18-000349-0052

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 9900

SEVENSEAS GROUP CUSTOMER SERVICES, INC.,
Petitioner,

- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

COMMISSIONER OF INTERNAL REVENUE
Thru: Litigation Division
Bureau of Internal Revenue
BIR National Office Building
BIR Road, Diliman, Quezon City

ATTY. ALBERT C. ARPON
ATTY. AVELINO G. ALFELOR, JR.
Bureau of Internal Revenue-Revenue Region No. 8A
36th Floor, Legal Division, Export Bank Plaza Bldg.
Sen. Gil Puyat Avenue cor. Don Chino Roces Avenue
Makati City

GATMAYTAN YAP PATACSIL GUTIERREZ & PROTACIO
30th Floor, 88 Corporate Center, Sedeño corner Valero Streets
Salcedo Village, 1227 Makati City

GREETINGS:

You are hereby notified by these presents that on **June 26, 2023,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **July 4, 2023.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
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SPECIAL FIRST DIVISION

SEVENSEAS GROUP CUSTOMER SERVICES, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9900

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:
JUN 26 2023 10:30AM

x- x

DECISION

MANAHAN, *J.:*

This is a Petition for Review[1] filed by Sevenseas Group Customer Services, Inc. against respondent Commissioner of Internal Revenue (CIR) on August 2, 2018 praying for the nullification of the Closure Order dated July 4, 2018.[2]

THE PARTIES

Petitioner Sevenseas Group Customer Services, Inc. is a corporation duly organized and existing under the laws of the Philippines, with principal office located at the 4th Floor, 6780 Building, Ayala Avenue, San Lorenzo Village, Makati City.[3]

Respondent CIR is the duly appointed official to administer all internal revenue laws in the land. He is empowered, among others, to decide disputed assessments, refunds of internal revenue taxes, fees and other charges, penalties in relation thereto, and other matters arising under the 1997 National Internal Revenue Code (NIRC), as amended, and other laws

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[1] Court Docket, pp.12-33.
[2] Statement of the Case, Pre-Trial Order dated July 2, 2019, Docket, p. 396.
[3] Par. A(1), Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket, p. 374; Exhibit "P-11", Docket, pp. 467 to 479.

administered by the Bureau of Internal Revenue (BIR). His office address is at the BIR National Office Building, BIR Road, Diliman, Quezon City.

FACTS

On May 8, 2018, the BIR issued Revenue Regional Special Order (RRSO) No. 190-2018, directing the conduct of Tax Compliance Verification Drive (TCVD) activities in the establishments operating under the jurisdiction of Revenue District Office (RDO) No. 047-East Makati on May 10-11, 2018, and authorizing Group Supervisor (GS) Josephine L. Paralejas and Revenue Officers (ROs) Mark M. Secretario, Rasul S. Solaiman, and John Paul L. Virtudes, to conduct the TCVD.[4]

Respondent then issued the Mission Order dated May 9, 2018, authorizing, *inter alia*, GS Paralejas to conduct and implement the TCVD operation against petitioner. The latter received the said Mission Order on May 10, 2018.[5] On the same date, the BIR conducted a TCVD operation in petitioner's office, and RO Secretario gave petitioner copies of Taxpayer Information Sheet No. 00072253 and a Violation Checklist.[6]

After conducting the TCVD, GS Paralejas advised petitioner to report to the BIR to discuss the findings indicated in the Violation Checklist.

On May 11, 2018, petitioner's Finance Executive, Ms. Annie Cabaylo, went to the BIR for the aforesaid discussion. During the meeting, the BIR apprehended petitioner's unused official receipts with serial nos. 0001-0500, which Ms. Cabaylo presented to the BIR as part of the requirements for processing petitioner's request for Authority to Print. The BIR issued Apprehension Slip No. APS 2002 00012572 dated May 11, 2018[7] for petitioner's unused official receipts.[8]

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[4] Par. (A)3, Facts, JSFI, Docket, pp. 374 to 375; Exhibit "R-1", BIR Records, p. 1 vis-à-vis Docket, 639.
[5] Par. (A)4, Facts, JSFI, Docket, p. 375; Exhibit "R-2", BIR Records, p. 2 vis-à-vis Docket, 639.
[6] Par. (A)5, Facts, JSFI, Docket, p. 375; Exhibit "P-3", Docket, p. 421; Exhibit "R-3", BIR Records, p. 9.
[7] Exhibit "P-4", Docket, p. 422.
[8] Par. (A)6, Facts, JSFI, Docket, p. 375; Exhibit "P-4", Docket, p. 422; Exhibit "R-4", BIR Records, p. 11. cmn

The BIR conducted an investigation, the results of which were embodied in a Memorandum Report dated May 17, 2018, with a finding that petitioner's receipts/invoices were left blank or not filled out, and that its Authority to Print had expired.[9]

On May 23, 2018, petitioner received an undated 48-Hour Notice from Mr. Glen A. Geraldino,[10] the Regional Director of BIR Revenue Region No. 8 – Makati. The 48-Hour Notice stated that petitioner failed to comply with the following requirements as a value-added tax (VAT)-registered person:

(a) To issue sales invoices or receipts;
(b) To file its VAT Return; and
(c) To reflect its correct taxable sales/receipts for the taxable years 2016, 2017, and first quarter of 2018.[11]

The 48-Hour Notice further stated that the BIR will be constrained to recommend the imposition of administrative sanctions against petitioner "thru suspension of business operations or temporary closure of your business establishment, pursuant to Section 115 of the 1997 NIRC, as amended, as implemented by Revenue Memorandum Order (RMO) No. 3-2009[12], otherwise known as 'OPLAN KANDADO', and/or filing of criminal action xxx for violations of the provisions of the Tax Code, WITHOUT FURTHER NOTICE".[13]

On May 24, 2018, petitioner sent a letter to the BIR, requesting for an extension of thirty (30) days to respond to the 48-Hour Notice. RO Secretario prepared the Memorandum Report dated May 24, 2018, recommending the denial of petitioner's request for extension.[14]

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[9] Par. (A)7, Facts, JSFI, Docket, p. 375; Exhibit "R-5", BIR Records, pp. 37 to 38.
[10] Exhibit "P-5", Docket, p. 423.
[11] Par. (A)8, Facts, JSFI, Docket, pp. 375 to 376; Exhibit "P-5", Docket, p. 423; Exhibit "R-6", BIR Records, p. 47.
[12] SUBJECT: Amendment and Consolidation of the Guidelines in the Conduct of Surveillance and Stock-Taking Activities, and the Implementation of the Administrative Sanction of Suspension and Temporary Closure of Business.
[13] Par. (A)9, Facts, JSFI, Docket, p. 376.
[14] Par. (A)10, Facts, JSFI, Docket, p. 376; Exhibit "P-6", Docket, p. 424; Exhibit "R-7", BIR Records, p. 50.

Thereafter, on May 28, 2018, petitioner received a letter from the BIR denying its request for extension.[15]

On May 30, 2018, petitioner received the Five (5)-Day VAT Compliance Notice (VCN) dated May 28, 2018 issued by the BIR. The 5-Day VCN demanded that petitioner rectify its alleged violations by "[d]eclaring the correct taxable sales/receipts which were previously understated *** due to under-declaration of sales/receipts and to pay the correct VAT deficiency including increments".[16]

On June 1, 2018, petitioner sent a letter of the same date to the BIR, requesting for the cancellation of the 5-Day VCN,[17] inasmuch as petitioner has nothing to rectify, considering that it declared its correct taxable sales and paid the penalties for the late filing of some of its VAT returns for the subject period.[18]

Subsequently, on June 6, 2018 petitioner received the BIR's letter dated June 4, 2018, stating that the 5-Day VCN "is hereby reiterated. In case you failed to comply [with] such Notice, much to our regret, we are constrained to recommend for the CLOSURE ORDER as provided on [*sic*] RMO 3-2009".[19]

After the BIR conducted an investigation against petitioner, the BIR submitted the Memorandum dated June 7, 2018 to respondent for the recommendation of the issuance of a closure order against petitioner.[20]

On June 6 and 11, 2018, representatives of petitioner and the BIR met and discussed the 5-Day VCN.[21]

On July 4, 2018, the BIR served upon petitioner the Closure Order of even date[22], and proceeded to close its office

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[15] Par. (A)12, Facts, JSFI, Docket, p. 376; Exhibit "P-7", Docket, p. 425; Exhibit "R-8", BIR Records, p. 53.
[16] Par. (A)13, Facts, JSFI, Docket, p. 376; Exhibit "P-8", Docket, p. 426; Exhibit "R-10", BIR Records, p. 57.
[17] Par. (A)14, Facts, JSFI, Docket, p. 376; Exhibit "R-11", BIR Records, pp. 93 to 96.
[18] Par. 12, *Petition for Review*, vis-à-vis Par. 6, *Answer*, Docket, pp. 15 and 102, respectively.
[19] Par. (A)15, Facts, JSFI, Docket, p. 377; Exhibits "P-10" and "P-10-A", pp. 465 to 466; Exhibit "R-12", BIR Records, pp. 101 to 102.
[20] Par. (A)16, Facts, JSFI, Docket, p. 377; Exhibit "R-13", BIR Records, pp. 103 to 105.
[21] Par. (A)17, Facts, JSFI, Docket, p. 377.
[22] Exhibit "P-1", Docket, p. 88.

premises at the 4th Floor, 6780 Building, Ayala Avenue, San Lorenzo Village, Makati City by posting therein the Closure Order and a BIR warning, and a Notice to the Public across, on the main door of petitioner's office such that the door cannot be opened or used for ingress.[23]

Petitioner filed the present Petition for Review on August 2, 2018.[24]

Respondent posted his Answer to the Petition for Review on September 25, 2018.[25] He then transmitted the BIR Records of this case to the Court on October 18, 2018.[26]

The Pre-Trial Conference was initially set on November 29, 2018.[27] Petitioner filed a Motion to Postpone (a) Pre-Trial and (b) Submission of the Pre-trial Brief and Judicial Affidavits on November 12, 2018.[28] The Court granted the same in the interest of justice, in an Order dated November 14, 2018.[29]

Petitioner filed a second Motion to Postpone (a) Pre-Trial and (b) Submission of the Pre-trial Brief and Judicial Affidavits on January 31, 2019.[30] The Court also granted the said Motion to Postpone in a Resolution dated February 6, 2019.[31]

The Pre-Trial Conference was then held on March 28, 2019.[32] Prior thereto, Respondent's Pre-Trial Brief was filed on November 7, 2018,[33] while the petitioner's Pre-Trial Brief was submitted on March 22, 2019.[34]

On April 16, 2019, the parties submitted their Joint Stipulation of Facts and Issues,[35] which was approved in the

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[23] Par. (A)18, Facts, JSFI, Docket, p. 377.
[24] Docket, pp. 12 to 36.
[25] Docket, pp. 101 to 114.
[26] Letter dated October 18, 2018, Docket, p. 146.
[27] *Notice of Pre-Trial Conference* dated October 12, 2018, Docket, pp. 143 to 144.
[28] Docket, pp. 155 to 158.
[29] Docket, p. 159.
[30] Docket, pp. 161 to 164.
[31] Docket, pp. 166 to 167.
[32] Resolution dated February 6, 2010, Docket, pp. 166 to 167; Minutes of the hearing held on, and Order dated, March 28, 2019, Docket, pp. 299 to 301, and 303 to 305, respectively.
[33] Docket, pp. 147 to 152.
[34] Docket, pp. 216 to 229.
[35] Docket, pp. 374 to 381.

Resolution dated May 21, 2019,[36] thereby deeming the termination of the Pre-Trial. Subsequently, the Court issued the Pre-Trial Order dated July 2, 2019.[37]

The trial of the case proceeded.

During trial, both parties presented their respective testimonial and documentary evidence.

Petitioner offered the testimony of Atty. Diana Louise W. Dela Guerra,[38] a Senior Associate at Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law), as petitioner's external counsel.

On July 17, 2019, petitioner filed its Formal Offer of Documentary Evidence.[39] Respondent filed his Comment (To Petitioner's Formal Offer of Documentary Evidence dated July 17, 2019) on July 23, 2019.[40] In the Resolution dated February 11, 2019,[41] the Court admitted petitioner's exhibits, except for Exhibits "P-2", "P-9", "P-9-A", and "P-9-B", for failure to present the originals for comparison.

Petitioner then filed a Motion for Partial Reconsideration (of the Resolution dated September 11, 2019) on October 1, 2019,[42] praying that the Court admit the denied exhibits or in the alternative, order that the exhibits be made part of the records of the case.

In the Resolution dated June 9, 2020,[43] the Court denied petitioner's Motion for Partial Reconsideration and the admission of petitioner's exhibits, and noted petitioner's tender of excluded evidence.

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[36] Docket, p. 383.
[37] Docket, pp. 396 to 406.
[38] Exhibit "P-12", Docket, pp. 311 to 320; Minutes of the hearing held on, and Order dated, July 2, 2019, Docket, pp. 407 to 409.
[39] Docket, pp. 411 to 418.
[40] Docket, pp. 541 to 542.
[41] Docket, pp. 546 to 547.
[42] Docket, pp. 548 to 558.
[43] Docket, pp. 565 to 568. cen

Respondent presented as his lone witness, RO Mark M. Secretario.[44]

Respondent's Formal Offer of Evidence was filed on December 18, 2020.[45] Petitioner filed its Comment (on the Respondent's Formal Offer of Evidence dated December 16, 2020) on December 28, 2020.[46] In the Resolution dated February 22, 2021,[47] the Court admitted respondent's Exhibits, except for the following:

1. Exhibits "R-1", "R-1-A", "R-2", and "R-2-A", for failure to present originals for comparison; and,

2. Exhibit "R-13-A", for not being found in the records of the case.

Subsequently, respondent posted a Motion for Reconsideration of the Resolution dated February 22, 2021.[48] Petitioner failed to file its comment thereto.[49] In the Resolution dated April 20, 2022,[50] the Court granted respondent's Motion for Reconsideration, and admitted Exhibits "R-1", "R-1-A", "R-2", and "R-2-A".

Petitioner's Memorandum was posted on April 13, 2021.[51] Respondent, however, failed to file his memorandum.[52]

The present case was submitted for decision on June 28, 2022.[53]

THE ISSUE

The parties submitted the following lone issue for this Court's resolution, to wit:

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[44] Exhibit "R-14", Docket, pp. 168 to 186; Minutes of the hearing held on, and Order dated, December 10, 2020, Docket, pp. 584 to 586.
[45] Docket, pp. 592 to 599.
[46] Docket, pp. 601 to 606.
[47] Docket, pp. 610 to 611.
[48] Docket, pp. 633 to 638.
[49] Records Verification dated February 24, 2022 issued by the Judicial Records Division of this Court Docket, p. 645.
[50] Docket, pp. 649 to 651.
[51] Docket, pp. 612 to 631.
[52] Records Verification dated June 4, 2021 issued by the Judicial Records Division of this Court, Docket, p. 642.
[53] Minute Resolution dated July 28, 2022, Docket, p. 647.

"Whether or not the BIR's 48-Hour Notice, 5-Day VCN, and Closure Order are void." [54]

Petitioner's arguments:

Petitioner challenges the validity of the 48-Hour Notice, 5-Day VCN, and Closure Order issued by the BIR for failure to comply with the procedures set out in RMO No. 9-2006[55] and the mandatory surveillance requirement under RMO No. 3-2009. Citing the case of *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.,*[56] petitioner maintains that failure to strictly comply with the requirements laid down by its own rules constitutes a violation of a taxpayer's right to due process. Petitioner further objects to the alleged "piecemeal" compliance with the said RMOs by following only portions of the prescribed procedures of the subject RMOs while ignoring the other pertinent requirements and processes.

Among the defects alleged by the petitioner in the issuance of the Closure Order is the failure of respondent to advise it to appear before the BIR to explain its position and to issue a Second Opportunity Notice (SON) and a Last Opportunity Notice (LON) after conducting the TCVD pursuant to the provisions of RMO No. 9-2006. Further, petitioner asserts that respondent issued the subject 48- Hour Notice, the 5-Day VCN and Closure Order without the necessary surveillance required under RMO No. 3-2009. Petitioner maintains that the closure of an establishment can only be made (a) after the conclusion of a surveillance, and, (b) that there are sufficient grounds for the closure of an establishment after the said surveillance.

On its compliance with the relevant VAT laws and administrative issuances, petitioner asserts that it did not commit the violations alleged by respondent and maintains that it declared the correct taxable sales and filed the corresponding VAT returns pursuant to Section 114 of the 1997 NIRC, as amended, and that there is no such under declaration of sales or receipts, contrary to the contention of respondent. At most,

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[54] Issue, JSFI, Docket, p. 378.

[55] SUBJECT: PRESCRIBING THE GUIDELINES AND PROCEDURES IN THE CONDUCT OF TAX COMPLIANCE VERIFICATION DRIVE (TCVD).

[56] G.R. No. 185371, December 8, 2010.

petitioner may be required to pay the compromise penalty in connection with late filing of VAT returns.

Respondent's counter-arguments:

Respondent avers that the Closure Order finds its legal basis in Section 115, in relation to Section 113, of the 1997 NIRC, as amended. He claims that petitioner was caught *in flagrante delicto* in violating the relevant provisions of the 1997 NIRC, as amended, hence, there is no need to conduct prior surveillance before its revenue officers may proceed with the TCVD. Surveillance, according to respondent, is a mere surplusage and further wastes the government's time and efforts because the TCVD conducted is already in lieu thereof.

Contrary to the arguments of petitioner, respondent states that the provisions of RMO No. 3-2009 are mere guidelines and are directory in nature. To strictly adhere to the provisions of RMO No. 3-2009 for the implementation of Secs. 113 and 115 of the 1997 NIRC, as amended, would result to absurdity considering that petitioner, based on the records, clearly did not issue official receipts and/or sales invoices in violation of the relevant provisions of the law. Further, respondent avers that a statute conferring powers on administrative agencies must be liberally construed to enable them to discharge their assigned duties. Finally, respondent cites the oft-repeated doctrine that assessments are presumed correct, and official functions are regularly done, and the burden of proving that the assessments are not correct rests on petitioner.

THE COURT'S RULING

Although not raised by both parties, the Court will determine whether it has jurisdiction over the Petition for Review filed by petitioner. Well-settled is the rule that the issue of jurisdiction over the subject matter may, at any time, be raised by the parties or considered by the Court *motu proprio*.[57]

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[57] Northern Mindanao Power Corporation vs. CIR, G.R. No. 185115, February 18, 2015.

As held by the Supreme Court in the case of *Bernadette S. Bilag, et al. vs. Estela Ay-Ay, et al.*[58], jurisdiction is a primordial issue that must be passed upon by a court before any other issue is adjudicated upon, thus:

> "Jurisprudence has consistently held that 'jurisdiction is defined as the power and authority of a court to hear, try and decide a case. In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter. xxx xxx **Thus, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action**.' xxx xxx" (emphasis supplied)

A perusal of the instant Petition for Review reveals that the relief sought by petitioner is the nullification of the 48-Hour Notice, 5-Day VCN, and Closure Order issued by the BIR.

Jurisdiction is conferred by law. The Court of Tax Appeals (CTA), as a court of special jurisdiction, can only take cognizance of matters that are clearly within its jurisdiction.[59]

Section 7(a) (1) of Republic Act (RA) No. 1125, as amended by RA No. 9282, provides for the Court's jurisdiction, thus:

> "Sec. 7. Jurisdiction. – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **<u>other matters</u> arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue** xxx xxx." (Emphasis and underscoring supplied)

Further, Section 3 (a) (1), Rule 4 of the Revised Rules of the CTA likewise states:

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[58] G.R. No. 189950, April 24, 2017.
[59] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc.,* G.R. No. 169778, March 12, 2014. cm

> "Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
>
> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, **or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**." (emphasis and underscoring supplied).

An analysis of the foregoing subject matters cognizable by this Court discloses that the appellate jurisdiction of the CTA Division is not limited to cases involving decisions or inactions of the CIR on matters relating to assessments or refunds but also includes other cases arising from the NIRC or related laws administered by the BIR.[60]

The second part of Section 7 (a) (1) of RA No. 1125, as amended by RA No. 9282, covers "other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue."

In the instant case, petitioner argues that respondent failed to comply with the provisions of RMO No. 9-2006 which allegedly violated its right to due process. RMO No. 9-2006 prescribes guidelines and procedures in the BIR's TCVD, which implements Section 115 of the 1997 NIRC, as amended, in relation to Section 5 of the same Code, specifically, the power of the CIR to suspend the business operations of a taxpayer and its concomitant power to obtain information. In other words, the legality or validity of the issuance of the 48-Hour Notice, 5-Day VCN, and Closure Order are related to the aforesaid powers of the CIR to determine tax compliance by taxpayers, and are covered by the term "other matters" arising under the 1997 NIRC, as amended, hence, falling under the Court's exclusive appellate jurisdiction.

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[60] *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.,* G.R. No. 183408, July 12, 20217.

In sum, we rule that the Court has jurisdiction to review the validity of the 48-Hour Notice, 5-Day VCN, and Closure Order issued by the BIR.

We now proceed to discuss the issues raised by the parties.

Petitioner claims that the 48-Hour Notice, 5-day VCN and Closure Order issued by the BIR violated its right to due process as the same were all in violation of its own post TCVD-procedure outlined in RMO No. 9-2006 and without conducting the necessary surveillance prescribed under RMO No. 3-2009.

We find the present Petition for Review meritorious.

The issuance of the subject 48-Hour Notice, 5-Day VCN, and Closure Order violated petitioner's constitutional right to due process.

It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution.[61] Thus, while taxes are the lifeblood of the government, the power to tax has its limits, in spite of all its plenitude. 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.[62]

Simply put, the BIR's power to collect taxes must yield to the fundamental rule that no person shall be deprived of his/her property without due process of law. The rule is that

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[61] *Commissioner of Internal Revenue vs. BASF Coating + Inks Phils., Inc.*, G.R. No. 198677, November 26, 2014.
[62] *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014. cm

taxes must be collected reasonably and in accordance with the prescribed procedure.[63]

In this case, however, respondent clearly failed to observe the prescribed procedure in the issuance of the subject 48-Hour Notice, 5-Day VCN, and Closure Order. Particularly, respondent did not fully comply with the procedure prescribed under RMO No. 3-2009 in the issuance of said Notices.

It must be emphasized that this Court cannot subscribe to respondent's contention that "RMO No. 3-2009 is merely guidelines *[sic]* and directory in nature." This must be so because administrative issuances, such as the said RMO, have the force and effect of law; and that they benefit from the same presumption of validity and constitutionality enjoyed by statutes.[64] Thus, any provision in any administrative issuance must be accorded with the same treatment as any statute, so long as they are not contrary to the laws or the Constitution.[65] Pertinently, since there is no showing that RMO No. 3-2009 is contrary to law or the Constitution, the same must be given legal effect.

Part III (1) of RMO No. 3-2009 defines what constitutes a "non-compliant taxpayer", to wit:

> "A **non-compliant taxpayer** is defined as a taxpayer who, **as a result of surveillance / stocktaking activities,** has been found to have committed the violations enumerated in Item (1), Section IV of this Order, and who, notwithstanding the issuance of several notices of violations, continues to refuse to comply with the requirements provided under existing rules and regulations." (Emphases supplied)

Based on the foregoing definition, for purposes of RMO No. 3-2009 or the issuance of a 48-Hour Notice, 5-day VCN, and Closure Order, a taxpayer, to be considered as "non-compliant", must have resulted from "surveillance / stocktaking activities" of the BIR. In other words, before the issuance of the said Notices against a particular taxpayer, the BIR must have initially conducted surveillance or stocktaking against the latter

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63 *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation, etseq.,* G.R. Nos. 197945 and 204119-20, July 9, 2018.
64 *Chevron Philippines, Inc. vs. Bases Conversion and Development Authority, et al.,* G.R. No. 173863, September 15, 2010.
65 Article 7, Civil Code of the Philippines (Republic Act No. 386).

otherwise, said taxpayer may not be categorized as a "non-compliant taxpayer", warranting the issuance of the same Notices. Correspondingly, respondent cannot simply argue that "[t]o conduct surveillance is surplusage and further waste of government's time and effort" and "[t]he conducted TCVD against [petitioner] is in lieu of surveillance".

The prerequisite conduct and conclusion of surveillance by the BIR before the issuance of the said Notices, and that the concerned taxpayer must be "non-compliant", are even axiomatic under the following pertinent provisions of RMO No. 3-2009, to wit:

"V. GUIDELINES AND PROCEDURES

A. Surveillance Activities

xxx xxx xxx

2. **Conduct of Surveillance**

2.1. Revenue Officer Authorized to Conduct Surveillance Activities on Business establishments for Possible Violations of Sections 113, 114, 236, 237 and 238 of the NIRC, as amended. – **At least two (2) implementing officers comprised of Revenue Officers (ROs) (Assessment/Excise), Intelligence Officers (IOs) and special Investigators (SIs) assigned in the following investigating offices/ divisions shall be authorized to conduct surveillance activities on identified business establishment based on validly issued mission order signed by the concerned authorized revenue official:**

xxx xxx xxx

2.2. **Mandatory Requirement for the Conduct of Surveillance and Apprehension of Business Establishments for Non-Compliance with the Provisions of Section 113, 114, 236, 237 and 238 of the NIRC, as amended. – No surveillance activities shall be conducted nor apprehension effected unless the same has been authorized by a mission order**

issued in accordance with the provisions of this Order.

xxx xxx xxx

4. **Action on Surveillance Results**

If after the conclusion of the surveillance, there is a sufficient ground for the closure of the establishment as provided under Section 115 of the NIRC, as amended, **a recommendation shall be made to effect such closure.**

xxx xxx xxx

B. Suspension or Temporary Closure of Business

xxx xxx xxx

3. **Confrontational Requirements**

3.1. Consistent with the requirements of due process, the report of the handling Revenue Officer shall be concurred in by the Head of the investigating office. The findings of the investigating office shall be reviewed by a Review Board composed of the following:

xxx xxx xxx

If a report is approved by a Review Board, the concerned Regional Director or the ACIR, Enforcement Service/LTS, as the case may be, shall, in his capacity as Chair of the Review Board, sign and issue to the taxpayer concerned a Forty-Eight (48)-Hour Notice, requiring him to explain under oath within forty eight (48) hours why he should not be dealt with administratively, by suspension of business or temporary closure of his establishment, and/or criminally, for violation of pertinent provisions of the Tax Code.

xxx xxx xxx

3.3. **If a Review Board deems it necessary to pursue administrative or criminal action against a non-compliant taxpayer, it shall cause the preparation of a 5-Day VAT Compliance Notice (VCN)** [Annex 'D'], which shall be issued in lieu of the 10-Day

VCN, to expedite the resolution of the case at hand. The 5-Day VCN shall be signed by the Chair of the Review Board concerned.

xxx xxx xxx

C. Execution and Enforcement

xxx xxx xxx

2. **The signed Closure Order** shall be returned by the Office of the Commissioner, together with all supporting documents, to the Review Board concerned, **for immediate service to the non-compliant taxpayer**. xxx xxx" (Emphases supplied)

Based on the foregoing provisions, it is clear that surveillance is necessary before the BIR can issue a 48-Hour Notice, 5-day VAT Compliance Notice, and Closure Order, to a "non-compliant taxpayer".

In this case, respondent implicitly admits that no surveillance was ever conducted against petitioner before the issuance of the subject 48-Hour Notice, 5-day VAT Compliance Notice, and Closure Order. Thus, for purposes of RMO No. 3-2009, petitioner cannot be considered as a "non-compliant taxpayer" to warrant the issuance of the said Notices.

Moreover, RMO No. 9-2006 prescribes the guidelines and procedures relative to the BIR's TCVD. It states, *inter alia*, what should be done after the TCVD activity conducted by ROs, to wit:

"V. GUIDELINES AND PROCEDURES

V.1 MANUAL TAX COMPLIANCE VERIFICATION DRIVE (TCVD)

xxx xxx xxx

3. POST TCVD CONDUCT

xxx xxx xxx

3.2 Host RDO shall:

xxx xxx xxx

3.2.2 Assessment Unit shall:

a. Receive from the Taxpayer Service Section those taxpayers who have been issued Violations Checklist and/or Apprehension Slips and evaluate explanation thereof;

b. Forward to Revenue Officer concerned for issuance of Second Opportunity Notice (SON), if necessary, after evaluation of those taxpayers who have been issued Violations Checklists and/or Apprehension Slips;

c. Receive report of findings from Revenue Officers then forward the docket/case to the Legal Division recommending that appropriate civil/criminal action be initiated if taxpayer fails or refuses to respond to the Last Opportunity Notice (LON).

3.2.3 Revenue Officer (RO) shall:

a. **Prepare and serve Second Opportunity Notice (SON)**, {Annex 'N'} **if the taxpayer failed to settle the penalty or to explain the reasons why no penalty should be imposed**, within five (5) days from the receipt of the letter;

b. **In the event that the taxpayer fails or refuses to respond to the follow-up letter (SON) or if as a result of preliminary conference it was determined that the explanation of the taxpayer is without any factual or legal basis, prepare and serve Last Opportunity Notice (LON)** {Annex 'O'} after the lapse of the five-day period from the date the SON was served to the taxpayer;

c. Prepare and submit a report of findings, together with the whole docket of the case and a copy of the letter bearing the acknowledgement of receipt by the taxpayer concerned, to the Assessment Unit within one (1) day following the date of service of LON.

3.3 Legal Division shall: om

3.3.1 Receive docket/case of taxpayers from the Assessment Unit of the Host RDO within two (2) days following the expiration of the five-day period granted to the taxpayer together with the report of findings of the RO and a copy of the letter bearing the acknowledgment of receipt by the taxpayer;

3.3.2 **If the taxpayer pays, return the docket to the RDO within two (2) days for evaluation and transmittal to the Regional Evaluation Committee (REC), if proper**;

3.3.3 **If the taxpayer fails or refuses to pay the suggested compromise penalty:**

a. Prepare Complaint based on the report of the Revenue Officer;

b. Forward the prepared Complaint to the Regional Director for his approval and signature;

c. File the Complaint together with the whole docket of the case to the Prosecutor's Office;

xxx xxx xxx" (emphasis supplied)

In the instant case, it is undisputed that after the conduct of the TCVD, respondent did not follow the foregoing prescribed post-TCVD procedures. In fact, during the cross-examination of respondent's witness, RO Secretario, testified, in effect, that the BIR did not adhere or follow the procedure prescribed under RMO No. 9-2006 relative to the subject TCVD, as follows:

"ATTY. NIERRA
Q In your Judicial Affidavit, you mentioned that you issued a violation's checklist and an apprehension's *(sic)* slip after you conducted TCVD, is that correct?

MR. SECRETARIO
A Yes, Atty.

xxx xxx xxx

ATTY. NIERRA
Q Are these similar to the documents that you identified as Exhibits 'R-3' and 'R-4', the violation's *(sic)* checklist and the apprehension slip?

MR. SECRETARIO
A Yes, Atty.

ATTY. NIERRA
Q Therefore, can you, are the apprehension slip and the violation's checklist *(sic)* issued pursuant to RMO 9-2006?

MR. SECRETARIO
A Yes, Atty.

ATTY. NIERRA
Q Under RMO 9-2006 which governs TCVD's *(sic)*, the Revenue Officer such as yourself is required to serve after conducting TCVD to serve as an Opportunity Notice and/or a Last Opportunity Notice to the alleged violator. As a Revenue Officer, did you issue any Second Opportunity Notice or Last Opportunity Notice to Sevenseas?

MR. SECRETARIO
A I don't recall issuing that Sir.

ATTY. NIERRA
Q You don't recall, okay. So, just to clarify, in your entire Judicial Affidavit and in all your, in all the exhibits you identified, there is no Second Opportunity Notice or Last Opportunity Notice, correct?

MR. SECRETARIO
A Yes, Atty.

ATTY. NIERRA
Q Mr. Secretario, are you aware of *(sic)* that penalties prescribed under RMO 9-2006 or the rules that govern TCVD's?

MR. SECRETARIO
A Yes, Atty.

ATTY. NIERRA
Q Are you aware that RMO 9-2006 does not prescribed *(sic)* closure as a penalty for TCVD violation?

MR. SECRETARIO
A I'm not familiar with the penalty of closure Sir but we are not citing RMO 9-2006 for the closure.

ATTY. NIERRA
Q Okay. So, why did you, what regulations did you cite for the closure order? cm

MR. SECRETARIO
A Under Section 115 of the Tax Code Sir.

ATTY. NIERRA
Q Under the Tax Code. And if I direct you to Exhibit 'R-6' attached to your Judicial Affidavit entitled 48-hour notice, can you read the words that appear under the words 48-hour notice?

MR. SECRETARIO
A Under RMO 3-2009."[66]

From the foregoing testimony and the evidence presented, it is then clear that respondent resorted to a piecemeal application of RMO Nos. 9-2006 and 3-2009. Particularly, on the issuance of RRSO No. 190-2018,[67] the Mission Order dated May 9, 2018 (relative to the conduct and implementation of the TCVD Operation),[68] Taxpayer Information Sheet,[69] and Violation Checklist,[70] the same were made pursuant to certain provisions of RMO No. 9-2006, without conducting the required "POST TCVD CONDUCT". And on the issuance of the subject 48-Hour Notice,[71] 5-Day VCN,[72] and Closure Order,[73] respondent invokes the provisions of Section 115 of the 1997 NIRC, as amended, and RMO No. 3-2009, without observing the required prior surveillance.

The failure of respondent or the BIR to act in accordance with the prescribed procedures before issuing the subject Notices, resulted to the violation of petitioner's right to due process. Correspondingly, the said Notices are void, and thus, cannot be given effect.

WHEREFORE, in light of the foregoing considerations, the present Petition for Review is **GRANTED**.

Accordingly, the undated 48-Hour Notice, the 5-day VCN dated May 28, 2018, and the Closure Order (SN: RR8-047-

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[66] Transcript of Stenographic Notes (TSN) for the hearing held on December 10, 2020, pp. 9 to 11.
[67] Exhibit "R-1", BIR Records, p. 1 vis-à-vis Docket, 639.
[68] Exhibit "R-2", BIR Records, p. 2 vis-à-vis Docket, 639.
[69] Exhibit "P-3", Docket, p. 421.
[70] Exhibit "R-3", BIR Records, p. 9.
[71] Exhibit "P-5", Docket, p. 423.
[72] Exhibit "P-8", Docket, p. 426; Exhibit "R-10", BIR Records, p. 57.
[73] Exhibit "P-1", Docket, p. 88. cm

006CO) dated July 4, 2018, all issued against petitioner, are hereby **CANCELLED** and **SET ASIDE**.

Respondent is further **ORDERED** to:

(i) **REMOVE** the Closure Order and Notice to the Public which was posted on the main door of petitioner's office; and,

(ii) **RESTRAIN** from collecting taxes based on the 48-Hour Notice, 5-Day VCN and Closure Order.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(See Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

SEVENSEAS GROUP CUSTOMER SERVICES, INC., Petitioner,	**CTA Case No. 9900**
- versus -	Members: **DEL ROSARIO**, *P.J.*, *Chairperson* **MANAHAN**, and **REYES-FAJARDO**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 26 2023 10:30 AM

x - x

CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur that the 48-Hour Notice, 5-Day VAT Compliance Notice (VCN) dated May 28, 2018, and Closure Order (SN: RR8-047-006CO) dated July 4, 2018, should be invalidated for violating petitioner's due process rights. I wish to point out, however, that the required "surveillance" prior to the issuance of the said documents was satisfied by respondent in accordance with Revenue Memorandum Order (RMO) No. 3-2009.

Item III(2) of RMO No. 3-2009 provides for three (3) types of surveillance, namely:

> "2.1 Covert Surveillance – the surreptitious and undercover watch on the business operations of a person for a certain period before the conduct of the inventory of business documents evidencing receipt of income as well as movement of goods or rendition of services; or apprehension / seizure of the aforementioned business documents and properties found to be the subject of violations of the provision of the NIRC, as amended, and its implementing regulations. (See Section 6(c), NIRC, as amended)
>
> 2.2 Overt Surveillance – the type of surveillance which commences with inventory-taking of the business documents as mentioned in 1.1 above, of the person under surveillance followed by the actual

> observation and close monitoring of the business activities of such person.
>
> 2.3 **Short-Duration Surveillance (Tax Compliance Check) – the type of surveillance wherein the business operations of the target taxpayer are observed for purposes of detecting non-compliance with the Bureau's primary and secondary registration requirements. It is an on-and-off activity which does not involve prolonged on-premises observation.**" (*Boldfacing supplied*)

Upon review, it is noted that the **Tax Compliance Verification Drive (TCVD)** conducted on petitioner may be considered as the "surveillance" required under RMO No. 3-2009, particularly as a "Short-Duration Surveillance (Tax Compliance Check)."

Under Item I of RMO No. 9-2006, or the revenue issuance governing the conduct of TCVDs, the TCVD is aimed at "establishing cordial relationship with [the] taxpayer by giving assistance thru tax information drive and **verification of taxpayer's compliance requirements during the actual visitation of taxpayer's establishment and its branches**."

During the conduct of the TCVD, the Tax Mapping Team, which is composed of revenue officers designated under a Revenue Region Special Order and Mission Order, is authorized to perform the following duties and responsibilities:

> "2.1.3 The Tax Mapping Team shall:
>
> a. Issue a "Reminder to All Business Establishments" (Annex "D") which reminder letter contains: x x x
>
> b. **Verify if the establishment is registered or not**: x x x
>
> c. **Observe and verify if the establishment maintains duly authorized Receipts or Sales/Commercial Invoices in accordance with the provisions of Sec 238 and if the same is issued in consonance with Sec 237 of the Tax Code as amended. If taxpayer is a VAT registered person, verify compliance with Sec 113 of the Tax Code and note findings in the TIS;**
>
> d. **Verify if the use of CRM/POS/CAS is duly authorized and determine if there are violations in the use of CRM/POS/CAS** under RR 10-99, RMO 29-2002, RR 11-2004 and RMO 10-2005 and note findings in the TIS;
>
> e. **Verify if the establishment is maintaining duly authorized books of accounts and recorded transactions are updated** as

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required by Revenue Regulation V-1 as amended (Bookkeeping Regulations) and note findings in the TIS;

f. **If warranted, issue an Apprehension Slip (Annex "C") to the taxpayer for offenses penalized relative to unauthorized use and issuance of receipt, sales and commercial invoices and unauthorized use of CRM/POS/CAS**. x x x

g. List down all violations in Violations Checklist (Annex "G") and accomplish TIS (Annex "F") in duplicate, one copy of each to be given to the taxpayer who shall be required to acknowledge receipt thereof and the other copy to be attached to the List of Taxpayers Visited/Apprehended under Tax Mapping Operation (Annex "H") to be submitted to the Host RDO.

h. Before leaving the tax mapped establishment, the Tax Mapping Team shall post a sticker (Annex "P") as proof that the establishment has been tax mapped with color coding scheme as follows: x x x" (*Boldfacing supplied*)

The duties of a Tax Mapping Team during the conduct of TCVD operations fall squarely within the definition of a Short-Duration Surveillance (Tax Compliance Check), which is undertaken to detect any non-compliance with the registration requirements under pertinent BIR rules and regulations.

The nature of such surveillance as an "on-and-off activity" not requiring prolonged on-premises observation is bolstered by the Mission Order[1] issued in favor of the revenue officers who conducted the TCVD. Said Mission Order authorized the revenue officers "[t]o conduct and implement [a] Tax Compliance Verification Drive (TCVD) Operation" on petitioner from "**May 10, 2018 to May 11, 2018**."

Interestingly, RMO No. 3-2009 explicitly and categorically states that the procedures provided therein on the conduct of surveillance activities are mere "general guides"; nevertheless, such surveillance should still observe the taxpayer's due process rights, thus:

"V. GUIDELINES AND PROCEDURES

A. Surveillance Activities

x x x x x x x x x

2. Conduct of Surveillance

x x x x x x x x x

[1] Exhibit "R-2", BIR Records, p. 2.

> 2.4 Performance of Surveillance Activities
>
> x x x x x x x x x
>
> **The procedures outlined in this Order are general guides in the conduct of the surveillance.** The implementing officer is not precluded from applying additional procedures which he may deem necessary based on his findings or initial evaluation of the case, **provided that the same are carried out with due regard for the SUBJECT's legal rights.**" (*Boldfacing supplied*)

Thus, even if respondent undertook a "Short-Duration Surveillance (Tax Compliance Check)" in the form of a TCVD, the conduct of such TCVD should still comply with the requirements under the pertinent rule, *i.e.*, RMO No. 9-2006, for the observance of petitioner's due process rights.

As correctly found in the *ponencia*, the conduct of the TCVD in this case did not conform to the post-TCVD procedure laid out in Item V(3.2.3) of RMO No. 9-2006, particularly the sending out of the **Second Opportunity Notice** and/or **Last Opportunity Notice** to petitioner. This was admitted by respondent's witness, Revenue Officer Mark M. Secretario, a member of the Tax Mapping Team who conducted the TCVD on petitioner.

Tax assessments issued in violation of the due process rights of a taxpayer are null and void.[2] Similarly, a Closure Order under Section 115 of the National Internal Revenue Code of 1997, as amended, must likewise be declared void if issued in violation of the due process rights of a taxpayer. Thus, for respondent's failure to observe the procedure provided for under RMO No. 9-2006, the TCVD conducted on petitioner violated the latter's due process rights. Necessarily, the 48-Hour Notice, 5-Day VCN, and Closure Order, which are products of said invalid TCVD, are likewise rendered void.

ALL TOLD, I *CONCUR* in the *ponencia*.

ROMAN G. DEL ROSARIO
Presiding Justice

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[2] *Commissioner of Internal Revenue vs. Avon Products Manufacturing. Inc., et seq.*, G.R. Nos. 203198-99 & 201418-19, October 3, 2018.