for the settlement of a tax liability. In the instant case, the FAN and the FDDA did not contain a definite due date. Moreover, the Assessment Notices where due dates should be indicated are left blank. ***Grand Union Supermarket Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 10299 dated October 25, 2013.***

THE LAPSE OF THE AUDIT PERIOD DOES NOT RENDER THE SUBJECT LOA INVALID AND WILL NOT HAVE THE EFFECT OF REVOKING THE AUTHORITY GIVEN THEREUNDER TO THE CONCERNED RO. Under RMO No. 19-2015, there is indeed a 180-day period for regional cases within which to submit a report of investigation. However, nothing therein states that in case the 180-day period to submit the said report of investigation is not observed, the LOA issued will be a nullity. In fact, in the same issuance, it was clearly stated that the failure to render a report of investigation/verification within the time frame shall not nullify the LOA. The revalidation of LOAs which should be done "for failure of the revenue officials to complete the audit within the prescribed period," has been withdrawn beginning on June 1, 2010. The effect of such failure is merely to subject the concerned RO(s) to applicable administrative sanctions, not to render null the issued LOA. More significantly, the lapse of the said period of audit would not have the effect of revoking the authority given to the concerned RO(s). ***IBMS Technology Phils. Corp. v. Commissioner of Internal Revenue, C.T.A. Case No. 9970 dated October 5, 2023.***

SALE TO NON-RESIDENT FOREIGN CORPORATIONS THAT ARE NOT SUPPORTED BY THE REQUIRED DOCUMENTS WILL NOT QUALIFY FOR VAT ZERO-RATING. The taxpayer-claimant must present, at the very least, both the Securities and Exchange Commission (SEC) Certificates of Non-Registration — to prove that the affiliate is foreign, and the Articles or Certificates of Foreign Incorporation, printed screenshots of US SEC website showing the state/province/country where the entity was organized, or any similar document — to prove the fact of not engaging in trade or business in the Philippines at the time the sales are rendered. ***Rema Tip Top Philippines, Inc. v. Commissioner of Internal Revenue, C.T.A. EB Case No. 2623 (C.T.A. Case No. 9836) dated October 4, 2023.***

THE JUDICIAL CLAIM SHALL BE FILED WITHIN 30 DAYS AFTER RECEIPT OF CIR'S DECISION OR RULING OR AFTER THE EXPIRATION OF THE 120-DAY [NOW 90-DAY] PERIOD, WHICHEVER IS SOONER. Petitioner filed its administrative claim for input VAT refund for the 3rd and 4th quarters of calendar year 2017, as well as its supporting documents, on September 30, 2019. Counting ninety (90) days therefrom, the BIR had until December 29, 2019 to

decide on said administrative claim. As no BIR adverse decision was received by respondent as of December 29, 2019, the law considered such administrative claim as denied. Counting another thirty (30) days from December 29, 2019, respondent had until January 28, 2020 to seek judicial redress. Ergo, petitioner's belated filing of its Petition for Review on February 13, 2020 deprived the Court of jurisdiction over CTA Case No. 10258. ***CITCO International Support Services Limited-Philippine ROHQ v. Commissioner Internal Revenue, C.T.A. Case No. 10258 dated October 5, 2023.***

THE IMPOSITION OF A MANDATORY 90-DAY PERIOD TO ACT UPON THE ADMINISTRATIVE CLAIMS FOR REFUND UNDER THE TRAIN LAW DID NOT OPERATE TO REPEAL THE JURISDICTION OF THE COURT OVER THE "INACTION" OF THE CIR WHICH IS CONSIDERED AS A "DEEMED DENIAL" APPEALABLE UNDER REPUBLIC ACT NO. 1125. ***Regus Service Centre Philippines B.V.-ROHQ v. Commissioner of Internal Revenue, C.T.A. Case No. 9907 dated October 25, 2023.***

IN CASES OF RECOVERY OF ERRONEOUSLY PAID OR ILLEGALLY COLLECTED TAX, BOTH THE CLAIM FOR REFUND AND THE FILING OF THE SUIT SHOULD BE MADE BEFORE THE EXPIRATION OF TWO (2) YEARS FROM THE DATE OF PAYMENT REGARDLESS OF ANY SUPERVENING CAUSE THAT MAY ARISE AFTER PAYMENT. While the law provides that the two (2)-year prescriptive period in claiming a tax credit/refund is counted from the date of payment of the tax, jurisprudence clarified that the two years is reckoned from the filing of the final adjustment return or adjusted final tax return because this is where the figures of the gross receipts and deductions have been audited and adjusted, reflective of the results of the operations of a business enterprise. ***Stages Production Specialists, Inc. v. Commissioner of Internal Revenue, C.T.A. EB Case No. 2658 (C.T.A. Case No. 9817) dated October 4, 2023.***

THE PRINCIPLE OF SOLUTIO INDEBITI DOES NOT APPLY WITH REGARD TO THE FILING OF THE INTERNAL REVENUE TAX REFUND CLAIMS. In *Commissioner of Internal Revenue vs. Manila Electric Company (MERALCO), G.R. No. 181459 dated June 9, 2014*, the Supreme Court ruled on the non-applicability of the principle of *solutio indebiti* with regard to filing of internal revenue tax refund claims. There can be no exception from the application of the two (2)-year prescriptive period based on equity considerations because equity cannot be applied when there is clear statutory law governing the matter. Thus, to be entitled to a refund of erroneously paid taxes, petitioner must comply with the requisites provided for under Sections 204(C) and 229 of the 1997 NIRC. ***Valle Verde Country Club, Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 10306 dated October 6, 2023.***

RECREATIONAL CLUB MEMBERSHIP FEES, ASSESSMENT DUES AND SIMILAR CHARGES ARE NOT SUBJECT TO VALUE-ADDED TAX (VAT) UNDER SECTION 105 OF THE 1997 NIRC. Recreational clubs are not selling any kind of service when they are collecting membership fees, assessment dues, and the like from their members, nor are the members procuring services from the recreational clubs. As such, there could be no "sale, barter or exchange of goods or properties, or sale of a service" to speak of, which would then be subject to VAT under the NIRC of 1997, as amended. ***Valle Verde Country Club, Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 10306 dated October 6, 2023.***

BINGO GAMES OPERATION IS COVERED BY THE PHRASE "OPERATION OF CASINOS" UNDER PRESIDENTIAL DECREE (PD) NO. 1869. The Philippine Amusement and Gaming Corporation (PAGCOR), in its Casino Regulatory Manual for Fiesta Casino Licensees

Version 2.0, defines "casino" or "casino premises" as "the casino to be operated by the Licensee under the Provisional License or Authority to Operate whichever is applicable, in which all gaming activities shall take place. Casino or casino premises shall be made up of gaming areas and ancillary areas." In line with the foregoing principle and considering the ordinary acceptance and signification of the term "casino," it is without a doubt that petitioner's bingo gaming operations relate to the operations of casino(s) under PD No. 1869, as amended. ***AB Leisure Exponent, Inc. v. Commissioner of Internal Revenue, C.T.A. EB Case No. 2595 (C.T.A. Case No. 9620) dated October 4, 2023.***

THE FAILURE TO AVAIL OF THE REMEDY OF APPEAL WITHIN THE 30-DAY PERIOD FROM RECEIPT OF THE PRELIMINARY COLLECTION LETTER ("PCL") MADE THE FAN FINAL. The Supreme Court has, in a myriad of relevant cases, treated and defined, albeit in different forms, acts that may constitute as a denial or rejection of the protest filed by a taxpayer. The contents of the PCL passed the standard set by the Supreme Court as having the tone of finality. The PCL made a clear demand for payment of the alleged tax liabilities of petitioner and capped by a final statement. The categorical demand for payment coupled with the threat to pursue collection of the alleged tax liabilities if payment is not made, characterizes the finality of the decision. The failure of petitioner to avail of the remedy of appeal within the 30-day period from receipt of the PCL made the FAN final, executory and demandable. ***JTKC Land, Inc. v. Commissioner of Internal Revenue, C.T.A. EB Case No. 2378 (C.T.A. Case No. 9597) dated October 5, 2023.***

AS PART OF THE DUE PROCESS REQUIREMENT IN THE ISSUANCE OF TAX ASSESSMENT, THE BIR MUST GIVE REASONS FOR REJECTING THE TAXPAYER'S REFUTATIONS AND MUST GIVE PARTICULAR FACTS UPON WHICH THE CONCLUSIONS FOR ASSESSING THE TAXPAYER ARE BASED AND THOSE FACTS MUST APPEAR ON RECORD. A significant part of the due process requirement in the issuance of tax assessments is that the concerned taxpayer must be informed, in writing, of the law and of the facts on which the assessment is made. Such requirement must be embodied in the PAN, FLD/FAN, and FDDA. Specifically, when respondent rejects the taxpayer's explanations, he must give some reason for doing so and the particular facts and law upon which his conclusion are based, and those facts must appear in the record. As a corollary, the concerned taxpayer must *not* be left unaware on how respondent or his duly authorized representatives appreciated the explanations or defenses raised in connection with the assessment. In the instant case, the FLD/FAN still consisted of the same deficiency taxes as in the PAN. While the aggregate amount of taxes being assessed increased, a comparison of the figures stated in the PAN and the FLD/FAN would reveal that the respective amounts of basic taxes, surcharge and compromise penalties remain unchanged. Respondent merely adjusted the interests being imposed. Moreover, the Details of Discrepancy for the PAN and the FLD are mostly identical. Thus, respondent did not address the refutations made by petitioner in its reply to the PAN. Respondent has obviously not observed the due process requirement in the issuance of the FLD. ***Will Team PH, Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 10154 dated October 5, 2023.***

COLLECTION OF TAXES VIA THE 5-DAY VAT COMPLIANCE NOTICE AND CLOSURE ORDER WITHOUT A FORMAL ASSESSTMENT IS A VIOLATION OF THE TAXPAYER'S RIGHT TO DUE PROCESS. ***Commissioner of Internal Revenue v. Paymentwall Inc., CTA EB Case No. 2510 (C.T.A. Case No. 9727) dated October 17, 2023.***

NO COLLECTION EFFORT CAN BE MADE WHEN THE SAME IS BASED ON A VOID ASSESSMENT. Having found that respondent's assessments of petitioner's alleged tax deficiencies is void, the CTA then declared that there are no valid assessments of petitioner's percentage tax and DST for taxable year 2008 in this case. Consequently, without corresponding assessments, respondent is barred from collecting the Disputed Amount, lest he act contrary to law and jurisprudence. ***Sun Life Grepa Financial, Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 10080 dated October 6, 2023.***

SUBSEQUENT OR BELATED FILING OF PETITIONER'S VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING SHOULD NOT WARRANT THE DISMISSAL OF THE PETITION. ***Grid Solutions (U.S.) LLC. v. Commissioner of Internal Revenue, C.T.A. Case No. 10146 dated October 9, 2023.***

A COURT IS NOT OBLIGED TO ADDRESS EACH INDIVIDUAL ARGUMENT IN A MOTION FOR RECONSIDERATION THAT MERELY REITERATES ARGUMENTS PASSED UPON PREVIOUSLY. Whenever the issues raised in the Motion for Reconsideration have already been addressed and passed upon in the Decision, and the Motion for Reconsideration fails to raise matters which are substantially plausible or compellingly persuasive enough to lead the Court to rule in favor of the desired course of action, then the Motion for Reconsideration must be denied by the Court. ***Petron Corp. v. Commissioner of Internal Revenue, C.T.A. Case Nos. 9738 & 9741 dated October 9, 2023.***

A MOTION FOR PRELIMINARY INJUNCTION IS INEXTRICABLY LINKED TO SOME MAIN ACTION PENDING BEFORE A COURT. The filing and grant of such a motion presuppose an action or proceeding before a court. It cannot stand alone in a vacuum independent of some act or acts complained of that is/are the subject of the action or proceeding. One of the primary purposes of a preliminary injunction is to ensure that the Court can meaningfully decide upon a *main* action. The absence of such a main action, then, can render a preliminary injunction pointless. ***AGM Ventures Enterprises, Inc. v. Bureau of Internal Revenue, C.T.A. Case No. 11144 dated October 9, 2023.***

THE CTA HAS JURISDICTION TO RULE ON THE CONSTITUTIONALITY OR VALIDITY OF TAX LAWS, REGULATIONS, AND ADMINISTRATIVE ISSUANCES. ***San Miguel Brewery, Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 10223 dated October 9, 2023.***

UNDER SECTION 108(B)(3) OF THE 1997 NIRC, WHEN A VAT-REGISTERED PERSON RENDERS SERVICES TO A PERSON ENJOYING A TAX EXEMPTION THAT, IN ESSENCE, SUBJECTS THE SUPPLY OF SUCH SERVICES TO ZERO PERCENT RATE, SUCH SUPPLY OR SALE SHALL BE REGARDED AS ZERO-RATED. All sales of goods, property or services by a VAT-registered supplier to a PEZA-registered enterprise, regardless of the type of tax exemption availed of by the latter, shall be subject to VAT at zero percent, not at the regular rate of 12%. To enjoy the benefit of VAT zero-rating of its sales, the supplier is not even required to secure a separate certification therefor. RMC No. 74-99's provisions shall be sufficient basis for its entitlement to VAT zero-rating under Section 108(B)(3) of the 1997 NIRC.

Significantly, Section 108(B)(3) of the 1997 NIRC only requires the supplier to show that its client/purchaser enjoys a tax exemption (e.g., by virtue of PEZA registration) to avail itself of VAT

zero-rating of its sales of services to said client/purchaser. Thus, the taxpayer is not required to present its service agreement or even a certification of inward remittance showing that the transaction was paid in acceptable foreign currency. ***Commissioner of Internal Revenue v. Kurimoto (Philippines) Corp., C.T.A. EB Case No. 2666 (C.T.A. Case No. 9740) dated October 11, 2023.***

CLEARLY, FOR AS LONG AS THE ADMINISTRATIVE AND JUDICIAL CLAIMS FOR REFUND WERE FILED WITHIN THE TWO-YEAR REGLEMENTARY PERIOD, THERE IS NO VIOLATION OF THE DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES. Moreover, there is nothing in our laws and jurisprudence that supports petitioner's position that the exhaustion of an administrative claim for tax refund is a condition precedent that must be completely acted upon by the BIR before a judicial claim for refund may be filed by the taxpayer concerned. ***Commissioner of Internal Revenue v. Bethlehem Holdings, Inc., C.T.A. EB Case No. 2673 (C.T.A. Case No. 9789) dated October 11, 2023.***

BIR RULINGS AND ISSUANCES

IMPLEMENTING SECTION 237 OF THE 1997 NIRC ON THE ISSUANCE OF RECEIPTS OR SALES OR COMMERCIAL INVOICES BY AGRICULTURAL PRODUCERS. For ease of doing business, the Commissioner, hereby exempts Agricultural Producers from the issuance of principal and supplementary receipts or invoices on their sale of Agricultural Food Products, provided, that the gross sales/receipts for the year shall not exceed One Million Pesos (P1,000,000.00). ***Revenue Regulations No. 12-2023 dated October 2, 2023.***

Note: The information provided herein is general and may not be applicable in all situations. It should not be acted upon without specific legal advice based on particular situations. If you have any questions, please feel free to send us an email at mail@baniquedlaw.com.

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