REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

<u>SECOND DIVISION</u>

STA. ELENA CONSTRUCTION & DEVELOPMENT CORPORATION, Petitioner,	**CTA SCA CASE NO. 0029**
	Members:
- versus -	**RINGPIS-LIBAN**, *Chairperson*, **MODESTO-SAN PEDRO**, and **FERRER-FLORES**, <u>*JJ.*</u>
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: APR 08 2025

x - 4:31 p.m. - - - - x

RESOLUTION

Before this Court is the *Petition for Certiorari (With Application for Writ of Preliminary Injunction)* filed on December 23, 2024. Upon perusal of the allegations and documentary attachments thereto, the Court finds that the dismissal of the case is in order.

The facts, as alleged in the instant *Petition*, are as follows:

STATEMENT OF FACTS

3. On 29 May 2018, a Letter of Authority (LOA) No. AUDM36/020287/2018 (eLA201600038577) (**See Annex B – LOA**) was issued to Revenue Officers Cristina Lati, Divina Santos and Edna Can and Group Supervisor Asela Sese authorizing the examination of the books of accounts and other accounting records of herein Petitioner- SECD for all internal revenue taxes covering the period from ***January 1, 2017 to December 31, 2017.***

4. On February 19, 2019, a Memorandum of Assignment (MOA NO. 126-RECON-2019-0024 was issued reassigning the case to Revenue Officers Setie Naira Bobong and Kristine Leonila Samarita and Group Supervisor Asela Sees [sic] for the continuation of the investigation against the Petitioner SECD.

5. During the course of the examination, several exchanges of communications and documents between the Bureau and the Taxpayer was held in particular with regard to the Notice of Discrepancy dated October 20, 2020.

6. On **December 31, 2020,** a ***Waiver of the Defense of Prescription under the Statute of Limitations of NIRC*** was executed by the Taxpayer thru Alice Eduardo, in connection with the investigation for the internal revenue tax liabilities for taxable year 2017. Apparently, the Taxpayer waived the defence of prescription and consent to the assessment and/or collection of taxes for the above mentioned year which may be found due after the investigation at anytime before or after the lapse of the period of limitation fixed on the NIRC **but not later than 30 June 2021.** (See **Annex C – Waiver**).

7. On March 10, 2021, a Letter of Authority (LOA) No LOA-126-2021-00000111(eLA201900015505) was issued as a replacement of the LOA No. AUDm36/020287 (eLA201600038577) dated May 29, 2018 for continuation of audit of tax liabilities of Petitioner SECD for the taxable period from **January 1, 2017** to **December 31, 2021**; (See **Annex D – LOA 2.0**).

8. On **May 10, 2021**, a Preliminary Assessment Notice (PAN) was issued informing the Petitioner SECD of the result of the investigation to all the internal revenue for taxable year 2017. (See **Annex E - PAN**).

9. On **May 19, 2021**, a ***Waiver of the Defense of Prescription under the Statute of Limitations*** of NIRC was apparently executed by the Taxpayer thru its Corporate Secretary Joel G. Eduardo. He apparently waived the defence of prescription and consent to the assessment and/or collection of taxes for the above mentioned year which may be found due after investigation at any time before or after the lapse of the period of limitation fixed on the NIRC **but not later than 31 December 2021**. A certified true copy of the Waiver of the Defense of Prescription under the Statute of Limitations of NIRC dated 19 May 2021, is hereto attached as (**Annex F - Waiver 2.0**).

10. The Petitioner, SECD, was given fifteen days from the receipt of the PAN to file a reply. However, SECD neither responded nor took any action regarding the PAN. Consequently, on **October 28, 2021**, a Formal Letter of Demand (FLD) outlining the discrepancies and assessment notices was issued and served. (**Annex G - FLD**).

11. On **November 26, 2021**, a Letter Reply of Protest by Petitioner - SECD was received by the Respondent BIR requesting for the reinvestigation withdrawal and cancellation of the assessment of deficiency taxes for taxable year 2017. (**Annex H - Protest Letter**).

12. On **February 2, 2022**, the Respondent issued another Letter of Authority (LOA) No. AUDM20-126-2022-008960 (eLA201900025047) as a replacement of AUDM36/020287/2018 (eLA201600038577) dated May 29, 2018 for the continuation of audit of tax liabilities of Petitioner SECD for the taxable year 2017

13. On **March 2, 2022**, the Respondent issued a Final Decision of the Disputed Assessment (FDDA) and Final Assessment Notice (FAN) were issued stating that it is the final decision of the BIR and requested that the deficiency

taxes be paid, served and delivered and received by a certain Bayani Solidum ("Equipment Manager"). (**Annex H - FDDA/FAN**)

14. The Final Decision on Disputed Assessment (FDDA) and the Final Assessment Notice (FAN) were served to an equipment manager at 1625 Leon Guinto St., Malate, Manila, the yard (field) office of the Taxpayer where heavy equipment and construction materials are being kept. The recipient was not authorized to receive legal notices on behalf of the Petitioner.

15. Due to the improper service of these documents, which failed to comply with Section 228 of the NIRC and Revenue Regulations No. 12-99, the Petitioner did not receive the above mentioned documents in a timely manner. Consequently, the Petitioner was unable to file an appeal with the Court of Tax Appeals (CTA) within the reglementary period.

16. Subsequently, on October 3, 2022, the Respondent, through its Large Taxpayer Collection and Enforcement Division (LTCED), issued Warrant of Distraint and/or Levy (WDL) No. 126-2022-154 against the Petitioner, seeking to distraint personal properties and levy real properties, as well as the Petitioner's interests or rights to real property (**See Annex I - Warrant**). It was only through this garnishment that the Petitioner eventually learned of the finality of the assessment.

17. In its ongoing effort to collect allegedly unlawful taxes from the Petitioner, the Respondent, through the LTCED, filed a complaint with the Department of Justice on **May 13, 2024**, on the ground of tax fraud. The objective was to extend the validity of the tax assessment from three (3) years to ten (10) years. However, this complaint was initially dismissed on **September 24, 2024**, and the subsequent Motion for Reconsideration was denied on **October 9, 2024**.

Based on the foregoing facts, petitioner prays for the Court:

1. To issue Temporary Restraining Order enjoining respondent from enforcing from enforcing the illegal assessment, including the Garnishment Order, during the pendency of this case;

2. To declare the Garnishment Order null and void for lack of legal basis and lift the said illegal Order on garnished moneys and properties of the petitioner;

3. To declare the underlying assessment void due to its inherent illegality (lack of a valid LOA, being time-barred, and not supported by a valid waiver of the statute of limitations);

4. To issue a writ of Certiorari declaring the actions of the respondent constituting grave abuse of discretion;

5. To order respondent to pay the cost of the suit; and,

6. To grant such other reliefs as may be deemed just and equitable under the circumstances.

Sections 1 and 4 of Rule 65 of the Revised Rules of Court, as amended, provides as follows:

> Section 1. *Petition for certiorari.* – When **any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law**, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.
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> The **petition shall be accompanied by a <u>certified true copy</u> of the judgment, order or resolution subject thereof**, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.
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> xxx xxx xxx
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> Section 4. *When and where to file the petition.* – The **petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution**. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the petition shall be filed not later than sixty (60) days counted from the notice of the denial of the motion. *(Emphasis and underscoring supplied)*

Based on the foregoing, a petition for *Certiorari* may be filed when a tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law. Such petition should be filed not later than 60 days from notice of the judgment, order or resolution. Furthermore, the petition must be accompanied by a certified true copy of the judgment, order or resolution subject thereof.

In the present *Petition for Certiorari*, petitioner avers that "The **Garnishment Order** constitutes Grave Abuse of Discretion" and went on to assail the legality of the subject assessment alleging that it was arbitrarily imposed by the respondent, allegedly constituting grave abuse of discretion as demonstrated by the following:

a. The assessment was made without adherence to the established procedures, including the issuance of a garnishment order based on a void assessment;

b. Respondent acted beyond his legal powers by failing to comply with statutory requirements;

c. Respondent's actions contravened tax laws and constitutional provisions guaranteeing due process;

d. The assessment disregarded the taxpayer's submitted documents, explanations, and other relevant evidence; and,

e. The illegal assessment has imposed substantial harm to the petitioner including financial instability, damage to property rights, and harm to reputation.

Based on the foregoing, it appears that the subject of the present *Petition* is the *Garnishment Order* which was allegedly issued without legal basis, amounting to grave abuse of discretion, as a result of an allegedly illegal assessment.

The Court, however, observes that the copy of the subject order, *Warrant of Garnishment No. 126-2022-154* dated December 13, 2022 (assailed *Garnishment Order*), attached to the petition is a mere photocopy, albeit with pre-marking "CERTIFIED TRUE COPY FROM THE ORIGINAL". Notably, as required by Section 1 of Rule 65 of the Revised Rules of Court, a Petition for *Certiorari* must be accompanied by a certified true copy of the order subject thereof.

In relation thereto, Section 3, Rule 46 of the Revised Rules of Court for the consequence of non-compliance the requirements in relation to the filing of a petition for *certiorari*, to wit:

RULE 46
Original Cases

xxx xxx xxx

Section 2. *To what actions applicable.* — This Rule shall apply to **original actions for certiorari**, prohibition, mandamus and quo warranto.

xxx xxx xxx

Section 3. *Contents and filing of petition; effect of noncompliance with requirements.* – The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.

In actions filed under Rule 65, the petition shall further indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or

> reconsideration, if any, was filed and when notice of the denial thereof was received.
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> It shall be filed in seven (7) clearly legible copies together with proof of service thereof on the respondent with the original copy intended for the court indicated as such by the petitioner, and shall be accompanied by a **clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof**, such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto. The certification shall be accomplished by the proper clerk of court or by his duly authorized representative, or by the proper officer of the court, tribunal, agency or office involved or by his duly authorized representative. The other requisite number of copies of the petition shall be accompanied by clearly legible plain copies of all documents attached to the original.
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> xxx xxx xxx
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> **The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.** *(Emphasis supplied)*

Based on the foregoing, failure to comply with any of the documentary requirements (e.g., attachment of the certified true copy of the order subject thereof, etc.) shall be sufficient ground for the dismissal of the petition.

Inasmuch as petitioner failed to attach the certified true copy of the assailed *Garnishment Order*, on this score alone, the present *Petition* is already dismissible.

The Court further notes that the petitioner also failed to comply with *En Banc* Resolution No. 8-2024, effective September 1, 2024, which requires the parties to transmit a PDF copy through e-mail within 24 hours from the filing of the paper copy of the pleading; otherwise, it shall be deemed not filed.

At any rate, even if the certified true copy of the assailed *Garnishment Order* was duly attached to the petition, the petition will still fail. As discussed earlier, Section 3 of Rule 65 of the Revised Rules of Court provides that a petition for *Certiorari* must be filed not later than 60 days from notice of the judgment, order or resolution. Here, the Court observes that the assailed *Garnishment Order* was issued on December 13, 2022 and appears to have been received by the petitioner on December 14, 2022. Glaringly, more than two years have passed since petitioner received the assailed *Garnishment Order* before it opted to assail the validity of such collection through the filing of the *Petition for Certiorari* before this Court on December 23, 2024. Clearly, the *Petition for Certiorari* was filed beyond the 60-day reglementary period.

Time and again, the Supreme Court has stressed that procedural rules do not exist for the convenience of the litigants; the rules were established primarily to provide order to, and enhance the efficiency of, our judicial system. While procedural rules are liberally construed, the provisions on reglementary periods are strictly applied, indispensable as they are to the prevention of needless delays, and are necessary to the orderly and speedy discharge of judicial business. The timeliness of filing a pleading is a jurisdictional caveat that even the Supreme Court cannot trifle with.[1]

All told, the dismissal of the *Petition for Certiorari* is in order.

WHEREFORE, premises considered, the instant *Petition for Certiorari* filed on December 23, 2024 is **DISMISSED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

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[1] *Le Soleil Int'l. Logistics Co., Inc. vs. Sanchez*, G.R. No. 199384 (Resolution), September 9, 2015, citing *Labao vs. Flores*, G.R. No. 187984, November 15, 2010.