REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

FORD GROUP PHILIPPINES, INC., *Petitioner,*	**CTA CASE NO. 10316**
	Members:
-versus-	**RINGPIS-LIBAN**, *Chairperson,* **MODESTO-SAN PEDRO**, *and* **FERRER-FLORES**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** JUL 15 2024

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1:30 pm

DECISION

RINGPIS-LIBAN, *J.*:

THE CASE

The *Petition for Review* prays that the Court render judgment by:

1. Reversing and setting aside respondent's *Final Decision on Disputed Assessment* (FDDA), which hold petitioner liable for alleged deficiency value-added tax (VAT) assessment in the aggregate amount of ₱120,332,694.77;

2. Declaring as null and void the disputed deficiency assessments for VAT for taxable year 2015; *and,*

3. Declaring petitioner as not liable for any deficiency VAT for taxable year 2015.[1]

[1] Statement of the Case, *Pre-Trial Order* dated July 29, 2021, Docket – Vol. II, p. 541.

THE PARTIES

Petitioner Ford Group Philippines, Inc. is registered with the Securities and Exchange Commission as the Philippine Branch Office of FGP, Inc., a foreign corporation organized and existing under the laws of the State of Delaware, United States of America. Its principal place of business is located at 8th Floor, Filinvest One Building, Northgate Cyberzone, Filinvest City, Alabang, Muntinlupa City.[2] It is also registered with the Bureau of Internal Revenue (BIR) with Taxpayer's Identification Number 206-377-654-00000.[3] It is engaged in the "wholesale distribution and importation of automotive vehicles, parts and components; and to provide services relating to the same."[4]

Respondent Commissioner of Internal Revenue is empowered to perform the duties of his office, including acting upon on protest cases and approval of claims for refund or tax credit as provided by law and implementing regulations. He can be served with notices at BIR National Office Bldg., BIR Road, Diliman, Quezon City.[5]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

Petitioner received from the BIR Large Taxpayer Service (LTS) the *Letter of Authority* (LOA) with No. eLA201500034357 signed by Nestor S. Valeroso, Assistant Commissioner for Large Taxpayers Service, authorizing Revenue Officers (ROs) Leo Aldrin Reyes, Alvin Joseph Rago, and Group Supervisor Lydia Vito of the LTS, to examine petitioner's books of accounts and other accounting records for VAT for the period from January 1, 2015 to December 31 2015.[6] The said LOA was dated May 25, 2016 and received by petitioner on May 27, 2016.[7]

Thereafter, petitioner received from the BIR, a copy of the *Preliminary Assessment Notice* (PAN) for the deficiency VAT in the amount of ₱723,466,887.40, inclusive of interest, and compromise penalty of ₱75,000.00 for the taxable year of 2015.[8] The PAN was dated and received by petitioner on April 18, 2017.[9]

On May 3, 2017, petitioner filed a Reply to the PAN of even date.[10]

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[2] Par. B(1), *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. II, p. 516; Exhibits "P-1" to "P-2", Docket – Vol. II, pp. 843 to 877.
[3] Exhibit "P-3", Docket – Vol. II, pp. 878 to 879.
[4] Exhibit "P-2", Docket – Vol. II, p. 850.
[5] Par. A(1), JSFI, Docket – Vol. II, p. 515.
[6] Par. A(3), JSFI, Docket – Vol. II, pp. 515 to 516.
[7] Exhibits "P-4" and "R-1", BIR Records (Folder 1 of 4, Exhibit "R-9"), p. 1.
[8] Par. A(4), JSFI, Docket – Vol. II, p. 516.
[9] Exhibits "P-5" and "R-6" to "R-6-A", BIR Records (Folder 1 of 4, Exhibit "R-9"), pp. 275 to 296.
[10] Exhibit "P-6", BIR Records (Folder 1 of 4, Exhibit "R-9"), pp. 319 to 329.

On November 24, 2017,[11] petitioner received from the BIR the *Formal Letter of Demand* (FLD) dated November 10, 2017, together with the *"Details of Discrepancies"*, in the amount of ₱513,041,981.42, inclusive of surcharge, interest and compromise penalties, for the taxable year of 2015.[12]

On December 22, 2017, petitioner filed its *Request for Reinvestigation* with annexes of even date.[13]

On July 13, 2020, petitioner received a copy of the assailed FDDA dated June 29, 2020, which partially denied its Protest Letter, and lowered the deficiency VAT assessment for the year 2015 to ₱120,332,694.77, inclusive of interest.[14]

PROCEEDINGS BEFORE THIS COURT

Petitioner filed the present *Petition for Review* on August 12, 2020.[15] The case was initially raffled to this Court's Third Division.

On November 16, 2020, respondent filed his *Answer*,[16] interposing the following special and affirmative defenses, to wit: (1) petitioner's sale of automobiles to Westcoast Automotive Corporation/Ford Subic are subject to 12% VAT; (2) petitioner has sales/receipts not subjected to VAT amounting to ₱260,680,999.54, hence, petitioner was assessed pursuant to Section 106 and 108 of the Tax Code, as amended; (3) petitioner has Overclaimed/Unsupported Input Tax (SLP vs. TPI - SLS) amounting to ₱8,900,000.66, hence, corresponding input tax was disallowed pursuant to Section 113 of the National Internal Revenue Code (NIRC) of 1997, as amended; (4) petitioner is liable to pay interest in the amount of ₱48,976,063.64; and (5) tax assessments are presumed to be valid.

In the Resolution dated December 7, 2020,[17] the parties were ordered to appear before the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA) on January 12, 2021. The PMC-CTA issued the *No Agreement To Mediate* dated January 18, 2021,[18] stating that the parties decided not to have their case mediated.

[11] Par. A(5), JSFI, Docket – Vol. II, p. 516.
[12] Exhibits "P-7" and "R-8" to "R-8-A", BIR Records (Folder 1 of 4, Exhibit "R-9"), pp. 372 to 405.
[13] Exhibit "P-8", BIR Records (Folder 2 of 4, Exhibit "R-9-A"), pp. 1330 to 1340.
[14] Pars. A(2) and (6), JSFI, Docket – Vol. II, pp. 515 and 516; Exhibit "P-9", BIR Records (Folder 1 of 4, Exhibit "R-9"), pp. 450 to 452.
[15] Docket – Vol. I, pp. 6 to 25.
[16] Docket – Vol. I, pp. 287 to 297.
[17] Docket – Vol. I, pp. 308 to 309.
[18] Docket – Vol. I, p. 331.

In the meantime, on January 15, 2021, respondent transmitted the *BIR Records* of this case, consisting of four (4) folders.[19]

The Pre-Trial Conference was set and held on June 8, 2021.[20] Prior thereto, petitioner's *Pre-Trial Brief* was filed on March 5, 2021,[21] while *Respondent's Pre-Trial Brief* was submitted on June 3, 2021.[22]

On July 19, 2021, the parties submitted their *Joint Stipulation of Facts and Issues*,[23] which was admitted and approved by the Court in the Resolution dated July 27, 2021,[24] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated July 29, 2021 was then issued.[25]

Trial then ensued, with both parties presenting and offering their respective documentary and testimonial evidence.

Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Jo-Anne T. Matas,[26] petitioner's Tax Manager; and (2) Atty. Conrado M. Briones,[27] the Court-commissioned Independent Certified Public Accountant (ICPA).[28]

The *Report* of the ICPA was posted on November 19, 2021.[29]

Petitioner filed its *Formal Offer of Evidence* on June 8, 2022,[30] to which respondent filed his *Comment/Opposition (To Petitioner's Formal Offer of Evidence)* on June 28, 2022.[31] In the Resolution dated September 27, 2022,[32] the Court admitted petitioner's offered exhibits, *except* for (1) Exhibits "P-22", "P-23", "P-24", "P-25", "P-26", and "P-30", for not being found in the records of the case; and (2) Exhibit "P-33" and "P-34", for failure of the identified exhibits to correspond with the documents actually marked.

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[19] *Compliance* dated January 13, 2021, Docket – Vol. I, pp. 326 to 328.
[20] Resolution dated January 28, 2021, Docket – Vol. I, pp. 333 to 334; Minutes of hearing held on, and Order dated, June 8, 2021, Docket – Vol. I, pp. 472 to 475.
[21] Docket – Vol. I, pp. 335 to 343.
[22] Docket – Vol. I, pp. 465 to 468.
[23] Docket – Vol. II, pp. 515 to 523.
[24] Docket – Vol. II, pp. 530 to 531.
[25] Docket – Vol. II, pp. 541 to 547.
[26] Exhibit "P-14", Docket – Vol. I, pp. 349 to 360; Minutes of the hearing held on, and Order dated, December 7, 2021, Docket – Vol. II, pp. 785 to 787.
[27] Exhibits "P-35", Docket – Vol. II, pp. 795 to 811; Minutes of the hearing held on, and Order dated, May 11, 2022, Docket – Vol. II, pp. 829 to 831.
[28] *Oath of Commission* dated July 28, 2021, Docket – Vol. II, p. 548; Minutes of the hearing held on, and Order dated, July 28, 2021, Docket – Vol. II, pp. 532 to 534.
[29] Exhibit "P-15", Docket – Vol. II, pp. 669 to 766.
[30] Docket – Vol. II, pp. 832 to 841.
[31] Docket – Vol. II, pp. 889 to 891.
[32] Docket – Vol. II, pp. 905 to 908.

Thereafter, petitioner filed a *Motion for Reconsideration to the Resolution dated September 27, 2022* on October 14, 2022,[33] while respondent filed a *Manifestation (in lieu of Comment)* on November 2, 2022,[34] stating that he submits to the sound discretion of the Court the resolution of petitioner's *Motion*. The Court, in the Resolution dated December 7, 2022,[35] denied petitioner's *Motion*.

For his part, respondent presented the testimony of Revenue Officer Leo Aldrin Reyes.[36]

Respondent's Formal Offer of Evidence was filed on February 17, 2023.[37] Petitioner filed its *Comment (On Respondent's Formal Offer of Evidence)* on February 27, 2023.[38] Thereafter, respondent filed a *Motion with Leave of Court to Admit Attached Amended Formal Offer of Evidence* on April 25, 2023,[39] with attached *Amended Respondent's Formal Offer of Evidence*.[40] In the Resolution dated June 23, 2023,[41] the Court admitted all of respondent's exhibits.

In the meantime, in the Notice of Resolution dated June 13, 2023,[42] the present case was transferred to the Second Division of this Court.

On July 31, 2023, respondent filed his *Memorandum*,[43] while the *Memorandum for the Petitioner* was submitted on August 7, 2023.[44]

The case was considered submitted for decision on August 15, 2023.[45]

THE STIPULATED ISSUE

As stipulated by the parties, the issue for this Court's resolution is:

> "WHETHER OR NOT PETITIONER IS LIABLE FOR THE DEFICIENCY VALUE ADDED TAX ASSESSMENT AMOUNTING TO P120,332,694.77 FOR THE CALENDAR YEAR 2015."[46]

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[33] Docket – Vol. II, pp. 910 to 912.
[34] Docket – Vol. II, pp. 920 to 922.
[35] Docket – Vol. II, pp. 925 to 927.
[36] Exhibit "R-10", Docket – Vol. I, pp. 314 to 322; Minutes of the hearing held on, and Order dated, February 1, 2023, Docket – Vol. II, pp. 928 and 931, respectively.
[37] Docket – Vol. II, pp. 932 to 938.
[38] Docket – Vol. II, pp. 940 to 941.
[39] Docket – Vol. II, pp. 949 to 952.
[40] Docket – Vol. II, pp. 954 to 960.
[41] Docket – Vol. II, pp. 963 to 965.
[42] Docket – Vol. II, p. 961.
[43] Docket – Vol. II, pp. 966 to 978.
[44] Docket – Vol. II, pp. 980 to 1014.
[45] *Minute Resolution* dated August 15, 2023, Docket – Vol. II, p. __.
[46] Par. C, JSFI, Docket – Vol. II, p. 516.

Petitioner's arguments:

Petitioner argues that: (1) its right to due process was violated as the PAN, *Final Assessment Notice* (FAN) and FDDA were issued without regard to the objections raised in the Protest Letters and documents submitted to the respondent; (2) the subject assessment is void since petitioner's tax liability remains indefinite; (3) Vatable Sales Booked as Zero-rated Sales amounting to ₱520,471,920.52, holding petitioner liable for VAT thereon is erroneous and without factual and legal basis; (4) for the disallowed input tax for non-compliance of invoicing requirements in the amount of ₱8,900,000.00, petitioner agreed with this item and accordingly paid the corresponding deficiency VAT in the total amount of ₱15,058,570.97, inclusive of interest and compromise, as evidenced by BIR Form No. 0605 and eFPS Payment Details; and (5) petitioner is not liable to pay interest on basic deficiency VAT in the amount of ₱48,976,063.64.

Respondent's counter-arguments:

Respondent contends that: (1) petitioner's sale of automobiles to Westcoast Automotive Corporation/Ford Subic is subject to 12% VAT; (2) petitioner is liable for deficiency VAT in the amount of ₱120,332,694.77; (3) petitioner is liable to pay interest in the amount of ₱48,976,063.64; and (4) tax assessments are presumed to be valid.

THE COURT'S RULING

The present *Petition for Review* has merit.

Petitioner's right to due process was not violated as defenses and arguments raised in its Reply to the PAN and Protest to the FLD, together with the supporting documents it submitted, were considered by respondent.

Petitioner argues that the deficiency assessments of the respondent against it are *null and void* for being issued in violation of the its right of due process as the PAN, FAN and FDDA, were issued without considering its objections against the merit of the proposed deficiency assessments considering that the issues raised in the PAN, FAN and FDDA are basically the same.

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The Court disagrees with petitioner.

Section 228 of the NIRC of 1997 reads, in part, as follows:

> "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: xxx
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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.**
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> xxx xxx xxx." *(Emphasis added)*

The foregoing provision explicitly commands 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.[47] The requirement that the taxpayer must be informed of the factual and legal bases of the assessment is *mandatory.* It cannot be presumed. As a requirement of due process, this rule allows the taxpayer to make an effective protest.[48] To be sure, the requirement set by law to state in writing the factual and legal bases for the assessment is not a hollow exhortation. The law imposes a substantive, not merely a formal, requirement.[49] Furthermore, it must be emphasized that failure to comply with Section 228 does not only render the assessment void, but also finds no validation in any provision in the Tax Code.[50]

To implement the above-quoted Section 228, Section 3 of Revenue Regulations (RR) No. 12-99,[51] as amended by RR No. 18-2013,[52] provides, in part, as follows:

> "SECTION 3. ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment. -***
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:

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[47] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

[48] *Commissioner of Internal Revenue vs. Spouses Remigio P. Magaan and Leticia L. Magaan*, G.R. No. 232663, May 3, 2021.

[49] *Commissioner of Internal Revenue vs. Unioil Corporation*, G.R. No. 204405, August 4, 2021.

[50] *Id.*, citing *Commissioner of Internal Revenue vs. Reyes*, 516 Phil. 176, 189 (2006).

[51] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

[52] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

> 3.1.1 *Preliminary Assessment Notice (PAN).* – If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX 'A' hereof).
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> 3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* – The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. **The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes <u>shall state the facts, the law</u>, rules and regulations, or jurisprudence <u>on which the assessment is based, *otherwise, the assessment shall be void*</u>** (see illustration in ANNEX 'B' hereof).
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> xxx xxx xxx
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> 3.1.5 *Final Decision on a Disputed Assessment (FDDA).* – **The decision of the Commissioner or his duly authorized representative shall <u>state the (i) facts, the applicable law</u>, rules and regulations, or jurisprudence <u>on which such decision is based, *otherwise, the decision shall be void*</u>** (see illustration in ANNEX 'C' hereof), and (ii) that the same is his *final* decision." *(Emphases and underscoring added)*

The foregoing provision prescribe, as part of due process in the issuance of tax assessments, that the PAN, FLD/FAN and FDDA, must, respectively, state, among others, the facts and the law on which the assessment is based; otherwise, the FLD/FAN and/or FDDA shall be void.

In *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq. (Avon)*,[53] the Supreme Court said:

> "**<u>Tax assessments issued in violation of the due process rights of a taxpayer are null and void</u>. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, <u>but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process</u>.**
>
> The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise to submit comments or arguments with supporting documents at each stage in the assessment process. **<u>Due process requires the Bureau of Internal Revenue to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions</u>. Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.**

[53] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

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The Bureau of Internal Revenue is the primary agency tasked to assess and collect proper taxes, and to administer and enforce the Tax Code. To perform its functions of tax assessment and collection properly, it is given ample powers under the Tax Code, such as the power to examine tax returns and books of accounts, to issue a subpoena, and to assess based on the best evidence obtainable, among others. However, these powers must 'be exercised reasonably and [under] the prescribed procedure.' **The Commissioner and revenue officers must strictly comply with the requirements of the law, with the Bureau of Internal Revenue's own rules, and with due regard to taxpayer's constitutional rights.**

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In carrying out these quasi-judicial functions, the Commissioner is required to 'investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature.' **Tax investigation and assessment necessarily demand the observance of due process because they affect the proprietary rights of specific persons**.

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In *Ang Tibay v. The Court of Industrial Relations*,[54] this Court observed that **although quasi-judicial agencies 'may be said to be free from the rigidity of certain procedural requirements[, it] does not mean that it can, in justiciable cases coming before it, entirely ignore or disregard the fundamental and essential requirements of due process in trials and investigations of an administrative character.'** It then enumerated the fundamental requirements of due process that must be respected in administrative proceedings:

(1) The party interested or affected must be able to present his or her own case and submit evidence in support of it.

(2) **The administrative tribunal or body must consider the evidence presented.**

(3) There must be evidence supporting the tribunal's decision.

(4) The evidence must be substantial or 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'

(5) The administrative tribunal's decision must be rendered on the evidence presented, or at least contained in the record and disclosed to the parties affected.

(6) The administrative tribunal's decision must be based on the deciding authority's own independent consideration of the law and facts governing the case.

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[54] 69 Phil. 635 (1940) [Per *J.* Laurel, *En Banc*].

(7) **The administrative tribunal's decision is rendered in a manner that <u>the parties may know the various issues involved and the reasons for the decision</u>.**

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The last requirement relating to the form and substance of the decision is <u>the decision-maker's *'duty to give reason'*</u> to enable the affected person to understand how the rule of fairness has been administered in his [or her] case, to expose the reason to public scrutiny and criticism, and <u>to ensure that the decision will be thought through by the decision-maker</u>.

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Administrative due process is anchored on fairness and equity in procedure. <u>It is satisfied if the party is properly notified of the charge against it and is given a fair and reasonable opportunity to explain or defend itself. Moreover, it demands that the party's defenses be considered by the administrative body in making its conclusions, and that the party be sufficiently informed of the reasons for its conclusions</u>.

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<u>The importance of providing the taxpayer with adequate written notice of his or her tax liability is undeniable</u>. Under Section 228, 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. Section 3.1.2[55] of Revenue Regulation No. 12-99 requires the Preliminary Assessment Notice to show in detail the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based. Further, **<u>Section 3.1.4[56] requires the Final Letter of Demand must state the facts and law on which it is based; otherwise, the Final Letter of Demand and Final Assessment Notices themselves shall be void. Finally, Section 3.1.6[57] specifically requires that the decision of the Commissioner or of his or her duly authorized representative on a disputed assessment shall state the facts and law, rules and regulations, or jurisprudence on which the decision is based. Failure to do so would invalidate the Final Decision on Disputed Assessment</u>.**

'The use of the word 'shall' in Section 228 of the [National Internal Revenue Code] and in [Revenue Regulations] No. 12-99 indicates that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision made against him [or her] is mandatory.' <u>This is an essential requirement of due process and applies to the</u> Preliminary Assessment Notice, **<u>Final Letter of Demand with the Final Assessment Notices, and the Final Decision on Disputed Assessment</u>.**

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[55] Now Section 3.1.1 of RR No. 12-99, as amended by RR No. 18-2013.
[56] Now Section 3.1.3 of RR No. 12-99, as amended by RR No. 18-2013.
[57] Now Section 3.1.5 of RR No. 12-99, as amended by RR No. 18-2013.

The facts demonstrate that Avon was deprived of due process. **It was not fully apprised of the legal and factual bases of the assessments issued against it. The Details of Discrepancy attached to the Preliminary Assessment Notice, as well as the Formal Letter of Demand with Final Assessment Notices, did not even comment or address the defenses and documents submitted by Avon. Thus, Avon was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments.** There was clear inaction of the Commissioner at every stage of the proceedings.

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It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. **However, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusion are based, and those facts must appear in the record.**

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The Commissioner's total disregard of due process rendered the identical Preliminary Assessment Notice, Final Assessment Notices, and Collection Letter **null and void, and of no force and effect.**

This Court has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulation No. 12-99.

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In *Commissioner of Internal Revenue v. Reyes*,[58] **this Court ruled as void an assessment for deficiency estate tax issued by the Commissioner for failure to inform the taxpayer of the law and the facts on which the assessment was made, in violation of Section 228 of the Tax Code.**

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Compliance with strict procedural requirements must be followed in the collection of taxes as emphasized in *Commissioner of Internal Revenue v. Algue, Inc.*:[59]

> Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, **such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself.** It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.

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[58] 516 Phil. 176 (2006) [Per *C.J.* Panganiban, First Division].
[59] 241 Phil. 829 (1988) [Per *J.* Cruz, First Division].

> **But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate...that the law has not been observed.** (Emphasis supplied)
>
> xxx. *[The Commissioner of Internal Revenue's]* **disregard of the standards and rules renders the deficiency tax assessments null and void**. xxx." *(Emphases and underscoring added)*

Based on the foregoing pronouncements, respondent or his duly authorized representative is mandated to perform assessment functions in strict adherence to the law, with their own rules of procedure, and always with regard to the *basic tenets of due process.* Due process requires respondent and/or the BIR to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions.

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 of how the respondent or his duly authorized representatives appreciated the explanations or defenses raised in connection with the assessment.

In case respondent or his duly authorized representative fails or effectively fails to observe the foregoing due process requirements, it shall have the effect of rendering the assessment and collection of the pertinent deficiency tax void.

In this case, as stated in the PAN dated April 18, 2017,[60] the BIR found the following as due from petitioner for taxable year 2015, to wit:

I. Value Added Tax		
Vatable Sales	₱27,795,415,839.99	
Zero-rated Sales	542,300,121.47	₱28,337,715,961.46
Less: Zero-rated Sales and Exempt Sales		542,300,121.47
Vatable Sales		₱27,795,415,839.99
Add: Adjustments		

[60] Exhibits "P-5" and "R-6" to "R-6-A", BIR Records (Folder 1 of 4, Exhibit "R-9"), pp. 275 to 296.

Sales/Receipts not subjected to VAT	311,118,999.54	
Vatable sales booked as Zero-rated sales	520,471,920.52	
Undeclared Sales (SLS vs TPI-SLP)	16,085,751.53	
Undeclared Sales (SLS vs SAWT)	122,002,965.00	
Undeclared Sales (ORB recon)	1,574,438,494.41	2,544,118,131.00
Sales/Receipts per audit		30,339,533,970.99
Output tax due per audit		₱ 3,640,744,076.52
Less: Input tax claimed per Return		
IT deferred carried over fr. previous Quarter	100,555,031.89	
Current input tax	3,570,548,687.78	
Excess input tax carried over to SP	(356,700,166.09)	
Total input tax claimed per Return	3,314,403,553.58	
Less: Disallowances:		
Non-deferment of IT of CG > 1M	(19,238,056.22)	
Over claimed IT (SLP vs TPI-SLS)	(54,201,882.89)	
Violation in Invoicing Requirements	(4,799,563.44)	
Over claimed IT (possible source of IT)	(194,486,207.78)	3,041,677,843.25
VAT Payable		₱ 599,066,233.27
Less: VAT Credits/Payments		
VAT payments		21,046,347.21
Deficiency VAT		578,019,886.06
Add: Penalties		
Interest from January 25, 2016 to April 28, 2017 (25.15%)		145,372,001.34
Total Amount Due		**₱ 723,391,887.40**
II. Compromise Penalty		
Sec. 255, NIRC - For the unpaid VAT amounting to ₱578,019,886.06		₱ 50,000.00
Incomplete information on VAT Return		25,000.00
Total		**₱ 75,000.00**

In its Reply to the PAN dated May 3, 2017,[61] petitioner made certain refutations against the findings of the BIR relative to the foregoing deficiency VAT, and attached various annexes in support of its Reply.

An examination of the subject FLD with *Details of Discrepancies* dated November 10, 2017,[62] shows that the BIR *considered the defenses and pieces of evidence submitted by petitioner* and rendered its conclusion in the FLD based on these submissions. In fact, certain items of assessments were cancelled or reduced in the FLD, to wit:

I. Value Added Tax		
Vatable Sales	₱27,795,415,839.99	
Zero-rated Sales	542,300,121.47	₱28,337,715,961.46
Less: Zero rated Sales and Exempt Sales		542,300,121.47
Vatable Sales		₱27,795,415,839.99
Add: Adjustments		

[61] Exhibit "P-6", BIR Records (Folder 1 of 4, Exhibit "R-9"), pp. 319 to 329.
[62] Exhibits "P-7" and "R-8" to "R-8-A", BIR Records (Folder 1 of 4, Exhibit "R-9"), pp. 372 to 405.

Sales/Receipts not subjected to VAT	311,118,999.54	
Vatable sales booked as Zero-rated sales	520,471,920.52	
Undeclared Sales (SLS vs SAWT)	73,960.00	
Undeclared Sales (SLS vs TPI-SLP)	16,085,751.53	847,750,631.59
Sales/Receipts per audit		28,643,166,471.58
Output tax due per audit		₱ 3,437,179,976.59
Less: Input tax claimed per Return		
IT deferred carried over fr. previous Quarter	100,555,031.89	
Current input tax	3,570,548,687.78	
Excess input tax carried over to SP	(356,700,166.09)	
Total input tax claimed per Return	3,314,403,553.58	
Less: Disallowances:		
Non-deferment of IT of CG > 1M	(19,238,056.22)	
Over claimed IT (SLP vs TPI-SLS)	(54,201,882.89)	
Violation in Invoicing Requirements	(4,799,563.44)	
Over claimed IT (possible source of IT)	(194,486,207.78)	3,041,677,843.25
VAT Payable		₱ 395,502,133.34
Less: VAT Credits/Payments		
VAT payments		21,046,347.21
Deficiency VAT		374,455,786.13
Add: Penalties		
Interest from January 25, 2016 to Nov. 30, 2017 (36.99%)		138,511,195.29
Total Amount Due		**₱ 512,966,981.42**
II. Compromise Penalty		
Sec. 255, NIRC - For the unpaid VAT amounting to ₱374,455,786.13		₱ 50,000.00
Incomplete information on VAT Return		25,000.00
Total		**₱ 75,000.00**

For easy reference, a comparison of the items of assessment and their respective amounts as shown in the PAN vis-à-vis as shown in the FLD, is presented below:

	Item of Assessment	Amount in PAN	BIR's Remarks[63]	Amount in FLD
1	Sales/Receipts not subjected to VAT	311,118,999.54	assessment retained	311,118,999.54
2	Vatable sales booked as Zero-rated sales	520,471,920.52	assessment retained	520,471,920.52
3	Undeclared Sales (SLS vs TPI-SLP)	16,085,751.53	assessment retained	16,085,751.53
4	**Undeclared Sales (SLS vs SAWT)**	**122,002,965.00**	**Erroneous filing (interchanged TPs)**	**73,960.00**
5	**Undeclared Sales (ORB recon)**	**1,574,438,494.41**	**TP submitted Sales Invoices and Manufacturer's / Importer's Sworn Statements**	-
6	Non-deferment of IT of CG > 1M	(19,238,056.22)	assessment retained	(19,238,056.22)
7	Over claimed IT (SLP vs	(54,201,882.89)	assessment retained	(54,201,882.89)

[63] Refer to the Table captioned "Ford Group Philippines, Inc. For the Year 2015 PAN to FLD" attached to the FLD, Exhibits "P-7" and "R-8" to "R-8-A", BIR Records (Folder 1 of 4, Exhibit "R-9"), p. 403.

	TPI-SLS)			
8	Violation in Invoicing Requirements	(4,799,563.44)	assessment retained	(4,799,563.44)
9	Over claimed IT (possible source of IT)	(194,486,207.78)	assessment retained	(194,486,207.78)

Finally, the BIR examiners considered petitioner's protest letter as shown by the fact that this protest dated May 3, 2017 and the documents attached therein were mentioned in the *Details of Discrepancies* attached to the FLD.[64]

Likewise, in the FDDA dated June 29, 2020,[65] it was stated therein:

"Referring to your letters dated 22 December 2017 and 20 February 2018, please be informed that upon evaluation of your protest against our calendar year 2015 deficiency Value-Added Tax (VAT) assessment in the aggregate amount of ₱513,041,981.42, including increments, the subject matter of our covering letter of demand dated November 10, 2017 pursuant to Letter of Authority No. eLA201500034357 / AUDM52 / 007212 / 2016 dated 25 May 2016, covering the taxable period January 01 to December 31, 2015, is hereby considered. However, upon reinvestigation there has been found due from you deficiency VAT in the aggregate amount of Pesos: One Hundred Twenty Million Three Hundred Thirty T[wo] Thousand Six Hundred Ninety-Four and 77/100 (₱120,332,694.77), inclusive of interest computed as follows:

I. VALUE ADDED TAX (VAT)		
Vatable Sales	₱27,795,415,839.99	
Zero-rated Sales	542,300,121.47	₱28,337,715,961.46
Less: Zero rated Sales		542,300,121.47
Total Vatable Sales		₱27,795,415,839.99
Add: Adjustments		
VATable sales booked as Zero-rated sales		520,471,920.52
Sales/Receipts per audit		₱28,315,887,760.51
Output Tax Due per Audit		₱ 3,397,906,531.26
Less: Input tax claimed per Return		
IT Deferred Carried Over from Previous Qtr.	₱ 100,555,031.89	
Current input tax	3,570,548,687.78	
Excess Input Tax Carried Over to Succeeding Qtr.	(356,700,166.09)	
Total Input Tax Claimed per VAT Return	₱3,314,403,553.58	
Less: Disallowances:		
Violation in Invoicing Requirements	8,900,000.66	3,305,503,552.92
Value Added Tax Payable		₱ 92,402,978.34
Less: VAT Credits/Payments		
VAT payments		21,046,347.21
Deficiency Value Added Tax		₱ 71,356,631.13

[64] Refer to *Details of Discrepancies* attached to the FLD, Exhibits "P-7" and "R-8" to "R-8-A", BIR Records (Folder 1 of 4, Exhibit "R-9"), pp. 372 to 374.
[65] Exhibit "P-9", BIR Records (Folder 1 of 4, Exhibit "R-9"), pp. 450 to 452.

Add: Penalty / Interest		
At 20% - Jan. 26, 2016 to Dec. 31, 2017	27,604,263.88	
At 12% - Jan. 01, 2018 to June 30, 2020	21,371,799.77	48,976,063.64
Total Amount Due		**₱120,332,694.77**"

As shown above, respondent, without doubt, considered petitioner's defenses and arguments in its *Request for Reinvestigation* dated December 22, 2017,[66] and the supporting documents submitted by petitioner, as most of the items of assessment were cancelled, and only two items remained, to wit:

	Item of Assessment	Amount in FLD	Amount in FDDA
1	Sales/Receipts not subjected to VAT	311,118,999.54	-
2	Vatable sales booked as Zero-rated sales	520,471,920.52	520,471,920.52
3	Undeclared Sales (SLS vs TPI-SLP)	16,085,751.53	-
4	Undeclared Sales (SLS vs SAWT)	73,960.00	-
5	Non-deferment of IT of CG > 1M	(19,238,056.22)	-
6	Over claimed IT (SLP vs TPI-SLS)	(54,201,882.89)	-
7	Violation in Invoicing Requirements	(4,799,563.44)	(8,900,000.66)
8	Over claimed IT (possible source of IT)	(194,486,207.78)	-

For both of the remaining items of assessment, respondent included an explanation why these assessments were retained taking into consideration the defenses and documents submitted by petitioner.

In contrast to *Avon*, petitioner was fully apprised of the legal and factual bases of the assessments issued against it as shown in the *Details of Discrepancies* attached to the FLD and in the FDDA. Hence, respondent observed petitioner's right to due process in the issuance of the tax assessments, as recognized under Section 228 of the NIRC of 1997, vis-à-vis Sections 3.1.3 and 3.1.5 of RR No. 12-99, as amended by RR No. 18-2013.

There is demand to pay a definite liability.

Petitioner avers that the statement "Please take note that the *interest will have to be adjusted* if paid beyond the date specified therein" is found in the PAN dated April 18, 2017, FAN dated November 10, 2017 and FDDA dated June 29, 2020. In addition, both the FAN dated November 10, 2017 and FDDA dated June 29, 2020 indicate that there is a mere request to pay the alleged deficiency tax liabilities, particularly: "It is *requested* that your aforesaid deficiency Value-Added Tax liability be paid immediately upon receipt hereof, inclusive of penalties incident to delinquency..."

Petitioner argues that to be valid, the tax assessment must not only contain a computation of tax liabilities, it must also include a demand upon the taxpayer for the settlement of a tax liability that is there definitely set and fixed. It is further required that the due date in the final assessment notice be stated.

[66] Exhibit "P-8", BIR Records (Folder 2 of 4, Exhibit "R-9-A"), pp. 1330 to 1340.

In the instant case, petitioner contends that the subject FAN and the assessments made in the FDDA hardly fall under the jurisprudential definition of a tax assessment under the NIRC, considering that they lack *"a due tax liability that is there definitely set and fixed."* They do not purport to be a demand for payment of tax due, which a final assessment notice and final decision on disputed assessment should supposedly be. Clearly, petitioner claims that the subject tax assessments are void, and thus, bear no valid fruit.

Petitioner's position lacks merit.

For a tax assessment to be valid, it 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 that is definitely set and fixed. "A demand, within the meaning of the requirement of a demand for the payment of taxes, means any intimation to the taxpayer that payment is desired."[67]

A careful reading of the FLD dated November 10, 2017[68] reveals that it provided a computation of petitioner's liabilities, *i.e.* the VAT due and interest indicated therein are definite and fixed, and that petitioner was required to pay the same:

> "Please be informed that after examination of your Value Added Tax (VAT) liabilities for the period January 1, 2015 to December 31, 2015 pursuant to Letter of Authority No. SN: eLA 201500034357 / AUDM52/007212/2016 dated May 25, 2016 you have been found liable a total deficiency as shown hereunder:
>
> xxx xxx xxx

Deficiency Value-Added Tax	374,455,786.13
Add: Penalties	
Interest from January 25, 2016 to Nov. 30, 2017 (36.99%)	138,511,195.29
Total Amount Due	**512,966,981.42**

> xxx xxx xxx
>
> The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying ANNEX A of this assessment notice.
>
> The 20% interest per annum has been imposed pursuant to the provisions of Section 249(B) of the National Internal Revenue Code (NIRC) of 1997, as amended
>
> The compromise penalties have been imposed in view of your failure to file and/or pay an internal revenue tax at the time or times required by law or regulation pursuant to Section 255 of the Tax Code, as amended, as determined using the schedule of suggested compromise penalties prescribed under Revenue Memorandum Order No. 7-2015.

[67] Word & Phrases, Vol. 12, p. 5 citing *Miller v. Davis*, 34 A. 265, 88 Me. 454.
[68] Exhibits "P-7" and "R-8" to "R-8-A", BIR Records (Folder 1 of 4, Exhibit "R-9"), pp. 372 to 405.

> In view thereof, you are requested to pay the aforesaid deficiency tax lability using the BIR Payment Form (BIR Form 0605) through Electronic Filing Processing System within the time shown in the herein letter of demand. Afterwards, submit a copy thereof to our Office at Room 213, Large Taxpayers Service - VAT Audit Unit, BIR National Office Building, BIR Road, Diliman, Quezon City."

The FDDA dated June 29, 2020 also provided a computation of the deficiency VAT and the interest due and *demanded* payment thereof from the taxpayer: [69]

> "Referring to your letters dated 22 December 2017 and 20 February 2018, please be informed that upon evaluation of your protest against our calendar year 2015 deficiency Value-Added Tax (VAT) assessment in the aggregate amount of ₱513,041,981.42, including increments, the subject matter of our covering letter of demand dated November 10, 2017 pursuant to Letter of Authority No. SN: eLA201500034357/AUDM52/007212/2016 dated 25 May 2016, covering the taxable period January 01 to December 31, 2015, is hereby considered. However, upon reinvestigation there has been found due from you deficiency VAT in the aggregate amount of Pesos: One Hundred Twenty Million Three Hundred Thirty Tow Thousand Six Hundred Ninety-Four and 77/100 (₱120,332,694.77), inclusive of interest computed as follows:
>
> xxx xxx xxx

Deficiency Value-Added Tax		₱71,356,631.13
Add: Penalties / Interest		
At 20% - Jan. 26, 2016 to Dec. 31, 2017	27,604,263.88	
At 12% - Jan. 01, 2018 to June 30, 2020	21,371,799.77	48,976,063.64
Total Amount Due		**₱120,332,694.77**

> xxx xxx xxx
>
> It is requested that your aforesaid deficiency Value-Added Tax liability be paid immediately upon receipt hereof, inclusive of penalties incident to delinquency. This is our final decision. If you disagree, you may appeal this final decision to the Court of Tax Appeal within thirty (30) days from date of receipt hereof, otherwise our said deficiency Value-Added Tax assessment shall become final, executory and demandable."

Although the language of the FLD and FDDA may have been respectful, this did *not* change their tenor establishing that petitioner had an obligation to pay and, thus, it was being required to satisfy the same.

[69] Pars. A(2) and (6), JSFI, Docket – Vol. II, pp. 515 and 516; Exhibit "P-9", BIR Records (Folder 1 of 4, Exhibit "R-9"), pp. 450 to 452.

Deficiency VAT assessment must be cancelled and withdrawn.

To recall, in the FDDA dated June 29, 2020,[70] respondent assessed petitioner for deficiency VAT, for the taxable year 2015, in the aggregate amount of ₱120,332,694.77, inclusive of surcharges and interests, summarized as follows:

Vatable Sales	₱27,795,415,839.99	
Zero-rated Sales	542,300,121.47	₱ 28,337,715,961.46
Less: Zero rated Sales		542,300,121.47
Total Vatable Sales		27,795,415,839.99
Add: Adjustments		
Vatable sales booked as Zero-rated sales		520,471,920.52
Sales/Receipts per Audit		**₱28,315,887,760.51**
Output Tax Due per Audit		₱ 3,397,906,531.26
Less: Input tax claimed per Return		
IT Deferred Carried Over from Previous Quarter	₱ 100,555,031.89	
Current input tax	3,570,548,687.78	
Excess Input Tax Carried Over to Succeeding Qtr.	(356,700,166.09)	
Total Input Tax Claimed per VAT Return	₱ 3,314,403,553.58	
Less: Disallowances:		
Violation in Invoicing Requirements	8,900,000.66	3,305,503,552.92
Value Added Tax Payable		₱ 92,402,978.34
Less: VAT Credits/Payments		
VAT payments		21,046,347.21
Deficiency Value Added Tax		₱ 71,356,631.13
Add: Penalty/Interest		
At 20% - January 26, 2016 to December 31, 2017	27,604,263.88	
At 12% - January 01, 2018 to June 30, 2020	21,371,799.77	48,976,063.64[71]
TOTAL AMOUNT DUE		**₱ 120,332,694.77**

The VAT assessment can, thus, be broken down into the following items:

A	Vatable sales booked as Zero-rated sales	₱ 520,471,920.52
B	Violation in Invoicing Requirements	8,900,000.66
C	Excess input tax carried forward to succeeding quarter	356,700,166.09

[70] Exhibit "P-9", BIR Records (Folder 1 of 4, Exhibit "R-9"), pp. 450 to 452; Exhibit "P-16", USB.
[71] Total should be ₱48,976,063.65.

A. Vatable Sales booked as Zero-rated Sales - ₱520,471,920.52

The Vatable sales booked as zero-rated sales in the total amount of ₱520,470,920.52 pertain to the following:

1. Sale to Westcoast Automotive Corporation/ Ford Subic (Westcoast)	₱ 520,395,473.90
2. Unidentified zero-rated sales	76,446.62
Total	**₱ 520,471,920.52**

1. Sale to Westcoast Automotive Corporation/ Ford Subic (Westcoast) - ₱520,395,473.90

Respondent avers that petitioner sold vehicles and spare parts in the total amount of ₱520,395,473.90 to Westcoast Automotive Corporation (WAC)/Ford Subic, an entity registered with Subic Bay Metropolitan Authority (SBMA), which were booked by petitioner as zero-rated sales.

Respondent argues that although the sale, barter or exchange of goods or properties into a Freeport Zone by suppliers/contractors from the Customs Territory is considered *"export sales"* and are subject to zero percent (0%) VAT, this is applicable only if said cars, vehicles or automobiles are to be used *exclusively* within the subject Special Freeport Zone per Revenue Memorandum Circular (RMC) No. 50-2007. In the case at bar, respondent pointed out that there is *no proof that the automobiles sold by petitioner to WAC/Ford Subic are being used exclusively within Subic Freeport Zone (SFZ).* Hence, respondent believes that the sales of said automobiles *cannot* be considered as zero-rated sales.

Respondent also avers that WAC/Ford Subic is a dealer of Ford vehicles, who then sells to customers within and outside SFZ, just like any other dealer of motor vehicles. Thus, it can be said that the vehicles sold by WAC/Ford Subic are not being used exclusively within SFZ. Moreover, audit/investigation disclosed that sales made by WAC/Ford Subic showed that 77.72% of its total sales constituted VATable sales as compared to its exempt sales of only 22.28% which meant that WAC/Ford Subic's purchases should not be passed with VAT zero-rating but rather subjected to 12% VAT because its purchases did not remain, used exclusively or destroyed within SFZ.

On the other hand, petitioner argues that Section 4.106-5 of RR No. 16-2005, as amended by RR No. 4-2007, provides that the sales to enterprises duly registered and accredited with the SBMA shall be considered as *"constructive exports"*, and entitled to VAT zero-rating. Sections 12 and 15 of RA No. 7227 or otherwise known as the *"Bases Conversion and Development Act of 1992"*, as amended by RA No. 9400, provides that the SFZ shall be operated and managed as a separate customs territory. Thus, by legal fiction, SFZ is regarded as a foreign territory. As clarified in Section 43(a) of the Implementing Rules and Regulations (IRR) of RA No. 7227 relative to the Subic Special Economic and Freeport Zone, Subic Bay Freeport (SBF) enterprises are declared to be exempt from customs and import duties and national internal revenue taxes, such as VAT, excise and *ad valorem* taxes on foreign articles. Section 48 of the said IRR further provides that articles, which are admitted to the SBF from the Customs Territory under proper permit, shall be considered exported for purposes of the laws and regulations of the Philippines, and shall be considered to be zero-rated. Petitioner stresses that these tax incentives are manifested in Article III of the Certificate of Registration issued by SBMA to WAC - Ford Subic. Hence, petitioner's sale of motor vehicles and spare parts to WAC/Ford Subic of ₱520,395,473.90 is entitled to VAT zero-rating since WAC/Ford Subic is a registered SBMA enterprise.

Additionally, petitioner claims that respondent's argument that the sale of ordinary automobiles to Philippine Economic Zone Authority (PEZA), SBMA and other ecozone registered enterprises are not entitled to VAT zero-rating pursuant to RMC No. 25-99 is misplaced and unfounded. Petitioner stresses that the purchase of automobiles, accessories and spare parts for subsequent resale is included in the registered activity of Ford Subic. Corollary, the sale of motor vehicles, accessories, and spare parts by the petitioner to Ford Subic, being an SBMA registered enterprise, should qualify for VAT zero-rating, since the motor vehicles, accessories and spare parts purchased by Ford Subic are directly used in connection with the latter's registered activity. Petitioner avers that RMC No. 25-99 imposes VAT on PEZA registered enterprises for the procurement of vehicles or transportation equipment that are not directly connected with the firms' registered activities.

Under Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, transactions that are *"considered export sales"* are subject to zero-percent (0%) VAT, *viz.*:

> "SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* –
>
> (A) *Rate and Base of Tax.* – xxx
>
> xxx xxx xxx
>
> (2) **The following sales by VAT-registered persons shall be subject to zero percent (0%) rate**:
>
> (a) *Export Sales.* - The term '**export sales**' means:
>
> xxx xxx xxx
>
> (5) **Those considered export sales under** Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and **other special laws**; and" *(Emphases added)*

r

Relative thereto, Sections 4.106-5(a)(5) of RR No. 16-2005,[72] as amended by RR No. 4-2007,[73] which implements the foregoing provision, provides:

> "SEC. 4.106-5. *Zero-Rated Sales of Goods or Properties.* – xxx
>
> **The following sales by VAT-registered persons shall be subject to <u>zero percent (0%) rate</u>:**
>
> **(a) *Export sales.*** – '*Export Sales*' shall mean:
>
> xxx xxx xxx
>
> (5) **Transactions considered export sales under** Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and **other special laws.**
>
> '*Considered export sales under Executive Order No. 226*' shall mean the Philippine port F.O.B. value determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer, or the net selling price of export products sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same; *Provided*, That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents; *Provided, further*, **That pursuant to** EO 226 and **other special laws, even without actual exportation, the following shall be considered constructively exported**: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) sales to export processing zones pursuant to Republic Act (RA) Nos. 7916, as amended, 7903, 7922 and other similar export processing zones; (3) **<u>sale to enterprises duly registered and accredited with the Subic Bay Metropolitan Authority pursuant to RA 7227</u>**; (4) sales to registered export traders operating bonded trading warehouses supplying raw materials in the manufacture of export products under guidelines to be set by the Board in consultation with the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC); (5) sales to diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products whether paid for in foreign currency or not.
>
> xxx xxx xxx" *(Emphases and underscoring added)*

In this case, the special law applicable is RA No. 7227,[74] otherwise known as *"Bases Conversion and Development Act of 1992"*, as amended by RA No. 9400.[75] Section 12 (b) and (c) thereof provides as follows:

[72] SUBJECT: Consolidated Value-Added Tax Regulations of 2005.
[73] SUBJECT: Amending Certain Provisions of Revenue Regulations No. 16-2005, As Amended, Otherwise Known as the Consolidated Value-Added Tax Regulations of 2005.
[74] AN ACT ACCELERATING THE CONVERSION OF MILITARY RESERVATIONS INTO OTHER PRODUCTIVE USES, CREATING THE BASES CONVERSION AND DEVELOPMENT AUTHORITY FOR THE PURPOSE, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSE.

> "SEC. 12. *Subic Special Economic Zone.* — ...
>
> xxx xxx xxx
>
> (b) **The Subic Special Economic Zone shall be operated and managed as a separate customs territory ensuring free flow or movement of goods and capital within, into and exported out of the Subic Special Economic Zone, as well as provide incentives such as tax and duty-free importations of raw materials, capital and equipment**. However, exportation or removal of goods from the territory of the Subic Special Economic Zone to the other parts of the Philippine territory shall be subject to customs duties and taxes under the Tariff and Customs Code of the Philippines, as amended, the National Internal Revenue Code of 1997, as amended, and other relevant tax laws of the Philippines.
>
> (c) **The provision of existing laws, rules and regulations to the contrary notwithstanding, no national and local taxes shall be imposed within the Subic Special Economic Zone. In lieu of said taxes, a five percent (5%) tax on gross income earned shall be paid by all business enterprises within the Subic Special Economic Zone** and shall be remitted as follows: three percent (3%) to the National Government, and two percent (2%) to the Subic Bay Metropolitan Authority (SBMA) for distribution to the local government units affected by the declaration of and contiguous to the zone, xxx" *(Emphases added)*

DOF Department Order No. 003-08[76] issued by the Department of Finance, implementing RA No. 9400, further provides:

> "SECTION 4. *Tax Incentives in Ecozones and Freeport Zones.* — Ecozone and Freeport Enterprises shall be entitled to the following tax incentives:
>
> a. Subic Special Economic Zone — Ecozone Enterprises in the SSEZ shall be entitled to the 5% special tax on Gross Income Earned, in lieu of national and local taxes.
>
> b. Subic Freeport Zone — Freeport Enterprises in the SFZ shall be entitled to: (i) the freeport status of the zone; and (ii) the 5% special tax on Gross Income Earned, in lieu of national and local taxes.
>
> xxx xxx xxx" *(Emphasis added)*

Moreover, Section 45 of the Rules and Regulations Implementing the Provisions Relative to the Subic Special Economic and Freeport Zone and the Subic Bay Metropolitan Authority Under RA No. 7227 provides:

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[75] AN ACT AMENDING REPUBLIC ACT NO. 7227, AS AMENDED, OTHERWISE KNOWN AS THE BASES CONVERSION AND DEVELOPMENT ACT OF 1992, AND FOR OTHER PURPOSES.

[76] RULES AND REGULATIONS TO IMPLEMENT REPUBLIC ACT NO. 9400, "AN ACT AMENDING REPUBLIC ACT NO. 7227, OTHERWISE KNOWN AS THE BASES CONVERSION AND DEVELOPMENT ACT OF 1992, AND FOR OTHER PURPOSES"

> "SECTION 45. *Importation of Articles.* — **In general, all articles may be imported by SBF Enterprises into the SBF free of customs and import duties and national internal revenue taxes**, except those articles prohibited by the SBMA and those absolutely prohibited by law." *(Emphasis added)*

In *Secretary of Finance Cesar B. Purisima, et al. vs. Representative Carmelo F. Lazatin, et al.,*[77] the Supreme Court confirmed that freeport and economic zones (FEZ) enterprises enjoy tax- and duty-free incentives on its importations, *viz.*:

> "RA 9400 and its Implementing Rules grant the following:
>
> *First*, the law provides that *importations* of *raw materials* and *capital equipment* into the FEZs shall be *tax-* and *duty-free*. It is the *specific transaction* (*i.e.*, importation) that is exempt from taxes and duties.
>
> *Second*, the law also grants *FEZ enterprises tax-* and *duty-free importation* and a preferential rate in the payment of income tax, in lieu of all national and local taxes. These incentives exempt the *establishment* itself from taxation.
>
> Thus, the Legislature intended FEZs to enjoy tax incentives in general — whether with respect to the *transactions* that take place within its special jurisdiction, or the *persons/establishments* within the jurisdiction. From this perspective, the tax incentives enjoyed by *FEZ enterprises* must be understood to *necessarily* include the tax exemption of *importations of selected articles* into the FEZ.
>
> We have ruled in the past that FEZ enterprises' tax exemptions must be interpreted within the context and in a manner that promotes the legislative intent of RA 7227 and, by extension, RA 9400. Thus, we recognized that *FEZ enterprises are exempt from both direct and indirect internal revenue taxes.* In particular, they are considered *VAT-exempt entities.*
>
> In line with this comprehensive interpretation, we rule that the *tax exemption enjoyed by FEZ enterprises covers internal revenue taxes imposed on goods brought into the FEZ, including the Clark FEZ, such as VAT and excise tax.*" *(Emphasis added)*

In this case, petitioner presented the SBMA Certificate of Tax Exemption with Certificate No. 2009-0004 dated May 30, 2014 issued in favor of WAC - Ford Subic, effective until May 29, 2015,[78] and SBMA Certificate of Registration and Tax Exemption with Certificate No. 2009-0019 dated May 30, 2015 issued in favor of WAC - For Subic, effective until May 29, 2016,[79] to prove that WAC - Subic Ford is an enterprise duly registered with the SBMA. These certificates state that:

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[77] G.R. No. 210588, November 29, 2016.
[78] Exhibit "P-10-A", Docket – Vol. II, p. 884; Exhibit "P-28", USB.
[79] Exhibit "P-10", Docket – Vol. II, p. 883; Exhibit "P-29", USB.

> "ARTICLE I **The Company shall be classified as a Subic Bay Freeport Enterprise**, as such term is defined under Section 3, Paragraph G of the Implementing Rules, for the following purpose: **To engage in the business of sale and distribution of motor vehicles, spare parts, accessories, tires, batteries, and other related products, and in the rendition of services including, but not limited to repair, maintenance, and leasing or renting out of motor vehicles at Lot C-2, Subic Bay Gateway Park, Phase I, Commercial Area, Subic Bay Freeport Zone.**"

The certificates likewise state that "ARTICLE II The Company shall enjoy all the rights, privileges, and benefits established under the Act and the Implementing Rules with regard to the business and the location described above."[80] / "ARTICLE III The Company, with regard to its business at the location described above, shall enjoy all the rights, obligations, privileges, responsibilities, incentives and benefits established under and in accordance with the Act, the Implementing Rules and other applicable policies, rules and regulations as listed at the back of this Certificate."; "a. To import and export freely all types of goods into and out of the SBF, subject to the provision of the Act, the Implementing Rules and other regulations that may be promulgated by the SBMA."; "b. The tax and duty free importation of raw materials, capital, equipment and all articles in general, except those prohibited by SBMA and those absolutely prohibited by law. xxx"; "c. The exemption from all local and national taxes, including but not limited to the following: i) Customs and import duties and national revenue taxes, such as VAT, excise and *ad valorem* taxes on foreign articles; xxx"[81]

Hence, petitioner's sale of automobiles to WAC - Ford Subic, a Subic Bay Freeport Enterprise, is *not* subject to the 12% VAT.

In the PAN,[82] FLD,[83] and FDDA,[84] respondent cited RMC No. 25-99[85] and RMC No. 50-2007,[86] as basis for imposing the 12% VAT on the sales by petitioner to WAC - Ford Subic:

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[80] Exhibit "P-10-A", Docket – Vol. II, p. 884; Exhibit "P-28", USB.
[81] Exhibit "P-10", Docket – Vol. II, p. 883; Exhibit "P-29", USB.
[82] Exhibits "P-5" and "R-6-A", BIR Records (Folder 1 of 4, Exhibit "R-9"), p. 294.
[83] Exhibits "P-7" and "R-8" to "R-8-A", BIR Records (Folder 1 of 4, Exhibit "R-9"), p. 374.
[84] Exhibit "P-9", BIR Records (Folder 1 of 4, Exhibit "R-9"), p. 451.
[85] SUBJECT: Disseminating the Ruling of the Commissioner of Internal Revenue on the Non-eligibility for VAT Zero-Rating of Automobile Sales to Entities Registered with PEZA, SBMA and Clark Development Authority.
[86] SUBJECT: Tax Treatment of Sale, Barter or Exchange of Goods or Properties or Sale or Exchange of Services Made by Suppliers from the Customs Territory to Registered Freeport Zone Enterprises in the Subic Freeport Zone (SFZ), the Clark Freeport Zone (CFZ), as well as the Poro Point Freeport Zone (PPFZ), and Vice Versa under Sections 12 and 15 of Republic Act No. 7227, as amended by Republic Act No. 9400.

"REVENUE MEMORANDUM CIRCULAR NO. 25-99

xxx xxx xxx

xxx **sales of ordinary automobiles to PEZA or SBMA and other ECOZONE registered enterprises are not entitled to VAT zero-rating.**" *(Emphasis added)*

"REVENUE MEMORANDUM CIRCULAR NO. 50-07

xxx xxx xxx

SECTION 2. *Background.* — xxx

xxx xxx xxx

In another decision (*Coconut Oil Refiners Association, Inc., et. al. vs. Hon. Executive Secretary Ruben Torres, BCDA, et al., G.R. No. 132527, July 29, 2005*), the Supreme Court held that the provision on the incentives to SFZ, such as tax and duty-free importations of raw materials, goods and capital equipment, should be interpreted within the context and in a manner that would promote in the fullest manner the policy and object of the Legislature. In this decision, the Supreme Court ascertained the clear legislative intent thus: 'For as long as the goods remain within the zone, whether we call it an economic zone or a freeport zone, for as long as we say in this law that all goods entering this particular territory will be duty-free and tax-free, for as long as they remain there, consumed there or re-exported or destroyed in that place, then they are not subject to duties and taxes in accordance with the laws of the Philippines.'

xxx xxx xxx

SECTION 3. *Clarificatory Questions and Answers.* —

Q1: *How will the sale, barter or exchange of goods or properties into the Freeport Zone by suppliers/contractors from the Customs Territory be considered?*

A1: Such transactions shall be considered as export sales in accordance with RA 7227, as amended by RA 9400, which provides that the Freeport Zones shall be operated and managed as a separate customs territory.

xxx xxx xxx

Q5: *What is the coverage of VAT zero-rating?*

A5: The zero-rating will cover sale, barter, exchange or lease of all goods, properties and/or services by a VAT-registered seller/contractor from the Customs Territory to a Freeport Zone-registered enterprise and shall include, among others, the following:

a. **The sale/supply of ordinary cars, vehicles, automobiles, specialized vehicles or other transportation equipment, provided that these are <u>used exclusively within the subject special Freeport Zones</u>;**

xxx xxx xxx" *(Emphases and underscoring added)*

RMC No. 25-99, an earlier issuance, was apparently superseded by RMC No. 50-2007 which clarified that sales by a VAT-registered seller from the Customs Territory to a Freeport Zone-registered enterprise of ordinary cars, vehicles, automobiles, specialized vehicles or other transportation equipment are subject to VAT zero-rating, *but with a qualification that these vehicles must be used exclusively within the subject special Freeport Zones.*

However, it should be noted that both the NIRC of 1997, as amended, and RA No. 7227, as amended by RA No. 9400, do not impose such limitation.

RMCs are considered administrative rulings (in the sense of more specific and less general interpretations of tax laws) which are issued from time to time by respondent. It is widely accepted that the interpretation placed upon a statute by executive officers, whose duty to enforce it, is entitled to great respect by the courts. Nevertheless, such interpretation is *not conclusive* and will be ignored if judicially found to be erroneous. Thus, courts will not countenance administrative issuances that override, instead of remaining consistent and in harmony with, the law they seek to apply and implement.[87]

Hence, Answer A5 (a) of Section 3 of RMC No. 50-2007, an administrative issuance, which imposes an additional requirement not provided for by law, is of doubtful validity.

An Ecozone is viewed as a foreign territory by legal fiction. Thus, sales of goods and services made by a VAT-registered person in the Philippine customs territory to an entity registered and operating within an Ecozone are considered exports to a foreign country subject to 0% VAT. This was explained by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc.,*[88] to wit:

> "This Court agrees, however, **that PEZA-registered enterprises, which would necessarily be located within ECOZONES, are VAT-exempt entities**, not because of Section 24 of Rep. Act No. 7916, as amended, which imposes the five percent (5%) preferential tax rate on gross income of PEZA-registered enterprises, in lieu of all taxes; but, rather, **because of Section 8 of the same statute which establishes the fiction that ECOZONES are foreign territory**.
>
> xxx An ECOZONE or a Special Economic Zone has been described as —
>
> xxx [S]elected areas with highly developed or which have the potential to be developed into agro-industrial, industrial, tourist, recreational,

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[87] *Philippine Bank of Communications vs. Commissioner of Internal Revenue, et al.,* G.R. No. 112024, January 28, 1999.
[88] G.R. No. 150154, August 9, 2005.

> commercial, banking, investment and financial centers whose metes and bounds are fixed or delimited by Presidential Proclamations. An ECOZONE may contain any or all of the following: industrial estates (IEs), export processing zones (EPZs), free trade zones and tourist/recreational centers.
>
> The national territory of the Philippines outside of the proclaimed borders of the ECOZONE shall be referred to as the Customs Territory.
>
> Section 8 of Rep. Act No. 7916, as amended, mandates that the PEZA shall manage and operate the ECOZONES as a separate customs territory; thus, creating the fiction that the ECOZONE is a foreign territory. As a result, **sales made by a supplier in the Customs Territory to a purchaser in the ECOZONE shall be treated as an exportation from the Customs Territory**. Conversely, sales made by a supplier from the ECOZONE to a purchaser in the Customs Territory shall be considered as an importation into the Customs Territory.
>
> Given the preceding discussion, what would be the VAT implication of sales made by a supplier from the Customs Territory to an ECOZONE enterprise?
>
> **The Philippine VAT system adheres to the Cross Border Doctrine, according to which, no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. Hence, actual export of goods and services from the Philippines to a foreign country must be free of VAT;** while, those destined for use or consumption within the Philippines shall be imposed with ten percent (10%) VAT.[89] *(Emphases added)*

Accordingly, sales of goods by a VAT-registered taxpayer, such as petitioner, to entities located in the Subic Special Economic Zone, which by legal fiction is regarded as foreign territory, are considered "*export sales*" subject to VAT zero-rating, pursuant to Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, and as implemented by Section 4.106-5(a)(5) of RR No. 16-2005, as amended by RR No. 4-2007.

Here, WAC - Subic Ford is a Subic Bay Freeport Enterprise during the subject period and is engaged "in the business of sale and distribution of motor vehicles, spare parts, accessories, tires, batteries, and other related products xxx."[90] Hence, its purchase of vehicles and spare parts from petitioner for subsequent resale is included in its registered activity. **The subsequent resale of these vehicles and spare parts to customers who may or may not bring them outside the SFZ is beyond petitioner's control and should not affect the tax treatment of its sale of vehicles and spare parts to WAC - Ford Subic.**

All told, considering that petitioner's sales in the total amount of ₱520,395,473.90 to Westcoast Automotive Corporation/Ford Subic

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[89] Now at 12% VAT rate.
[90] Exhibit "P-10-A", Docket – Vol. II, p. 884; Exhibit "P-28", USB; Exhibit "P-10", Docket – Vol. II, p. 883; Exhibit "P-29", USB.

(Westcoast) is *not* subject to 12% VAT, the deficiency VAT assessment imposed thereon must be cancelled.

2. *Unidentified zero-rated sales - ₱76,446.62*

Respondent also found that there were *unidentified* zero-rated sales of ₱76,446.62 that should also be subjected to 12% VAT, pursuant to Sections 106 and 108 of the NIRC of 1997, as amended, determined as follows:[91]

Registered Name	Taxable Sales
Ford Lio Ho Motor Co Ltd	₱ 184,578.08
Ford Motor Comp of Australia	278,065.10
Ford Motor Indonesia	463,573.27
Ford Operations Thailand	5,669,511.78
Ford South Africa	232,495.03
Ford Vietnam	141,097.61
US Embassy	14,858,880.08
West Coast Automotive Corp.	520,395,473.90
Total Zero-rated sales per Summary List of Sales	₱ 542,223,674.85
Zero-rated sales per VAT return	542,300,121.47
Zero-rated sales to be subjected to VAT	**₱ 76,446.62**
Add: Westcoast Automotive Corp.	520,395,473.90
Total Zero-rated sales to be subjected to VAT	**₱ 520,471,920.52**

Ostensibly, the alleged unidentified zero-rated sales of ₱76,446.62 was computed by comparing the amounts of zero-rated sales declared per VAT return vis-à-vis per Summary List of Sales.

We find the assessment untenable.

In its Quarterly VAT Returns for the four (4) quarters of calendar year 2015, petitioner declared sales with an aggregate amount of ₱28,337,715,961.46, comprising of vatable and zero-rated sales, broken down as follows:[92]

Period	VATable Sales	Zero rated Sales	Total Sales
1st Quarter	₱4,917,502,656.25	₱82,531,225.18	₱5,000,033,881.43
2nd Quarter	5,550,051,958.50	119,587,949.01	5,669,639,907.51
3rd Quarter	7,333,078,416.54	133,005,059.19	7,466,083,475.73
4th Quarter	9,994,782,808.70	207,175,888.09	10,201,958,696.79
Total	**₱27,795,415,839.99**	**₱542,300,121.47**	**₱28,337,715,961.46**

[91] Annex "B-1" of Exhibits "P-7" and "R-8", BIR Records (Folder 1 of 4, Exhibit "R-9"), p. 402.
[92] Exhibit "P-21", USB.

Moreover, petitioner reported in its *Monthly Summary List of Sales* an aggregate amount of ₱28,337,715,961.49, which comprised of vatable and zero-rated sales, broken down as follows:[93]

Month	Zero rated Sales	VATable Sales	Total Sales
January	₱26,098,585.83	₱1,536,421,548.25	₱1,562,520,134.08
February	25,085,035.63	1,668,153,849.75	1,693,238,885.38
March	31,347,603.72	1,712,927,258.25	1,744,274,861.97
April	41,144,991.65	1,848,693,160.08	1,889,838,151.73
May	35,892,565.42	1,631,562,015.08	1,667,454,580.50
June	42,550,391.94	2,069,796,783.33	2,112,347,175.27
July	24,494,030.02	1,535,219,750.42	1,559,713,780.44
August	44,567,634.33	1,982,018,730.91	2,026,586,365.24
September	63,943,394.84	3,815,839,935.24	3,879,783,330.08
October	106,073,451.70	4,178,488,504.70	4,284,561,956.40
November	73,113,069.04	3,282,478,747.54	3,355,591,816.58
December	27,989,367.35	2,533,815,556.47	2,561,804,923.83
Total	**₱542,300,121.47**	**₱27,795,415,840.02**	**₱28,337,715,961.49**

The line items of zero-rated sales per *Summary List of Sales* is summarized as follows:[94]

Date Reported	Customer Name	Amount
January 31, 2015	Ford Lio Ho Motor Co. Ltd	₱ 29,101.37
February 28, 2015	Ford Lio Ho Motor Co. Ltd	22,496.71
April 30, 2015	Ford Lio Ho Motor Co. Ltd	14,465.95
May 31, 2015	Ford Lio Ho Motor Co. Ltd	28,262.47
June 30, 2015	Ford Lio Ho Motor Co. Ltd	31,073.98
July 31, 2015	Ford Lio Ho Motor Co. Ltd	20,849.92
August 31, 2015	Ford Lio Ho Motor Co. Ltd	14,367.68
September 30, 2015	Ford Lio Ho Motor Co. Ltd	11,855.37
October 31, 2015	Ford Lio Ho Motor Co. Ltd	12,104.63
Sub-Total		**184,578.08**
February 28, 2015	Ford Motor Company of Australia	56,912.99
April 30, 2015	Ford Motor Company of Australia	3,655.36
May 31, 2015	Ford Motor Company of Australia	3,856.67
June 30, 2015	Ford Motor Company of Australia	3,043.08
July 31,2015	Ford Motor Company of Australia	210,597.00
Sub-Total		**278,065.10**
January 31,2015	Ford Motor Indonesia	29,478.81
February 28, 2015	Ford Motor Indonesia	87,063.34
March 31, 2015	Ford Motor Indonesia	12,812.23
April 30, 2015	Ford Motor Indonesia	93,703.34
May 31, 2015	Ford Motor Indonesia	84,712.43
June 30, 2015	Ford Motor Indonesia	16,609.29
July 31, 2015	Ford Motor Indonesia	21,229.84
August 31, 2015	Ford Motor Indonesia	33,933.48
September 30, 2015	Ford Motor Indonesia	10,857.60
October 31, 2015	Ford Motor Indonesia	73,172.91
Sub-Total		**463,573.27**
January 31, 2015	Ford Operations Thailand	222,531.21
February 28, 2015	Ford Operations Thailand	255,217.51

[93] Exhibit "P-20", USB.
[94] Exhibit "P-20", USB.

March 31, 2015	Ford Operations Thailand	178,177.45
April 30, 2015	Ford Operations Thailand	79,190.97
May 31, 2015	Ford Operations Thailand	1,474,038.11
June 30, 2015	Ford Operations Thailand	318,959.95
July 31, 2015	Ford Operations Thailand	125,338.60
August 31, 2015	Ford Operations Thailand	2,047,999.63
September 30, 2015	Ford Operations Thailand	187,058.94
October 31, 2015	Ford Operations Thailand	780,999.41
Sub-Total		**5,669,511.78**
July 31, 2015	Ford South Africa	75,708.48
August 31, 2015	Ford South Africa	2,229.84
September 30, 2015	Ford South Africa	2,791.50
October 31, 2015	Ford South Africa	151,765.21
Sub-Total		**232,495.03**
January 31, 2015	Ford Subic	25,548,315.87
February 28, 2015	Ford Subic	24,642,414.48
March 31, 2015	Ford Subic	31,108,240.15
April 30, 2015	Ford Subic	40,895,350.56
May 31, 2015	Ford Subic	34,111,241.66
June 30, 2015	Ford Subic	42,146,510.84
July 31, 2015	Ford Subic	23,864,269.90
August 31, 2015	Ford Subic	37,231,043.85
September 30, 2015	Ford Subic	60,616,213.19
October 31, 2015	Ford Subic	104,943,466.58
November 30, 2015	Ford Subic	66,253,530.00
December 31, 2015	Ford Subic	27,955,535.23
Sub-Total		**519,316,132.31**
January 31, 2015	Ford Vietnam	161.67
February 28, 2015	Ford Vietnam	2,023.89
March 31, 2015	Ford Vietnam	894.49
April 30, 2015	Ford Vietnam	13,655.21
May 31, 2015	Ford Vietnam	11,196.97
June 30, 2015	Ford Vietnam	14,284.01
August 31, 2015	Ford Vietnam	46,087.76
September 30, 2015	Ford Vietnam	6,585.65
October 31, 2015	Ford Vietnam	46,207.96
Sub-Total		**141,097.61**
January 31, 2015	Sime Darby Auto Conexion	268,996.90
March 31, 2015	Sime Darby Auto Conexion	47,479.40
February 28, 2015	Sime Darby Autoconexion	18,906.71
April 30, 2015	Sime Darby Autoconexion	44,970.26
May 31, 2015	Sime Darby Autoconexion	179,257.11
June 30, 2015	Sime Darby Autoconexion	19,910.79
July 31, 2015	Sime Darby Autoconexion	176,036.28
August 31, 2015	Sime Darby Autoconexion	89,294.94
September 30, 2015	Sime Darby Autoconexion	165,175.44
October 31, 2015	Sime Darby Autoconexion	65,735.00
November 30, 2015	Sime Darby Autoconexion	63,109.32
December 31, 2015	Sime Darby Autoconexion	16,916.06
Sub-Total		**1,155,788.21**
August 31, 2015	US Embassy	5,102,677.15
September 30, 2015	US Embassy	2,942,857.15
November 30, 2015	US Embassy	6,796,429.72
December 31, 2015	US Embassy	16,916.06
Sub-Total		**14,858,880.08**
Total Zero-rated sales per Summary List of Sales		542,300,121.47
Less: Zero-rated Sales per VAT Return[95]		542,300,121.47
Difference		**₱ -**

[95] Exhibit "P-21", USB.

We find that the amount of zero-rated sales declared per VAT return ties up with the amount of zero-rated sales per *Summary List of Sales*. Thus, there is no basis in respondent's allegation that there were unidentified zero-rated sales. Accordingly, the assessment pertaining to this item should be cancelled.

B. Disallowed Input Tax for Non-compliance of Invoicing Requirements - ₱8,900,000.66

In the course of respondent's audit, petitioner presented documents to support discrepancies per third party information as against SLP. However, verification of said documents disclosed that various purchase invoices and official receipts revealed violations per invoicing requirements, hence, the corresponding input tax was disallowed pursuant to Section 113(B) of the NIRC of 1997, as amended.

Petitioner manifested that it agreed with this item and accordingly paid the corresponding deficiency VAT in the total amount of ₱15,058,570.97, inclusive of interest and compromise, as evidenced by BIR Form No. 0605[96] and eFPS Payment Details.[97] Hence, this part of assessment shall be deemed cancelled.

C. Excess input tax carried forward to succeeding quarter - ₱356,700,166.09

As disclosed in the FDDA, respondent deducted the amount of ₱356,700,166.09 from the available input tax credits of petitioner which effectively disallows the same. Respondent did not provide for any legal and/or factual basis for disallowing the said amount, as such, the same must be cancelled as it violates Section 228 of the NIRC of 1997, which requires that 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.

In view of the foregoing, considering that the assessment has no legal mooring to stand on, and that in fact, petitioner had excess input tax as of the end of taxable year 2015, amounting to ₱356,700,166.09, as shown in its Quarterly VAT Return for the 4th quarter of 2015,[98] We find petitioner not liable to pay any deficiency VAT. Accordingly, the assessment issued by respondent against petitioner for taxable year 2015, covering deficiency VAT,

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[96] Exhibit "P-11", Docket - Vol. II, p. 886; Exhibit "P-18", USB.
[97] Exhibit "P-12", Docket - Vol. II, p. 887; Exhibit "P-19", USB.
[98] Line 29 of Exhibit "P-21", p. 36, USB.

including the corresponding interest thereon in the amount of ₱48,976,063.64, must be cancelled and withdrawn.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**. Accordingly, the FLD dated November 10, 2017 and the FDDA dated June 29, 2020 issued against petitioner for deficiency VAT assessment in the aggregate amount of **₱120,332,694.77**, inclusive of interest, for taxable year 2015 are **CANCELLED** and **SET ASIDE**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

I attest 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's Division.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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