REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, **Plaintiff,** **- versus –** **WILLIAM R. VILLARICA,** **(c/o Chavez Miranda Aseoche Law Offices, 8th Floor, One Corporate Plaza, No. 845 Arnaiz Avenue, San Lorenzo Village, Makati City),** **Accused.**	**CTA Crim. No. O-212** **(NPS Docket # XVI-INV-10G-00225)** **For: Tax Evasion under Section 254 of the National Internal Revenue Code of 1997**

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PEOPLE OF THE PHILIPPINES, **Plaintiff,** **- versus -** **WILLIAM R. VILLARICA,** **(c/o Chavez Miranda Aseoche Law Offices, 8th Floor, One Corporate Plaza, No. 845 Arnaiz Avenue, San Lorenzo Village, Makati City),** **Accused.**	**CTA Crim. No. O-213** **(NPS Docket # XVI-INV-10G-00225)** **For: Tax Evasion under Section 255 of the National Internal Revenue Code of 1997** **Members:** **Acosta, *Chairperson*,** **Uy, *and*** **Fabon-Victorino, *JJ.*** **Promulgated:** OCT 12 2011 ; 4:00pm

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RESOLUTION

For resolution in these consolidated criminal cases are the following:

1) the prosecution's **"MANIFESTATION (Re: 29 July 2011 Motion Hearing)"** filed on August 11, 2011 filed in CTA Criminal Case No. 0-213;

2) the accused's **"COMMENT [Re: Prosecution's Manifestation dated 09 August 2011 WITH MOTION TO QUASH"** filed on September 26, 2011, by registered mail and subsequently, in open court on September 28, 2011; and

3) the prosecution's **"REPLY (to Accused's Comment with Motion to Quash)"** filed on October 10, 2011 in both consolidated cases.

Records show that prior to the consolidation of the above-captioned criminal cases (both pending before the First Division of this Court) on August 9, 2011[1], a Resolution was issued on August 2, 2011 in CTA Criminal Case No. 0-213 allowing the state prosecutors representing the People of the Philippines in said case to confer with the investigating prosecutor and to file appropriate pleading, if warranted. This is based on the Court's observation that VAT is collected upon the seller, transferor or lessor of goods or properties in the course of trade or business or upon any person who imports goods; and that the seller, transferor or lessor is the person statutorily liable for the payment of the VAT and not the buyer, transferee or lessee.

Correspondingly, the subject "**Manifestation (Re: 29 July 2011 Motion Hearing)**" was filed in Criminal Case No. 0213 by investigating Assistant State Prosecutor Edna A. Valenzuela on August 11, 2011, alleging that:

> "1. On 29 July 2011, during the hearing of the Accused's 'Omnibus Motion to Consolidate and to Cancel Arraignment/Suspend Proceedings', an issue was raised concerning the Resolution of the undersigned Investigating Prosecutor dated 1 June 2011, insofar as it provides:
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> > '*Furthermore, under the Tax Code, respondent is likewise mandated to file Value Added Tax Return and pay the corresponding tax due thereon in view of his acquisition of the Lamborghini luxury sports car.*'
>
> 2. The undersigned Investigating Prosecutor would like to clarify that the Value Added Tax (**'*VAT*'**) stated in the Resolution pertains to the income as mentioned in the preceding paragraph. Respondent in 2007 had undeclared and unaccounted income considering that he was able to purchase and fully pay for an expensive Lamborgini luxury sports car during said taxable year despite his declarations in his 2007 Income Tax Return that he had no income. Such undeclared income should likewise then be liable for VAT. Evidence shows that Respondent is remissed in filing his VAT Returns and paying

[1] Resolution dated August 9, 2011 in Criminal Case No. 0-212

> VAT. Respondent's total VAT deficiency for 2007 amounted to Php 6,257,950.68, inclusive of increments. Respondent is thus found to have violated Section 255 of the NIRC of 1997, as amended (Failure to File VAT Return and Pay VAT)."

A **"COMMENT [Re: Prosecution's Manifestation dated 09 August 2011 WITH MOTION TO QUASH"** was filed by accused, through counsel, on September 26, 2011, by registered mail, and subsequently furnishing opposing counsel his copy thereof in open court during the hearing held on September 28, 2011.

In said Comment, accused, while praying for the quashal of the Information dated June 1, 2011 and dismissal of CTA Criminal Case No. O-213, argues, *inter alia*, as follows:

> "4. The tenor of the *Resolution* dated 01 June 2011 is quite unambiguous, particularly in the portion where it ratiocinates that accused is supposedly liable to file Value Added Tax Return and pay the corresponding value-added tax, apparently and allegedly **'in view of his *(accused's)* ACQUISITION of the Lamborghini luxury sports car.'** Measure against the aforequoted provision of law,[2] accused is not liable to pay value-added tax by reason of an alleged **'ACQUISITION of the Lamborghini luxury sports car.'**"

According to accused, he is not liable to pay value-added tax and should not have been indicted for an otherwise baseless charge of failure to file value-added tax return and pay corresponding value-added tax, and therefore there is allegedly no basis, legal or factual, to proceed with the prosecution of accused in CTA Crim. Case No. 0-213. Under the premises, there is allegedly sufficient basis for the Honorable Court to quash the criminal Information dated 01 June 2011 in CTA Crim. Case No. 0-213, indicting accused for the offense of tax evasion under Section 255 of the NIRC of 1997, for failure to file value-added tax return and pay value-added tax citing Section 4 of Rule 117 of the Revised Rules of Criminal Procedure. Moreover,

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[2] That is, Section 105 of the National Internal Revenue Code of 1997.

accused contends that the prosecution virtually insisted to maintain the criminal *Information* dated 01 June 2011 by opting to merely file a *Manifestation* dated 09 August 2011, which allegedly expresses its choice not to make an amendment of the criminal information as allowed under the Revised Rules of Criminal Procedure.

In the subject Reply, the prosecution imputes procedural defects that were committed by the accused in the filing of his Comment with Motion to Quash. Particularly, the prosecution points out that the Comment should be considered as not filed for failure of the accused to state an explanation why the filing and service of the same was not personally made, in violation of Section 11, Rule 13 of the Rules of Court; and that the Motion to Quash should be considered as a mere scrap of paper, since it did not comply with the three-day notice rule, pursuant to Section 4 Rule 15 of the same Rules.

After due deliberation and careful consideration of the parties' respective allegations in their subject pleadings, the Court finds that, while it may be true that accused failed to offer any written explanation as to why the service and the filing of his Comment was done by registered mail, such defect, however, was cured when defense counsel furnished this Court and the prosecution copies thereof during the hearing held on September 28, 2011. In the same vein, the Court, in the exercise of its judicial discretion, hereby disregards late filing of the said Comment, in the interest of substantial justice.

Furthermore, in *Jehan Shipping Corporation vs. National Food Authority*,[3] the Supreme Court stated the purpose of the three-day notice rule, viz:

> "As an integral component of procedural due process, the three-day notice required by the Rules is not intended for the benefit of the movant. Rather, **the requirement is for the purpose of avoiding surprises that may be sprung upon the adverse party, who must be**

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[3] G.R. No. 159750, December 14, 2005.

> **given time to study and meet the arguments in the motion before a resolution by the court.** Principles of natural justice demand that the right of a party should not be affected without giving it an opportunity to be heard.
>
> **The test is the presence of the opportunity to be heard, as well as to have time to study the motion and meaningfully oppose or controvert the grounds upon which it is based.**" *(Emphases supplied)*

In this case, the hearing of accused's Motion to Quash set on September 30, 2011 was cancelled by the Court, and in lieu thereof, the prosecution was given a period of ten (10) days to file comment or opposition thereto. Having been given the opportunity to be heard and ample time to intelligently oppose the same, the purpose behind the three-day notice rule is deemed duly served. Therefore, We find no reason not to admit and consider accused's Comment with Motion to Quash as the filing of same was directed in the Resolution dated September 12, 2011.

Technicality aside, We shall now resolve the prosecution's Manifestation vis-à-vis the accused's Comment with Motion to Quash.

We find for the accused in CTA Criminal Case No. 0-213.

Pertinent provisions of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act (RA) No. 9337, state:

> "SEC. 105. *Person Liable.*— **Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT)** imposed in Sections 106 and 108 of this Code.
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> The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. xxx.
>
> The phrase 'in the course of trade or business' means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income

> and whether or not it sells exclusively to members or their guests), or government entity.
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> xxx xxx xxx." *(Emphasis supplied)*
>
> "SEC. 107. *Value-added Tax on Importation of Goods.*—
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> (A) *In General.*— There shall be levied, assessed and collected on every importation of goods a value-added tax equivalent to ten percent (10%) based on the total value used by the Bureau of Customs in determining tariff and customs duties, plus customs duties, excise taxes, if any, and other charges, **such tax to be paid by the importer prior to the release of such goods from customs custody**: *Provided,* That where the customs duties are determined on the basis of the quantity or volume of the goods, the value-added tax shall be based on the landed cost plus excise taxes, if any: xxx.
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> (B) *Transfer of Goods by Tax-exempt Persons.*— In the case of tax-free importation of goods into the Philippines by persons, entities or agencies exempt from tax where such goods are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, **the purchasers, transferees or recipients shall be considered the importers thereof, who shall be liable for any internal revenue tax on such importation**. The tax due on such importation shall constitute a lien on the goods superior to all charges or liens on the goods, irrespective of the possessor thereof." *(Emphases supplied)*
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> "SEC. 114. *Return and Payment of Value-added Tax.*—
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> (A) *In General.*— **Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer**: *Provided, however,* That VAT-registered persons shall pay the value-added tax on a monthly basis.
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> xxx xxx xxx." *(Emphasis supplied)*

It is clear from the foregoing provisions that the persons who are liable for the payment of the VAT, and thus, are required to file the corresponding Quarterly VAT Return, are (1) those who sell, barter, exchange, lease goods or properties, or render service, in the course of trade or business, and (2) those who import goods. However, when the importation of goods was made by a tax-exempt person or entity and such goods are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the VAT shall instead be imposed on the purchaser, transferee or recipient thereof.

Nevertheless, it must be emphasized that there are transactions which may not be subject to VAT, as when the same were not made "in the course of trade or business". Accordingly, while in a sale, barter, exchange, lease of goods or properties, or in rendering service, income usually accrue and thus, may be subject to income tax, it does not follow that the same should also be subject to VAT, for it may *not* be made "in the course of trade or business".

In this case, the prosecution relied mainly on an acceptable method (*i.e.*, the net worth method)[4] of determining the supposed undeclared income of the accused for income tax purposes. For that reason, it was not able to identify from which transaction or series of transactions the income under consideration was derived. Thus, such lack of identification in the Resolution dated June 1, 2011 of the Assistant State Prosecutor Edna A. Valenzuela fails to convince the Court that accused should be held responsible for his failure to file the required VAT Return, since it is possible that said income was derived from a transaction or transactions *not* "in the course of trade or business".

Furthermore, a careful reading of the same Resolution will readily disclose that while the accused is allegedly the purchaser or transferee of an imported Lamborghini luxury sports car, there is likewise no indication or allegation that said motor vehicle was imported by a tax-exempt person or entity, before it was allegedly sold to the accused. The accused, therefore, was not required by law to file the corresponding Quarterly VAT Return, since it is not shown that he is liable for the

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[4] Revenue Audit Memorandum Order No. 1-00 dated March 17, 2000 [Updated Handbook on Audit Procedures and Techniques-Volume I (XIII, B)]. See also *Avelino vs. Collector of Internal Revenue*, G.R. No. L-17715, July 31, 1963.

payment of the VAT on the alleged undeclared income of the accused, nor of his alleged acquisition of the subject imported motor vehicle. There being no requirement to make a return or to "supply correct and accurate information" on the part of the accused under the premises, it cannot be said that the accused violated Section 255 of the NIRC of 1997.

Additionally, and as correctly pointed out by accused in his Comment, that although the filing of a motion to quash calls for the operation of Section 4, Rule 117 of the Revised Rules on Criminal Procedure[5] wherein amendment of complaint or information may be allowed, it appears that the prosecution virtually insisted to maintain the criminal *Information* dated 01 June 2011 by opting to merely file a ***Manifestation*** dated 09 August 2011 and a ***Reply*** dated October 10, 2011, which allegedly expresses its choice not to make an amendment of the criminal information as allowed under the said Rules. Thus, the Court is left with no recourse but to dismiss without prejudice CTA Criminal Case No. O-213.

As regards CTA Criminal Case No. O-212, considering the lapse of the sixty (60) day period (from July 8, 2011 or until September 6, 2011) given to the Department of Justice within which to resolve the Petition for Review (with NPS Docket No. XVI-INV-10G-00225) filed thereat by accused, the arraignment of accused in CTA Criminal Case No. O-212 must perforce proceed as scheduled.

WHEREFORE, in view of the foregoing considerations, CTA Criminal Case No. O-213 is hereby **DISMISSED WITHOUT PREJUDICE.**

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[5] "SEC. 4. *Amendment of complaint or information.*— If the motion to quash is based on an alleged defect of the complaint or information which can be cured by amendment, the court shall order that an amendment be made.

If it is based on the ground that the facts charged do not constitute an offense, the prosecution shall be given by the court an opportunity to correct the defect by amendment. The motion shall be granted if the prosecution fails to make the amendment, or the complaint or information still suffers from the same defect despite the amendment." *(Emphases supplied)*

On the other hand, the arraignment of accused in CTA Criminal Case No. 0-212 is set on **October 13, 2011 at 9:00 a.m.,** as previously scheduled.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice