REPUBLIC OF THE PHILIPPINES
***Court of Tax Appeals***
QUEZON CITY

## ***FIRST DIVISION***

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| **AUTOSTRADA MOTORE, INC.,** *Petitioner,* | **CTA Case No. 9624** |
| | *Members*: |
| - versus - | **DEL ROSARIO,** *P.J., Chairperson,* **FABON-VICTORINO**, *and* **MANAHAN**, *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** *Respondent.* | **Promulgated:** JUL 10 2020 ; 8:30 A.M. |

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# DECISION

***DEL ROSARIO, P.J.*:**

Before the Court is a Petition for Review filed on June 28, 2017 by petitioner Autostrada Motore, Inc. against respondent Commissioner of Internal Revenue (CIR), praying that the Final Decision on Disputed Assessment (FDDA) issued against petitioner for deficiency tax assessments in the aggregate amount of ₱341,366,628.70,[1] inclusive of interest and penalties for taxable years (TYs) 2011, 2012 and 2013, be declared null and void.

## THE PARTIES

Petitioner Autostrada Motore, Inc. is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with office address at 32nd Street corner 4th Avenue, Fort Bonifacio Global City, Taguig City. It is primarily engaged in the business of importation and distribution of motor vehicles, selling or purchasing new or used cars in wholesale or retail level, dealing in or engaging in any commerce relating to automobiles, cars, and all kinds of vehicles, automobile products of every kind and description, motor

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[1] Erroneously stated in the Petition for Review as ₱341,366,628.70.

vehicles parts, accessories or automotive equipment or machineries, and doing and performing any and all acts or works which may be necessary or advisable for or incidental with the above business such as maintaining and operating motor vehicle service center within the object of this corporation.[2]

Respondent, on the other hand, is the Commissioner of the Bureau of Internal Revenue (BIR), the government agency tasked to, among others, collect all national internal revenue taxes. Respondent has 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 the National Internal Revenue Code, as amended, or other laws or portions thereof administered by the BIR. He may be served with summons and other court processes at the 5th Floor, BIR Building, Agham Road, Diliman, Quezon City.[3]

## THE FACTS

On October 27, 2014, petitioner received a copy of Mission Order No. MSO2001 00110054 dated October 22, 2014, signed by Nestor S. Valeroso, then Officer-in-Charge (OIC) – Assistant Commissioner of the Large Taxpayers Service, directing Revenue Officers (ROs) Marianne P. Pascual and Emmanuel G. Viardo and Group Supervisor (GS) Emilie C. Peig to validate/verify petitioner's Importer's Sworn Statement and inspect its books of accounts pertaining to its importation/sales of automobiles, covering the period from 2011 to 2013, pursuant to Section 13 of Revenue Regulation (RR) No. 25-2003.[4]

On March 9, 2015, petitioner received a Preliminary Assessment Notice (PAN) dated January 26, 2015 issued by OIC-Assistant Commissioner Valeroso, stating the alleged discrepancy in the taxable base for excise tax as a result of the validation and verification conducted by the ROs in connection with the aforesaid Mission Order; and, finding petitioner liable for deficiency excise tax and value-added tax (VAT) in the sum of ₱291,060,156.70 for TYs 2011 to 2013.[5]

On March 23, 2015, petitioner filed a reply to the PAN, opposing the assessments contained therein.[6]

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[2] Exhibit "P-1", CTA Docket vol. II, pp. 734-744.
[3] Par. 1, Summary of Admitted and Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), CTA Docket vol. I, p. 267.
[4] Exhibit "P-3", CTA Docket vol. II, p. 745; and Exhibit "R-1", BIR Records, p. 641.
[5] Exhibits "P-6" and "R-5", BIR Records, pp. 650-653.
[6] Exhibit "P-10", BIR Records, pp. 661-663.

On November 24, 2016, petitioner received a Formal Letter of Demand (FLD) dated October 10, 2016, which merely reiterated the findings in the PAN, save for the adjustments in the interest imposed, and the administrative penalty, bringing the total amount of deficiency taxes for TYs 2011 to 2013, including compromise penalties, to ₱341,366,628.70.[7]

On December 22, 2016, petitioner filed its Protest to the FLD, through a Request for Reconsideration, disputing the assessments contained in the FLD for being without legal and factual bases.[8]

On March 14, 2017, petitioner received the FDDA dated February 20, 2017, signed by OIC - Assistant Commissioner Teresita M. Angeles, denying petitioner's protest, reiterating the assessed deficiency taxes of the petitioner, and requesting the immediate payment thereof.[9]

Consequently, petitioner filed an appeal through a Request for Reconsideration of the FDDA with the CIR on April 11, 2017.[10]

Respondent denied the Request for Reconsideration and requested the immediate payment of petitioner's deficiency taxes through a Letter dated May 11, 2017, which petitioner received on May 29, 2017.[11]

Aggrieved, petitioner filed the Petition for Review on June 28, 2017.[12]

On October 4, 2017, within the extended period[13], respondent filed his Answer.[14]

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[7] Exhibits "P-8" and "R-7", BIR Records, pp. 668-671.
[8] Exhibit "P-10-A", CTA Docket vol. II, pp. 749-765.
[9] Exhibit "P-9", CTA Docket vol. I, pp. 82-83; and Exhibit "R-9" BIR Records, pp. 701-702.
[10] Exhibit "P-10-B", CTA Docket vol. II, pp. 766-792.
[11] Exhibit "P-10-C", CTA Docket vol. I, p. 111; and Exhibit "R-11", BIR Records, p. 733.
[12] CTA Docket vol. I, pp. 10-41.
[13] Orders dated August 2, 2017, August 30, 2017 and September 26, 2017, CTA Docket vol. I, pp. 216, 221, and 226.
[14] CTA Docket vol. I, pp. 227-232.

The Pre-Trial Brief for Petitioner[15] was filed on October 23, 2017, while Respondent's Pre-Trial Brief[16] was filed on October 25, 2017. The Pre-Trial Conference was held on October 26, 2017.[17]

On November 16, 2017, the parties filed their Joint Stipulation of Facts and Issues,[18] which was approved and adopted by the Court in the Pre-Trial Order[19] issued on November 28, 2017, thereby terminating pre-trial.

During trial, petitioner presented testimonial and documentary evidence. It presented the following witnesses: Mr. Severino E. Santillan,[20] petitioner's Corporate Secretary and Finance Director; and Mr. Severino Esplana,[21] a consultant in Jestine Customs Brokerage, Inc.

Petitioner's Formal Offer of Evidence[22] was filed on April 5, 2018, and the exhibits offered therein were admitted in the Resolution[23] dated May 17, 2018, except for Exhibits "P-19-DDD" and "P-19-EEE", for petitioner's failure to present their originals for comparison.

Thereafter, respondent presented his witnesses: RO Emmanuel G. Viardo;[24] and RO Consorcio C. Olivan.[25] On September 12, 2019, respondent filed his Formal Offer of Evidence.[26] In the Resolution[27] dated November 6, 2019, the Court admitted all of respondent's formally offered evidence.

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[15] CTA Docket vol. I, pp. 240-248.
[16] CTA Docket vol. I, pp. 253-256.
[17] CTA Docket vol. I, p. 262.
[18] CTA Docket vol. I, pp. 267-272.
[19] CTA Docket vol. I, pp. 279-283.
[20] Exhibit "P-20", CTA Docket vol. I, pp. 288-305; and Minutes of Hearing dated December 4, 2017, CTA Docket vol. I, p. 465.
[21] Exhibit "P-21", CTA Docket vol. II, pp. 483-497; and Minutes of Hearing dated February 12, 2018, CTA Docket vol. II, p. 691.
[22] CTA Docket vol. II, pp. 720-733.
[23] CTA Docket vol. III, pp. 925-926.
[24] Exhibits "R-13" and "R-20", CTA Docket vol. III, pp. 936-944 and 1160-1165; and Orders dated August 20, 2018 and August 6, 2019, CTA Docket vol. III, pp. 1106, and 1357-1358.
[25] Exhibits "R-18" and "R-21", CTA Docket vol. III, pp. 1137-1143 and 1198-1201; and Minutes of Hearing dated May 28, 2019, CTA Docket vol. III, pp. 1182-1185, and Order dated August 6, 2019, pp. 1357-1358.
[26] CTA Docket vol. III, pp. 1368-1380.
[27] CTA Docket vol. III, pp. 1403-1404.

Respondent filed a Motion to Admit Attached Memorandum[28] on December 19, 2019, while petitioner timely filed its Memorandum[29] on January 14, 2020. In the Resolution[30] dated January 23, 2020, the Court granted respondent's motion and admitted his Memorandum[31] and the case was submitted for decision.

## THE ISSUES

The parties jointly stipulated the issue of whether petitioner is liable to pay deficiency excise tax and VAT for TYs 2011, 2012 and 2013 in the total amount of ₱341,366,828.70, inclusive of interest and penalties.[32]

Petitioner also raised the following additional issues for resolution:[33]

1. Whether or not the assessments for TYs 2011, 2012 and 2013 are void in the absence of a validly issued letter of authority to conduct an audit of petitioner;

2. Whether or not respondent's right to assess petitioner for TYs 2011 and 2012, in full, as well as a portion of TY 2013, has prescribed; and,

3. Whether or not petitioner's constitutional right to due process was violated by respondent with the issuance of the unsupported assessments without providing petitioner with factual or legal bases.

## PETITIONER'S ARGUMENTS

Petitioner argues that the assessments for TYs 2011, 2012 and 2013 are void in the absence of a validly issued Letter of Authority (LOA) to conduct an audit of petitioner. It claims that the law specifies that an LOA is necessary to conduct an assessment against a taxpayer. Petitioner contends that a mere regulation dispensing with

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[28] CTA Docket vol. III, pp. 1409-1412.
[29] CTA Docket vol. III, pp. 1428-1477.
[30] CTA Docket vol. III, pp. 1479.
[31] CTA Docket vol. III, pp. 1414-1426.
[32] Issues to be Resolved, JSFI, CTA Docket vol. I, p. 268.
[33] Issues to be Resolved, JSFI, CTA Docket vol. I, p. 268.

such prerequisite cannot supersede the law. It also argues that a mere Mission Order cannot supplant an LOA.

Petitioner likewise avers that respondent's right to assess petitioner for TYs 2011 and 2012, in full, as well as a portion of taxable year 2013, has prescribed.

Furthermore, petitioner insists that its constitutional right to due process was violated by respondent with the issuance of the unsupported assessments without providing petitioner with factual or legal bases.

Lastly, petitioner posits that it is not liable for deficiency taxes for TYs 2011, 2012 and 2013. It alleges that it duly paid and filed all of its taxes for these subject TYs. Petitioner also claims that there is no basis for the imposition of administrative penalties in this case.

## RESPONDENT'S ARGUMENTS

Respondent, on the other hand, counter-argues that the issuance of the assessments was authorized under existing laws and rules. He contends that the revenue officers were duly authorized to validate and verify petitioner's Importer's Sworn Statement and inspect its books of accounts pertaining to its importations/sales of automobiles pursuant to Section 13 of Revenue Regulations (RR) No. 25-2003[34] with the issuance of a Mission Order dated October 22, 2014.

Respondent alleges that the PAN, FLD and FDDA state the facts and the law on which the assessments were based, thus, petitioner's right to due process was not violated.

Respondent further claims that his right to assess has not yet prescribed considering that petitioner committed substantial underdeclaration in its taxable base.

Finally, respondent contends that petitioner is liable for payment of deficiency excise tax, VAT and administrative penalties in the aggregate amount of ₱341,366, 628.70 for TYs 2011, 2012 and 2013

[34] SUBJECT: Amended Revenue Regulations Governing the Imposition of Excise Tax on Automobiles pursuant to the Provisions of Republic Act No. 9224, An Act Rationalizing the Excise Tax on Automobiles, Amending for the Purpose the National Internal Revenue Code of 1997, and For Other Purposes.

## THE COURT'S RULING

### *The Petition for Review was timely filed*

Before delving into the merits of the case, it is imperative for the Court to determine whether the present Petition for Review was filed within the reglementary period.

Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides for the manner in which an assessment, which is otherwise presumed correct, may be assailed, *viz.*:

> "SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:
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> xxx xxx xxx
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> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
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> **If the protest is denied in whole or in part**, or is not acted upon within one hundred eighty (180) days from submission of documents, **the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision,** or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." (*Boldfacing supplied*)

RR No. 12-99, as amended by RR No. 18-13, implements Section 228 of the NIRC of 1997, as amended. Section 3.1.4 thereof provides:

> "3.1.4 **Disputed Assessment.** - The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
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> (i) **Request for reconsideration** - refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.
>
> (ii) **Request for reinvestigation** - refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.
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> xxx xxx xxx
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> **If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may either**: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or (ii) **elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision**. No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.
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> If the protest is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted from the date of filing of the protest in case of a request for reconsideration; or from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation, the taxpayer may either: (i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner's duly authorized representative on the disputed assessment.
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> **If the protest or administrative appeal, as the case may be, is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision.** Otherwise, the assessment shall become final, executory and demandable. A motion for reconsideration of the Commissioner's denial of the protest or administrative appeal, as the case may be, shall not toll the thirty (30)-day period to appeal to the CTA.

xxx" *(Boldfacing supplied)*

In *Philippine Amusement and Gaming Corporation vs. Bureau of Internal Revenue, et. al.*[35], the Supreme Court enumerated the options available to a protesting taxpayer under Section 228 of the NIRC of 1997, as amended, and as implemented by Section 3.1.5[36] of RR No. 12-99, to wit:

> "Following the *verba legis* doctrine, the law must be applied exactly as worded since it is clear, plain, and unequivocal. A textual reading of Section 3.1.5 gives a protesting taxpayer like PAGCOR only three options:
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> 1. If the protest is wholly or partially denied by the CIR or his authorized representative, then the taxpayer may appeal to the CTA within 30 days from receipt of the whole or partial denial of the protest.
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> 2. **If the protest is wholly or partially denied by the CIR's authorized representative, then the taxpayer may appeal to the CIR within 30 days from receipt of the whole or partial denial of the protest.**
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> 3. If the CIR or his authorized representative failed to act upon the protest within 180 days from submission of the required supporting documents, then the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period.
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> To further clarify the three options: **A whole or partial denial by the CIR's authorized representative may be appealed to the CIR or the CTA. A whole or partial denial by the CIR may be appealed to the CTA.** The CIR or the CIR's authorized representative's failure to act may be appealed to the CTA. **There is no mention of an appeal to the CIR from the failure to act by the CIR's authorized representative.**" *(Boldfacing supplied)*

Additionally, Section 11 of Republic Act (RA) No. 1125,[37] as amended, and Section 3(a), Rule 8 of the Revised Rules of the Court

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[35] G.R. No. 208731, January 27, 2016.

[36] Now Section 3.1.4 of RR No. 12-99, as amended by RR. No. 18-13.

[37] SEC. 11, Who may appeal; Mode of Appeal; Effect of Appeal. -Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein. xxx

of Tax Appeals,[38] provide that a party adversely affected by the decision or ruling of the CIR may appeal to the CTA by filing a petition for review within thirty (30) days after the receipt of such decision or ruling.

Indubitably, if the CIR's authorized representative wholly or partially denies the protest, the taxpayer may either appeal to the CTA or elevate the protest through a request for reconsideration to the CIR himself within thirty (30) days from receipt of the whole or partial denial of the protest. In the event that the taxpayer opted to appeal the denial of its protest by the CIR's authorized representative to the CIR himself, and the latter wholly or partially denied the appeal, the taxpayer may elevate the denial to the CTA within thirty (30) days from receipt of the CIR's decision.

In the present case, petitioner received the FDDA dated February 20, 2017, issued by OIC - Assistant Commissioner Teresita M. Angeles of the Large Taxpayers Service, on March 14, 2017.[39] Petitioner had until April 13, 2017 within which to appeal the FDDA either to respondent or to this Court. On April 11, 2017, petitioner elevated an appeal through a Request for Reconsideration of the FDDA with the CIR.[40] The Request for Reconsideration was denied by respondent in a letter dated May 11, 2017, which petitioner received on May 29, 2017.[41]

Counting thirty (30) days from May 29, 2017, petitioner had until June 28, 2017 within which to appeal to the CTA. The Petition for

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[38] SEC. 3. Who may appeal; period to file petition. –
(a) A party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of the copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of taxes.
[39] Exhibit "P-9", CTA Docket vol. I, pp. 82-83; and Exhibit "R-9" BIR Records, pp. 701-702.
[40] Exhibit "P-10-B", CTA Docket vol. II, pp. 766-792.
[41] Exhibit "P-10-C", CTA Docket vol. I, p. 111; and Exhibit "R-11", BIR Records, p. 733.

Review was therefore timely filed on June 28, 2017.[42] Consequently, the Court has acquired jurisdiction to resolve the present controversy.

***The assessments issued by respondent against petitioner pursuant to a Mission Order are void***

Petitioner argues that the assessments for deficiency excise tax and VAT, covering TYs 2011, 2012 and 2013, are void as they emanated from a mere Mission Order.

Respondent, on the other hand, counter-argues that the issuance of the assessments was authorized under existing laws and rules. He contends that the revenue officers were duly authorized to validate and verify Importer's Sworn Statement and inspect books of accounts pertaining to importations/sales of automobiles pursuant to Section 13 of RR No. 25-2003.

Section 13 of RR No. 25-2003, reads as follows:

> "**SEC. 13. MANUFACTURER'S/ASSEMBLER'S OR IMPORTER'S SWORN STATEMENT.** – Every manufacturer/assembler or importer of automobiles shall file with the Commissioner of Internal Revenue or his authorized representative on or before the end of months of June and December of every calendar year, or for every proposed registration of a new brand of automobiles, including its variants, a sworn statement showing, among others, the following information:
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> The manufacturer/assembler or importer shall file an amended sworn statement of the selling price of any brand/model of automobiles whenever there is a change on the actual selling price thereof. The amended sworn statement shall be filed before the said brand/s or model/s of automobiles may be removed from the place of production or assembly for sale to dealer or the public at the new selling price or before removal thereof from the customs custody. No changes in the selling price of the automobiles shall be allowed unless the corresponding amended sworn statement shall have been submitted to the Commissioner of Internal Revenue.
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> **The sworn statement shall be subject to verification by the Commissioner of Internal Revenue or his duly authorized representative to determine its correctness and/or accuracy. For this purpose, the Commissioner of Internal Revenue or his**

[42] CTA Docket vol. I, pp. 10-41.

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> **duly authorized representative may examine and/or require the production of the manufacturer's/assembler's or importer's books of accounts or such other documents from which the accuracy and correctness of the sworn statement may be determined. In case it is determined that the sworn statement does not accurately and correctly reflect the prices of automobiles, the taxpayer shall be assessed of the deficiency excise tax, inclusive of surcharges and interests.**" (*Boldfacing supplied*)

Based on the foregoing, the CIR or his duly authorized representative may examine and/or require the production of the manufacturer's/assembler's or importer's books of accounts or such other documents to verify an Importer's Sworn Statement, and in case of discrepancy, assess the taxpayer of the deficiency excise tax, inclusive of surcharges and interests.

Records reveal that Mission Order No. MSO2001 00110054 dated October 22, 2014, signed by Mr. Valeroso, then OIC– Assistant Commissioner of the Large Taxpayers Service, was issued directing ROs Pascual and Viardo and GS Peig to validate/verify petitioner's Importer's Sworn Statement and inspect its books of accounts pertaining to its importation/sales of automobiles pursuant to Section 13 of RR No. 25-2003 covering the TYs from 2011 to 2013.[43]

On the basis of the aforesaid Mission Order, the ROs conducted a verification and validation of petitioner's Importer's Sworn Statements and Authority to Release Imported Goods issued for each and every brand/model of petitioner's imported automobiles for the TYs 2011 to 2013. The result thereof disclosed that there were alleged discrepancies in petitioner's declared taxable base for excise tax purposes which eventually led to the issuance of the PAN dated January 26, 2015, FLD dated October 10, 2016 and FDDA dated February 20, 2017.

Petitioner insists that the assessments issued against it, having emanated from a mere Mission Order, are void. Stated otherwise, petitioner posits that the issuance of an assessment may only originate from a valid LOA.

The Court finds petitioner's argument meritorious.

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[43] Exhibit "P-3", CTA Docket vol. II, p. 745; and Exhibit "R-1", BIR Records, p. 641.

Section IV (A) (4) of Revenue Memorandum Order (RMO) No. 003-2009[44] categorically states:

> "V. GUIDELINES AND PROCEDURES
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> A. Surveillance Activities
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> xxx
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> 4. Action on Surveillance Results
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> If after the conclusion of the surveillance, there is a sufficient ground for the closure of the establishment as provided for under Section 115 of the NIRC, as amended, a recommendation shall be made to effect such closure.
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> **If the result of the surveillance made likewise indicates that the taxpayer had not been, in fact, correctly reporting income for tax purposes, and that the veracity of his accounting records is not reliable, the Commissioner or Regional Director concerned shall issue a Letter of Authority (LA) for the investigation of the taxpayer. The Revenue Officer named in the LA shall proceed with the audit and cause the assessment of the taxpayer's internal revenue tax liabilities, based either on: (1) surveillance, pursuant to Section 6 [C]; (2) best evidence rule, as provided under Section 6 [B], NIRC as amended; and/or (3) the result of the tax audit.**" *(Boldfacing supplied)*

Undoubtedly, the issuance of an LOA, as stated in RMO No. 003-2009, is mandatory to pursue the investigation of a taxpayer and the eventual issuance of an assessment in cases where the result of the surveillance made against it, pursuant to a Mission Order, shows that the taxpayer had not been correctly reporting income for tax purposes and that the veracity of the taxpayer's accounting records is not reliable.

The foregoing requirement to issue an LOA is consistent with the clear and categorical mandate of the NIRC of 1997, as amended, which requires an authority from the CIR or from his duly authorized representatives before an examination of a taxpayer may be made.[45] Section 6 of the NIRC of 1997, as amended, provides:

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[44] SUBJECT: Amendment and Consolidation of the Guidelines in the Conduct of Surveillance and Stock-Taking Activities, and the Implementation of the Administrative Sanction of Suspension and Temporary Closure of Business.
[45] *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.

"SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. - (A) Examination of Returns and Determination of Tax Due - After a return has been filed as required under the provisions of this Code, the **Commissioner or his duly authorized representative may authorize** the examination of any taxpayer and the assessment of the correct amount of tax: Provided, however; That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer. xxx" *(Boldfacing supplied)*

**A BIR officer cannot simply subject a taxpayer to audit without valid authority issued for that purpose.** Section 13 of the NIRC of 1997, as amended, provides:

"SEC. 13. Authority of a Revenue Officer. - Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, **a Revenue Officer assigned to perform assessment functions** in any district may, **pursuant to a Letter of Authority** issued by the **Revenue Regional Director**, examine taxpayers within the jurisdiction of the district in order **to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due** in the same manner that the said acts could have been performed by the Revenue Regional Director himself." *(Boldfacing and underscoring supplied)*

The issuance of an LOA prior to the conduct of an examination of a taxpayer's books and other accounting records by any revenue officer is indispensable to the validity of an assessment. In the language of *CIR vs. Sony Philippines, Inc.*[46] *(Sony)*, its absence makes the assessment or examination a nullity, *viz.:*

"Based on Section 13 of the Tax Code, **a Letter of Authority or LOA is the authority given to the appropriate revenue officer** assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. The very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer.

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Clearly, **there must be a grant of authority before any revenue officer can conduct an examination or assessment**. Equally important is that the revenue officer so authorized must not go beyond the authority given. **In the absence of such an authority, the assessment or examination is a nullity**." *(Boldfacing and underscoring supplied)*

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[46] G.R. No. 178697, November 17, 2010.

> "SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. - (A) Examination of Returns and Determination of Tax Due - After a return has been filed as required under the provisions of this Code, the **Commissioner or his duly authorized representative may authorize** the examination of any taxpayer and the assessment of the correct amount of tax: Provided, however; That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer. xxx" *(Boldfacing supplied)*

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The issuance of an LOA prior to the conduct of an examination of a taxpayer's books and other accounting records by any revenue officer is indispensable to the validity of an assessment. In the language of *CIR vs. Sony Philippines, Inc.*[46] *(Sony),* its absence makes the assessment or examination a nullity, *viz.:*

> "Based on Section 13 of the Tax Code, **a Letter of Authority or LOA is the authority given to the appropriate revenue officer** assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. The very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer.
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> Clearly, **there must be a grant of authority before any revenue officer can conduct an examination or assessment**. Equally important is that the revenue officer so authorized must not go beyond the authority given. <u>**In the absence of such an authority, the assessment or examination is a nullity**</u>." *(Boldfacing and underscoring supplied)*

[46] G.R. No. 178697, November 17, 2010.

The Supreme Court's pronouncement in *Medicard Philippines Inc. vs. Commissioner of Internal Revenue*[47] (*Medicard)* on the significance of a valid authority of ROs to conduct an audit and examination of the taxpayer and the requirement to convert a Letter Notice into an LOA is very instructive, *viz.*:

> ***"The absence of an LOA violated MEDICARD's right to due process***
>
> **An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions.** It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. **An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives.** Section 6 of the NIRC clearly provides as follows:
>
> xxx xxx xxx
>
> **Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken.** The circumstances contemplated under Section 6 where the taxpayer may be assessed through **<u>best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA</u>**. These are simply **<u>methods of examining the taxpayer</u>** in · order to arrive at the correct amount of taxes. **Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority**.
>
> xxx xxx xxx
>
> In this case, there is no dispute that no LOA was issued prior to the issuance of a PAN and FAN against MEDICARD. Therefore no LOA was also served on MEDICARD. **<u>The LN that was issued earlier was also not converted into an LOA contrary to the above quoted provision</u>**. Surprisingly, the CIR did not even dispute the applicability of the above provision of RMO 32-2005 in the present case which is clear and unequivocal on the necessity of an LOA for the assessment proceeding to be valid. xxx xxx xxx.
>
> In the case of *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, the Court said that:
>
>> Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so

[47] G.R. No. 222743, April 5, 2017.

> authorized must not go beyond the authority given. **<u>In the absence of such an authority, the assessment or examination is a nullity</u>.** (Emphasis and underscoring ours)
>
> xxx xxx xxx
>
> xxx xxx xxx. In fact, apart from being a statutory requirement, an LOA is equally needed even under the BIR's RELIEF System because the rationale of requirement is the same whether or not the CIR conducts a physical examination of the taxpayer's records: **to <u>prevent undue harassment of a taxpayer and level the playing field between the government's vast resources for tax assessment, collection and enforcement, on one hand, and the solitary taxpayer's dual need to prosecute its business while at the same time responding to the BIR exercise of its statutory powers</u>. The balance between these is achieved by ensuring that any examination of the taxpayer by the BIR's revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute.**
>
> That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. **What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void.**" *(Citations omitted; boldfacing and underscoring supplied)*

In *Medicard*, the Supreme Court declared as void the disputed assessment for lack of an LOA authorizing the revenue officers to examine the taxpayer's books of account and other accounting records. More importantly, the Supreme Court emphasized the indispensable requirement of converting the Letter Notice (from which the assessments emanated) into an LOA as required under RMO No. 32-2005.

In the present case, it is incontrovertible that no LOA was issued against petitioner prior to the issuance of the PAN, FLD and FDDA. The Mission Order that was issued beforehand was not converted into an LOA, **albeit RMO No. 003-2009 unequivocally requires the necessity of issuing an LOA in cases where the result of the surveillance made against a taxpayer, pursuant to a Mission Order, shows that the taxpayer had not been correctly reporting income for tax purposes and that the veracity of the taxpayer's accounting records is not reliable**. Interestingly, **respondent neither disputed the applicability of RMO No. 003-2009 nor provided any legal basis for non-compliance therewith.**

CM

Similar to *Medicard* where the Supreme Court found fatal the failure of respondent to convert the Letter Notice to an LOA thereby resulting in the invalidation of the assessments issued therein, in this case, the procedural lapse of not converting the Mission Order into a valid LOA is fatal and renders the assessments issued pursuant thereto void.

Incidentally, while petitioner admitted that it **received on June 23, 2015**, an **LOA dated June 19, 2015,** this LOA could not in any way relate to the assessments subject of the present controversy, for the following reasons:

(i) The assessments against petitioner for deficiency taxes were for TYs 2011, 2012 and 2013. Said period is different from the period indicated in the LOA, that is, January 1, 2013 to December 31, 2014;

(ii) The LOA dated June 19, 2015 authorizes a different set of RO and GS, namely: RO Socrates Regala and GS Aurora Flor of the National Investigation Division, to audit petitioner's books of accounts and other accounting records for period January 1, 2013 to December 31, 2014; while the ROs and GS who conducted the surveillance pursuant to the Mission Order and recommended the issuance of the PAN and FLD were ROs Pascual and Viardo and GS Peig from the Large Taxpayers Service;

(iii) The LOA was issued on June 19, 2015 which was after issuance of the PAN on January 16, 2015. This proves that said LOA was not the source of ROs Pascual and Viardo and GS Peig's authority to audit petitioner and to recommend the issuance of the PAN and FLD; and,

(iv) There is nothing on record which would show that RO Regala and GS Flor conducted a reinvestigation of petitioner after the issuance of the PAN nor recommended the issuance of the FLD dated October 10, 2016.[48] Records reveal that ROs Pascual and Viardo and GS Peig from the Large Taxpayers Service recommended the issuance of the FLD.[49]

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[48] The FLD merely reiterated the findings in the PAN, save for the adjustments in the interest imposed, and the administrative penalty.
[49] Exhibits "R-6", BIR Records, pp. 666-667.

In fine, the LOA dated June 19, 2015 pertains to an entirely different assessment proceedings that cannot be used to validate the investigation conducted by ROs Pascual and Viardo and GS Peig on petitioner for TYs 2011, 2012 and 2013.

Considering that the revenue officers involved in this case were not authorized by virtue of an LOA to conduct an examination and inspection of petitioner's books of accounts, their authority having emanated from a Mission Order, the assessments resulting therefrom are inescapably void and must be slain at sight. Needless to say, void assessments bear no valid fruit.[50]

In light of the foregoing, the Court need not belabor the other issues raised by the parties.

**WHEREFORE**, premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, the Preliminary Assessment Notice dated January 26, 2015, Formal Letter of Demand dated October 10, 2016, Final Decision on Disputed Assessment dated February 20, 2017 assessing petitioner of deficiency taxes in the aggregate amount of ₱341,366,628.70, inclusive of interest and penalties for taxable years 2011, 2012 and 2013, and the Letter of the Commissioner of Internal Revenue dated May 11, 2017, are **CANCELLED** and **SET ASIDE.**

**SO ORDERED.**

**ROMAN G. DEL ROSARIO**
Presiding Justice

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[50] *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.

*WE CONCUR:*

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

**CATHERINE T. MANAHAN**
Associate Justice

## CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

**ROMAN G. DEL ROSARIO**
Presiding Justice