Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

KUDOS METAL CORPORATION, *Petitioner,*	**C.T.A. CASE NO. 7044**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY**, and **PALANCA-ENRIQUEZ**, *JJ*.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: OCT 04 2005 GAApolinario

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RESOLUTION

This resolves:

1.) petitioner's "Urgent Motion for Preferential Resolution of the Issue On Prescription" filed on April 11, 2005; and

2.) respondent's "Omnibus Motion" filed on June 30, 2005 praying that the attached Comment be admitted.

RESPONDENT'S "OMNIBUS MOTION"

In the broader interest of substantial justice, respondent's "Omnibus Motion" is hereby **GRANTED**, and "Comment (Re: Preferential Resolution on the Issue of Prescription)" is hereby **ADMITTED**.

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PETITIONER'S
"URGENT MOTION FOR
PREFERENTIAL RESOLUTION
OF THE ISSUE ON PRESCRIPTION"

Petitioner argues that: (a) the assessment made by respondent dated September 26, 2003 and received by the petitioner on November 12, 2003, for the taxable calendar year 1998, is barred by the three-year prescriptive period; (b) respondent's own evidence shows that the period within which it can make a valid assessment has prescribed; (c) in the first waiver dated December 10, 2001, though made within the statutory three-year prescriptive period, it was clearly agreed that the period of limitation shall not extend beyond December 31, 2002; and (d) the subsequent waiver made by Nelia Pasco and the BIR, represented by Assistant Commissioner Percival T. Salazar, was executed only on February 18, 2003, or thirty nine (39) days after the lapse of the period of limitation agreed on the first waiver which is December 31, 2002.

The motion is meritorious.

Section 203 of the National Internal Revenue Code ("NIRC") of 1997 provides:

> "**SEC. 203**. *Period of Limitation Upon Assessment and Collection.* – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period; Provided, That in case where the return is filed beyond the period prescribed by law, the three (3) year period shall be counted from the day the return was filed. For the

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purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."

Pursuant to the above provision, in relation to the other provisions of the NIRC of 1997, respondent's right to assess petitioner of the said deficiency taxes had already prescribed.

a.) *As to Deficiency Income Tax*

Under Section 77 of the NIRC of 1997, petitioner is required to file a final adjustment return on or before the 15th day of April or on or before the fifteenth 15th day of the fourth month following the close of the fiscal year, as the case may be.

In the instant case, petitioner filed its 1998 annual income tax return on April 15, 1999. Respondent, therefore, had three (3) years from April 16, 1999 or until April 14, 2002 within which to assess petitioner of any deficiency income tax for the taxable year 1998. However, respondent issued the Formal Letter of Demand and the Assessment Notices on September 26, 2003 only, which were received by the petitioner on November 12, 2003. Clearly, respondent's right to assess petitioner for any deficiency income tax for the taxable year 1998 had long prescribed, pursuant to the settled ruled that the reckoning point in prescription is the date when said demand letter or notice is released, mailed or sent to the taxpayer that constitutes actual assessment *(Nava vs. CIR, 13 SCRA 104)*.

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b.) *As to Deficiency Withholding Tax on Compensation and Expanded Withholding Tax*

Under Sections 2.58 (A)(2) and 2.81 of Revenue Regulations No. 2-98, dated April 17, 1998, the withholding tax return, whether creditable or final, shall be filed and payments should be made within 10 days after the end of each month, except for taxes withheld for December which shall be filed on or before January 25 of the following year.

Respondent's right to assess deficiency withholding tax on compensation and expanded withholding tax should be within the period shown below:

Period (1998)	Date Filed	Last Date to Assess
January	2/10/1998	2/9/2001
February	3/10/1998	3/9/2001
March	4/13/1998	4/12/2001
April	5/12/1998	5/11/2001
May	6/10/1998	6/11/2001
June	7/10/1998	7/9/2001
July	8/10/1998	8/9/2001
August	9/10/1998	9/10/2001
September	10/12/1998	10/11/2001
October	11/10/1998	11/9/2001
November	12/10/1998	12/10/2001
December	1/11/1999	1/24/2002

From the foregoing, it is clear that respondent's right to assess petitioner of deficiency withholding and expanded withholding taxes had likewise prescribed.

c.) *As to Deficiency Value-Added Taxes*

Petitioner, under Section 114 of the NIRC of 1997, is required to file quarterly returns, within twenty five (25) days following the close of each taxable quarter.

In the present case, respondent's right to assess petitioner of deficiency VAT for taxable year 1998 had also prescribed, as shown by the table below:

Year 1998	Date Filed	Last Day to Assess
1st Quarter	4/20/1998	4/24/2001
2nd Quarter	7/21/1998	7/24/2001
3rd Quarter	10/19/1998	10/24/2001
4th Quarter	1/25/1999	1/24/2002

As to whether or not there was a valid waiver of the statute of limitation which extended the respondent's right to assess petitioner of deficiency taxes, the Court rules in the negative.

Section 222 (b) of the NIRC of 1997 provides for the exceptions as to the period of limitation of assessment and collection of taxes, to wit:

> "(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon."

RMO No. 20-90 provides for the following requirements as a guideline in the proper execution of a Waiver of the Statute of Limitations:

> "2.) Waiver shall be signed by the taxpayer himself or his duly authorized representative. In the case of corporation, the waiver must be signed by any of its responsible officials.

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Soon after the waiver is signed by the taxpayer, the Commissioner of Internal Revenue or the revenue official authorized by him as hereinafter provided, shall sign the waiver indicating that the Bureau has accepted and agreed to the waiver. The date of such acceptance by the Bureau should be indicated. Both the date of execution by the taxpayer and the date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

3.) The following officials are authorized to sign the waiver

A. <u>In the National Office</u>

xxx xxx xxx

3. Commissioner — For tax cases involving more than P1M

xxx xxx xxx

4.) The waiver must be executed in three (3) copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy shall be indicated in the original copy."

The waiver of the statute of limitations cannot include assessment of taxes already prescribed. Thus, respondent can no longer assess petitioner of deficiency withholding taxes on compensation and expanded withholding taxes covering the period from January until October 1998 and deficiency value-added tax for the three quarters of 1998. The right to assess such taxes had already prescribed prior to the execution of the first waiver.

Furthermore, the Court finds that the first Waiver of the Statute of Limitations is not valid and binding for failure to comply with the provisions of RMO 20-90, to wit:

First, the Assistant Commissioner is not the revenue official authorized to sign the waiver, as the tax case involves more than ₱1,000,000.00. In this regard, only the Commissioner is authorized to enter into agreement with the petitioner in extending the period of assessment;

Secondly, the waiver failed to indicate the date of acceptance. Such date of acceptance is necessary to determine whether the acceptance was made within the prescriptive period;

Third, the fact of receipt by the taxpayer of his file copy was not indicated on the original copy. The requirement to furnish the taxpayer with a copy of the waiver is not only to give notice of the existence of the document but also of the acceptance by the BIR and the perfection of the agreement.

The subject waiver is therefore incomplete and defective. As such, the three-year prescriptive period was not tolled or extended and continued to run. Consequently, the Formal Demand and Assessment Notices Nos. TFD-98-IT-156-03, TFD-98-IT-157-03, TFD-98-IT-158-03, TFD-98-IT-159-03 and TFD-98-IT-160-03 are invalid, having been issued beyond the prescriptive period.

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The Court finds no need to rule on the validity of the second waiver, considering that the first waiver, dated December 10, 2001, is defective and without force and effect.

IN VIEW OF THE FOREGOING, the present Petition for Review is hereby **DISMISSED**. The Formal Demand Letter and Assessment Notices Nos. TFD-98-IT-156-03, TFD-98-VT-157-03, TFD-98-WT-158-03, TFD-98-EWT-159-03 and TFD-98-CP-160-03 are hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice