REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM. CASE NO. O-935

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

GB BEM CIGARETTE CO., INC.,
GREGORY G. LIM (President),
BENSON G. CHUA (Treasurer),
ELSIE A. OAFALLAS (Director),
GENDY A. BAMBAO (Director)
and MARIA CRISTINA G. DAYOS
(Corporate Secretary),
Accused.

NOTICE OF DECISION

To:

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Angeles City Police Office
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GREETINGS:

You are hereby notified by these presents that on **November 20, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **November 20, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA CRIM. CASE NO. O-935** *For: Violation of Section 263, in relation to Section 253(d) and 256, of the NIRC of 1997, as amended*
-versus-	*Members:*
GB BEM CIGARETTE CO., INC., GREGORY G. LIM (President), BENSON G. CHUA (Treasurer), Elsie A. OAFALLAS (Director), GENDY A. BAMBAO (Director), and MARIA CRISTINA G. DAYOS (Corporate Secretary), Building 09-01, Pampanga Economic Zone Pulung, Cacutud, Angeles City, Pampanga, *Accused.*	**DEL ROSARIO,** *P.J., Chairperson,* **BACORRO-VILLENA,** *and* **CUI-DAVID,** *JJ.* Promulgated: NOV 20 2024; 8:30AM

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DECISION

CUI-DAVID, J.:

Before this Court are the *Information*[1] filed on September 6, 2022 and the *Amended Information*[2] filed on October 26, 2022, by plaintiff People of the Philippines (**People**), against accused GB BEM Cigarette Co., Inc. (**GB BEM**), Gregory G. Lim, Benson G. Chua, Elsie A. Oafallas, Gendy A. Bambao, and Maria Cristina G. Dayos, under Section 2, Rule 9,[3] in relation

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[1] Docket – Vol. I, pp. 5–8.
[2] *Id.* at 135–138.
[3] SECTION 2. Institution of Criminal Actions. — All criminal actions before the Court in Division in the exercise of its original jurisdiction shall be instituted by the filing of an information in the name of the People of the Philippines. In criminal actions involving violations of the National Internal Revenue Code and other laws enforced by the

to Section 3(b)(1), Rule 4,[4] of the Revised Rules of the Court of Tax Appeals[5] (**RRCTA**).

THE PARTIES

Accused GB BEM is a manufacturer of cigarettes and tobacco products. GB BEM is registered with the Philippine Economic Zone Authority (**PEZA**) as an Ecozone Export Enterprise per Registration No. 16-120 dated July 20, 2016.[6]

Accused Gregory G. Lim (**Lim**) is the President of GB BEM.[7]

Accused Benson G. Chua (**Chua**) is the Treasurer of GB BEM.[8]

Accused Elsie A. Oafallas (**Oafallas**) and Gendy A. Bambao (**Bambao**) are Directors of GB BEM.[9]

Accused Maria Cristina G. Dayos (**Dayos**) is the Corporate Secretary of GB BEM.[10]

All individual accused are resident citizens.[11]

FACTUAL ANTECEDENTS

Accused were charged with violation of Section 263, in relation to Section 253(d) and 256, of the National Internal Revenue Code (**NIRC**) of 1997, as amended. The *Amended Information*[12] reads as follows:

Bureau of Internal Revenue, the Commissioner of Internal Revenue must approve their filing. In criminal actions involving violations of the Tariff and Customs Code and other laws enforced by the Bureau of Customs, the Commissioner of Customs must approve their filing.

The institution of the criminal action shall interrupt the running of the period of prescription.

4 *Section 3. Cases Within the Jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:
(b) Exclusive jurisdiction over cases involving criminal offenses, to wit: ...
(1) Original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs, where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is one million pesos or more; ...

5 A.M. No. 05-11-07-CTA.

6 Summary of Stipulated Facts, Pre-Trial Order, Docket – Vol. II, p. 1147.

7 Docket – Vol. II, p. 810.

8 *Id.*

9 *Id.*

10 *Id.*

11 *Supra* note 6.

12 Docket – Vol. I, pp. 135–138.

That on or about the 5th day of February 2020, and sometime prior thereto, in Angeles City, Pampanga, Philippines, and within the jurisdiction of this Honorable Court, accused GREGORY G. LIM, president, BENSON G. CHUA, treasurer, ELSIE A. OAFALLAS, director, GENDY A. BAMBAO, director, and MARIA CRISTINA G. DAYOS, corporate secretary, of accused GB BEM CIGARETTE CO., INC., a registered domestic corporation with the Securities and Exchange Commission and registered taxpayer engaged in manufacturing and producing tobacco products, with the obligation under the law to pay excise tax on the said locally manufactured tobacco products for taxable years 2017 to 2020, conspiring together and confederating with one another, did then and there, willfully, unlawfully, and knowingly possess the following locally manufactured cigarettes or tobacco products without paying the excise tax thereon for taxable years 2017 to 2020 in the total amount of Fourteen Million Forty Eight Thousand Nine Hundred Ten Pesos (₱14,048,910.00) Philippine currency, exclusive of charges and penalties, to the damage and prejudice of the Government:

D&B cigarette	500 packs
Two Moon cigarette	4,138 packs
A380 cigarette	307,560 packs
Total excise stamp	312,198
Basic excise tax due (xP45)	P14,048,910.00

CONTRARY TO LAW.

The Court, finding probable cause, ordered the issuance of warrants of arrest against accused in a *Resolution* dated November 18, 2022.[13] Subsequently, on June 22, 2023, the Court issued an *Order* accepting and approving the Bail Bonds posted by Lim, Chua, Oafallas, Bambao, and Dayos, in the amount of ₱24,000.00 each.[14] In the same *Order*, the warrants of arrest issued on November 18, 2022 for the arrest of accused were lifted and set aside.[15]

A Preliminary Conference was held on July 19, 2023 for the marking of plaintiff's documentary exhibits. However, only counsels for the accused appeared.[16]

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13 Docket – Vol. I, pp. 270–273.
14 *Id.* at 345–346.
15 *Id.*
16 Docket – Vol. I, p. 376.

On August 4, 2023, accused filed their *Omnibus Motion (To Quash Information; To Suppress Evidence; and To Dismiss the Case).*[17] However, the same was denied by the Court on September 15, 2023.[18] Accused filed their *Motion for Partial Reconsideration (From the Denial of Omnibus Motion)* on October 9, 2023,[19] but the same was denied by the Court on November 8, 2023.[20]

On August 11, 2023, accused filed their *Pre-Trial Brief*,[21] which was followed by the filing of plaintiff's *Amended Pre-Trial Brief* on October 13, 2023.[22]

During the arraignment on November 8, 2023, all accused pleaded not guilty. Thereafter, pre-trial proceeded.

On November 29, 2023, accused filed a *Motion to Take Judicial Notice.*[23] This was followed on December 4, 2023 by a *Supplemental Motion to Take Judicial Notice.*[24] On December 7, 2023, accused filed their *Motion to Remove Padlocks and/or Reopen the Company's Warehouses.*[25]

Accused's *Motion to Take Judicial Notice* was denied by the Court on December 14, 2023,[26] considering that records of other cases are not the subject of judicial notice and must be separately offered in evidence. Further, considering that the defense has not yet formally offered their evidence, the Court considered said *Motion* prematurely filed. Similarly, accused's *Supplemental Motion to Take Judicial Notice* and *Motion to Remove Padlocks and or Reopen the Company's Warehouses* were both denied by the Court on January 10, 2024.[27] Accused filed their *Motion for Partial Reconsideration (From the Denial of Motion to Remove Padlocks)* on January 16, 2024,[28] which was denied by the Court in a *Resolution* dated February 27, 2024.[29]

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17 *Id.* at 388–406.
18 *Id.* at 497–499.
19 *Id.* at 513–524.
20 *Id.* at 725–729.
21 *Id.* at 441–445.
22 *Id.* at 527–538.
23 Docket – Vol. II, pp. 809–834.
24 *Id.* at 835–843.
25 *Id.* at 844–853.
26 *Id.* at 871–873.
27 *Id.* at 879–881.
28 *Id.* at 882–886.
29 *Id.* at 1190–1197.

Plaintiff filed its *Formal Offer of Evidence* on February 12, 2024,[30] and was resolved by the Court on March 7, 2024.[31]

On the April 3, 2024 hearing, counsel for the accused presented their witnesses, Bambao and Dayos, who testified by way of their Judicial Affidavits.[32]

Bambao testified that GB BEM is registered with PEZA and is thus exempt from the payment of excise taxes. She likewise testified that the Bureau of Internal Revenue (**BIR**) Strike Team conducted raids and confiscated cigarette raw materials or products, machines, equipment, among other items of GB BEM without a search warrant. She further testified that this has led to the closure of the business, termination of "about 70 employees", and losses of P230 million. Dayos testified on the same matters.

On the April 4, 2024 hearing, counsel for the accused presented their witnesses, Chua, Lim, and Oafallas, who also testified by way of their Judicial Affidavits.[33]

Chua, Lim, and Oafallas consistently testified as to GB BEM's PEZA registration, their insistence that they are not required to pay excise taxes, the search and seizure allegedly conducted without a search warrant, and the damage that the ensuing closure of GB BEM's operations caused.

Accused filed their *Formal Offer of Evidence* on April 15, 2024,[34] which was resolved by the Court on July 5, 2024.[35]

Accused filed their *Memorandum*[36] and *Supplemental Memorandum*[37] on July 17, 2024 and July 19, 2024, respectively. Plaintiff filed its *Memorandum* on July 18, 2024.[38]

The case was submitted for decision in a *Resolution* dated July 19, 2024.[39]

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30 *Id.* at 1096–1129.
31 *Id.* at 1205–1207.
32 *Id.* at 1229–1230.
33 *Id.* at 1239–1241.
34 *Id.* at 1265–1274.
35 *Id.* at 1376–1379.
36 *Id.* at 1385–1409.
37 *Id.* at 1468–1479.
38 *Id.* at 1410–1463.
39 *Id.* at 1465–1466.

Thereafter, on August 29, 2024, accused filed a *Manifestation and Motion to Reopen Defense's Exhibits A-5 and A-5-1*, which the Court denied in a *Resolution* dated October 10, 2024.

On October 21, 2024, accused filed a *Motion for Reconsideration (From the denial of Manifestation and Motion to Reopen Defense's Exhibit A-5 and A-5-1)*, and on October 22, 2024, they filed a *Supplemental Motion for Reconsideration (from the denial of Manifestation and Motion to Reopen Defense's Exhibit A-5 and A-5-1)*, which the Court likewise denied in a *Resolution* dated November 18, 2024.

THE ISSUES

The parties stipulated the following issues for this Court's resolution, *viz.*:[40]

1. Whether or not accused GB GEM CIGARETTE CO., INC., Gregory G. Lim (President), Benson G. Chua (Treasurer), Elsie A. Oafallas (Director), Gendy A. Bambao (Director) and Maria Cristina G. Dayos (Corporate Secretary) are liable for violation of Section 263 in relation to Sections 253(d) and 256 of the National Internal Revenue Code (NIRC) of 1997, as amended; and

2. Whether or not the search and seizure of the BIR Strike Team was illegal and the evidence obtained are inadmissible in evidence. [*sic*]

PLAINTIFF'S ARGUMENTS

In its *Memorandum*,[41] plaintiff argues that the PEZA Registration Agreement is the final agreement executed by the PEZA and GB BEM setting forth the terms and conditions for the latter's conduct of economic activity within the Ecozone.[42] According to plaintiff, there is nothing in the said Registration Agreement which exempts GB BEM from certain types of taxes without complying with the conditions set forth by the PEZA in relation to the NIRC and its implementing rules and regulations.[43] Plaintiff further states that considering that GB

[40] *Id.* at 1147, Pre-Trial Order, Stipulation of Issue.
[41] *Id.* at 1410–1463.
[42] Plaintiff's Memorandum, par. 85.
[43] *Id.* at par. 89.

BEM is engaged in the manufacturing of cigarettes, it is required to register as an excise taxpayer and to obtain a Permit to Operate (**PTO**) before it commences its business operations.[44] Plaintiff claims that this requirement is separate and distinct from its PEZA registration,[45] and that accused admitted that they were manufacturing cigarettes without the requisite PTO.[46]

Plaintiff also argues that GB BEM is not entitled to the fiscal incentives under the Republic Act (**RA**) No. 7916, because it has not complied with the requirements for entitlement to such fiscal incentives under the law,[47] particularly compliance with the registration requirements of the BIR.[48]

Anent the issue of whether the search and seizure of the BIR Strike Team was illegal, plaintiff states that the BIR is an agency tasked to give effect to the supervisory and police powers conferred to it by the NIRC of 1997, as amended.[49] According to plaintiff, among the investigatory powers conferred upon the BIR is the power to enter premises and inspect or examine such premises or things or operations therein, particularly books and records.[50] Plaintiff suggests that the BIR observed the requirements provided under Revenue Memorandum Order (**RMO**) No. 3-2009,[51] considering that Mission Order No. MSO201400018128 (**Mission Order**) was issued[52] and enforced accordingly as recounted by witness Benedicto Augusto Cruz (**Cruz**).[53]

Plaintiff also avers that the excisable articles seized were products of a valid search as the second type of a valid warrantless search, *i.e.*, seizure in plain view, applies.[54] According to plaintiff, at the time the Revenue Officers (**RO**) entered the premises of GB BEM for purposes of serving the Mission Order, they can already view several boxes of cigarette products within the area.[55] Plaintiff further states that the failure of GB BEM to present the requisite permits engendered

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44 *Id.* at par. 94.
45 *Id.* at par. 95.
46 *Id.* at par. 97.
47 *Id.* at par. 120.
48 *Id.* at par. 123.
49 *Id.* at par. 129.
50 *Id.* at par. 133.
51 *Id.* at par. 142.
52 *Id.* at par. 143
53 *Id.* at par. 144.
54 *Id.* at par. 156.
55 *Id.* at par. 159.

a reasonable belief on the part of the BIR that the subject illegal cigarettes and other contrabands were indeed evidence of a crime.[56]

Plaintiff finally states that the elements of unlawful possession of articles subject to excise tax without payment of the tax in violation of Section 263 of the NIRC of 1997, as amended, are present.[57]

ACCUSED'S ARGUMENTS

In their *Memorandum* and *Supplemental Memorandum*, accused maintain that plaintiff failed to present the confiscated cigarettes during the hearing[58] and that the cigarettes were illegally confiscated without a search warrant.[59] According to accused, the evidence seized were in the nature of "fishing expedition" and hence, inadmissible in any judicial proceedings.[60]

Accused also maintain that they cannot be held liable for excise taxes because of the Registration Agreement between GB BEM and the PEZA.[61] According to accused, as GB BEM is located in an economic zone, GB BEM is exempt from paying excise taxes.[62] Accused also argue that the operations of GB BEM is legal based on the rights and privileges granted by the PEZA, that the importation of raw materials are duly covered with Import Permits approved by the PEZA and the Bureau of Customs (**BOC**), and that none of the cigarettes and raw materials imported into the Special Economic Zone had been taken out and brought to the customs territory without legal and proper documentation from the PEZA.[63] Accused cite the Supreme Court case of *Purisima v. Lazatin*[64] in support of its exemption from excise taxes.[65]

Accused state that the issuance of the Mission Order was prompted by an unsigned letter from Philip Morris Fortune

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56 *Id.* at par. 161.
57 *Id.* at par. 163.
58 Accused's Memorandum, par. 9.
59 *Id.* at pars. 10 and 22.
60 *Id.* at par. 22.
61 *Id.* at par. 16.
62 *Id.* at par. 17.
63 *Id.* at par. 19.
64 G.R. No. 210588, November 29, 2016 [Per J. Brion, *En Banc*].
65 Accused's Memorandum, pars. 36–38.

Tobacco Corporation (**PMFTC**),[66] and that the Mission Order was issued without the BIR validating the correctness and authenticity of the letter.[67] Accused also aver that the implementation of the Mission Order does not include illegal searches and seizures and/or confiscation of cigarette raw materials, tobacco products, machines, equipment and various items, nor does it include the act of padlocking GB BEM's offices and warehouses.[68] Further, the BIR Strike Team was not able to obtain the consent and/or permission from the corporate officers of GB BEM before the conduct of the search and seizure.[69] Accused conclude that the BIR Strike Team had exceeded its authority,[70] and such is "fatal to the evidence" of plaintiff[71] for being "fruits of poisonous tree."[72]

THE COURT'S RULING

The Court has jurisdiction over the instant case.

Section 7(b)(1) of RA No. 1125,[73] as amended by RA No. 9282,[74] confers jurisdiction to this Court relative to criminal offenses arising from violations of the NIRC of 1997, as amended, to wit:

> SEC. 7. *Jurisdiction*. – The CTA shall exercise:
>
> ... ...
>
> (b) Jurisdiction over cases involving criminal offenses as herein provided:
>
> (1) Exclusive original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code ... and other laws administered by the Bureau of Internal Revenue ... : Provided, however, That offenses or felonies mentioned in this paragraph where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos

66 *Id.* at pars. 40–41.
67 *Id.* at par. 42.
68 *Id.* at pars 45 and 47.
69 *Id.* at pars 51 and 55.
70 *Id.* at par. 46.
71 *Id.* at pars. 52 and 57.
72 *Id.* at par. 54.
73 An Act Creating the Court of Tax Appeals, June 16, 1954.
74 An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes, March 30, 2004.

(P1,000,000.00) or where there is no specified amount claimed shall be tried by the regular Courts and the jurisdiction of the CTA shall be appellate. Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action will be recognized.

Similarly, Section 3(b)(1), Rule 4[75] of the RRCTA states:

Section 3. Cases Within the Jurisdiction of the Court in Divisions. — The Court in Divisions shall exercise:

... ...

(b) Exclusive jurisdiction over cases involving criminal offenses, to wit: ...

(1) Original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs, where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is one million pesos or more; ...

Considering that the *Amended Information*[76] charges accused with a violation of Section 263, in relation to Section 253(d) and 256 of the NIRC of 1997, as amended, and that the case involves a principal tax amount of ₱14,048,910.00, exclusive of charges and penalties, the Court finds that it has jurisdiction over the instant case.

We now proceed to discuss the merits of the case.

The Court deems it proper to first address the *second* issue as follows:

Whether or not the search and seizure of the BIR Strike Team was illegal and the evidence obtained are inadmissible in evidence.

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[75] *Supra* note 4.
[76] *Supra* note 7.

The search and seizure conducted by the BIR Strike Team on the business premises of accused were unreasonable and contrary to the rules and regulations of the BIR; thus, the evidence obtained are inadmissible in evidence.

Plaintiff contends that the BIR is tasked to give effect to the supervisory and police powers conferred to it by the NIRC of 1997, as amended and special laws.[77] In relation thereto, it possesses investigative or inquisitorial power as an aid to other powers it possesses. According to plaintiff, among the investigatory powers granted to an administrative agency is the power to enter premises and inspect or examine such premises or things or operations therein, particularly books and records.[78] Similarly, plaintiff avers that Section 6(C) of the NIRC of 1997, as amended, in relation to Section 7, grants the CIR the power to place a business under observation or surveillance if there is reason to believe that such person is not declaring his correct income, sales or receipts for tax purposes.[79] It claims that all surveillance activities are mandated to be covered by Mission Orders pursuant to RMO No. 3-2009.[80] It also claims that the BIR observed the requirements provided under RMO No. 3-2009 in the implementation of the surveillance activities.[81]

On this issue, accused argue that the unsigned letter from PMFTC alleging that GB BEM was engaged in the illegal manufacture of cigarettes and sale of its products in the local market, prompted the issuance of a Mission Order by BIR Deputy Commissioner Arnel Guballa (**Deputy Commissioner Guballa**) and the subsequent raid of its company in Pampanga Economic Zone, Cacutud, Angeles City on February 5, 2020 without a search warrant.[82] Accused further argues that: (1) the Mission Order was issued without the BIR validating the

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77 Plaintiff's Memorandum, par. 129.
78 *Id.* at par. 133.
79 *Id.* at par. 135.
80 *Id.* at par. 137.
81 *Id.* at par. 142.
82 Accused's Memorandum, pars. 40–41.

correctness and authenticity of PMFTC's letter;[83] (2) Section 6(C) of the NIRC of 1997, as amended, did not include illegal searches and seizures and/or confiscation of cigarette raw materials, tobacco products, machines, equipment and various items, and the padlocking of GB BEM's office, warehouses, and a container van;[84] (3) the BIR Strike Team exceeded the authority granted under the Mission Order and failed to comply with the requirements of Section 6(C) of the NIRC of 1997, as amended;[85] and (4) the BIR Strike Team conducted the search and seizure without obtaining consent or permission from GB BEM's corporate officers.[86] Accused conclude that plaintiff's evidence was obtained through unreasonable searches and seizures and should be deemed inadmissible in any judicial proceedings.[87]

In fine, plaintiff invokes Sections 6(C) and 7 of the NIRC of 1997, as amended, Section 11 of Revenue Regulations (**RR**) No. 7-2014, RMO No. 3-2009,[88] and the Mission Order in arguing that the BIR was justified in intruding and searching GB BEM's premises.

The Court is not persuaded.

Sections 6(C) and 7 of the NIRC of 1997, as amended, read:

> ***SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. -***
>
> ... ...
>
> (C) *Authority to Conduct Inventory-taking, Surveillance and to Prescribe Presumptive Gross Sales and Receipts.* - The Commissioner may, at any time during the taxable year, **order inventory-taking of goods** of any taxpayer as a basis for determining his internal revenue tax liabilities, **or may place the business operations of any person**, natural or juridical, **under observation or surveillance** if there is reason to believe that such person is not declaring his correct income, sales or receipts for internal revenue tax purposes. The findings may be used as the basis for assessing the taxes for

[83] *Id.* at par. 42.
[84] *Id.* at pars 44--48.
[85] *Id.* at par. 46.
[86] *Id.* at pars 51 and 55.
[87] *Id.* at par. 57.
[88] Plaintiff's Memorandum, par. 148.

the other months or quarters of the same or different taxable years and such assessment shall be deemed prima facie correct.

When it is found that a person has failed to issue receipts and invoices in violation of the requirements of Sections 113 and 237 of this Code, or when there is reason to believe that the books of accounts or other records do not correctly reflect the declarations made or to be made in a return required to be filed under the provisions of this Code, the Commissioner, after taking into account the sales, receipts, income or other taxable base of other persons engaged in similar businesses under similar situations or circumstances or after considering other relevant information may prescribe a minimum amount of such gross receipts, sales and taxable base, and such amount so prescribed shall be prima facie correct for purposes of determining the internal revenue tax liabilities of such person.

SEC. 7. Authority of the Commissioner to Delegate Power. - The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: ...

While Section 11 of RR No. 7-2014[89] states:

SEC. 11. MONITORING OF STAMPS AND CIGARETTES PRODUCTS THROUGH MOBILE VERIFICATION DEVICES. – For purposes of verification of the authenticity of internal revenue stamps, as well as the determination of whether or not the proper excise taxes were paid on domestically manufactured or imported cigarettes, the BIR, through its authorized representatives, shall conduct on-the-spot surveillance of cigarette products either in the place of production, storage facilities, or in the domestic market, as the case may be, through the use of mobile verification devices issued for the purpose. **In case of discrepancies found during the conduct of surveillance, the appropriate excise taxes shall be assessed and collected** after verification from all persons who are found liable thereto, inclusive of the appropriate penalties, without prejudice to the confiscation and forfeiture of any untaxed cigarette products and the filing of the appropriate criminal case.

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89 Prescribing the Affixture of Internal Revenue Stamps on Imported and Locally Manufactured Cigarettes and the Use of the Internal Revenue Stamp Integrated System (IRSIS) for the Ordering, Distribution and Monitoring Thereof.

On the other hand, the pertinent portion of RMO No. 3-2009[90] states:

III. DEFINITION OF TERMS

... ...

2. For purposes of this Order, three (3) types of surveillance shall be utilized, and are hereby defined as follows:

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 the inventory-taking of the business documents** as mentioned in 1.1 above**, of the person under surveillance followed by the <u>actual observation and close monitoring of the business activities of such person</u>.**

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. ...

IV. POLICIES

1. The National Internal Revenue Code, as amended, (hereinafter referred to as "NIRC") empowers the Commissioner of Internal Revenue to **suspend the business operations of a taxpayer on certain grounds**, pertinent provisions of which provides: ...

2. **All surveillance activities shall be covered by Mission Orders (MOs)** [Annex "A"]. The MOs shall be printed as accountable forms to be requisitioned by the Revenue Officials authorized to sign said MOs. MOs issued should be chronologically recorded in the Mission Order Register. ...

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[90] 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.

V. GUIDELINES AND PROCEDURES

A. Surveillance Activities

1. Prelude to Surveillance

Acquiring preliminary information on the person to be placed under surveillance is necessary for an effective implementation thereof. Before the actual surveillance, the Head of the Investigating Office/Division must:

1.1. **Acquaint himself with the business organization and economic activity of the subject of surveillance** (SUBJECT), the location of the stores and outlets, the accounting records used and such other relevant information as may be available and/or necessary. This must be done with relative secrecy to prevent leakage of information to the SUBJECT.

1.2. **Prepare the necessary MO** for approval and signature of the concerned Regional Director/ACIR, as the case may be.

The number of MOs must correspond to the number of **stores and outlets** to be observed/monitored in case of overt surveillance. A different set of implementing officers shall be assigned for different stores and outlets of the same SUBJECT.

1.3. **Brief the implementing officer on the acts to be performed in compliance with the MOs**. The briefing shall be done **within thirty (30) minutes before the actual surveillance.** To preserve the confidentiality of the surveillance operation, the identity of the target SUBJECT should be revealed to the implementing officers only upon arrival at the site of operations.

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 a validly issued mission order** signed by the concerned authorized revenue official:

...

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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.

2.3. Implementing officers conducting the surveillance must possess the following qualities: ...

2.4. Performance of Surveillance Activities

Generally, surveillance may be either covert or overt. Covert surveillance will eventually become overt surveillance once the implementing officer informs the SUBJECT of his presence and purpose.

...

2.4.2. Overt Surveillance

The most important factor in overt surveillance is the **element of surprise**. The SUBJECT must be caught unaware to prevent him from committing acts which may defeat the purpose of the surveillance. Those caught in the act of committing crimes punishable under the Tax Code must be immediately apprehended.

After the covert surveillance has been undertaken, the following procedures shall be performed by the implementing officers who should always be ready to present their BIR Identification Cards:

a. Inform the SUBJECT of the purpose and duties of the implementing officer as stated in the MO.

b. Conduct an **inventory of all unused sales invoices, official receipts and such other documents** used in the movement of goods.

c. List all the above documents in the Surveillance Form (SF) [Annex "C"].

d. **Seize unauthorized official receipts or invoices and accomplish the AS in duplicate.** Issue the original copy to the SUBJECT. Report immediately to the Head of the Investigating Office/Division the results of the apprehension not later than the following day from the issuance of the AS.

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e. After all the unused official receipts/invoices are listed in the Surveillance Form, **sign the first and last receipts/invoices in each booklet** stating therein the date and time when the inventory was made.

f. For official receipts or invoices from partly used booklets, sign the duplicate/file copy of the last invoice used. In case there is no chronological issuance of invoices/official receipts, list down the unused invoices/official receipts, sign the first and last pages of the un-issued invoices/official receipts in each booklet and indicate the date and time when the inventory was made.

g. **Return all the official receipts** to the SUBJECT or his authorized representative and inform him that official receipts/invoices must be issued chronologically. **Request the SUBJECT or his authorized representative to sign the Surveillance Form**. If acknowledgement of the Surveillance Form is refused, have the certificate signed by at least two (2) witnesses present and leave a copy of the Surveillance Form with the SUBJECT or his authorized representative.

h. **Observe/monitor the daily sales** in the stores or the **daily production** and daily removal from or deliveries to the factories, from the time they open to the time they close.

i. **Summarize all the sales/official receipts** at the end of each day for the entire duration of the surveillance and enter the figures on the space provided in the Surveillance Form.

The procedures outlined in this Order are general guides in the conduct of the surveillance. ...

3. <u>Analysis of Surveillance Results</u>

3.1. Extrapolate the data gathered from the surveillance by using the following formulas:

To get the Average Daily Sales:

$$\frac{\textit{Total Sales During Surveillance}}{\textit{Total No. of Days Under Surveillance}} = \textit{Average Daily Sales (ADS)}$$

... ...

4. <u>Action on Surveillance Results</u>

If after the conclusion of the surveillance, there is a sufficient ground for the closure of the establishment as

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provided for under Section 115 of the NIRC, as amended, **a recommendation shall be made to effect such closure**.

If the result of the surveillance made likewise indicates that the taxpayer had not been, in fact, correctly reporting income for tax purposes, and that the veracity of his accounting records is not reliable, the Commissioner or Regional Director concerned shall issue a Letter of Authority (LA) for the investigation of the taxpayer.

... ...

B. Suspension or Temporary Closure of Business.

1. Grounds. — The following shall be the **only grounds** for **suspension or temporary closure of business**:

(a) Failure to issue receipts or invoices by a VAT-registered or registrable taxpayer;
(b) Failure to file a Value-Added Tax return;
(c) Understatement of taxable sales or receipts by 30% or more
(d) Failure to register.

It is clear from the foregoing that Section 6 of the NIRC of 1997, as amended, authorizes the BIR to conduct inventory-taking of goods or place a person under observation or surveillance. Section 11 of RR No. 7-2014 likewise authorizes the conduct of on-the-spot surveillance of cigarette products. However, the said provisions do not provide for the seizure of cigarette products and closure of business as an appropriate penalty during the conduct of surveillance.

While the BIR may possess the supervisory and police powers conferred to it by law,[91] and the investigative power to enter any house, building or place to search for taxable articles,[92] the authority of the BIR to make arrests and seizures for violation of any penal law, rule, or regulation it administers pursuant to Section 15 of the NIRC of 1997, as amended,[93] is not unbridled. The same remains subservient to the people's right against *unreasonable* searches and seizures as enshrined in Section 2, Article III, otherwise known as the Bill of Rights, of the 1987 Philippine Constitution, *viz.*:

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91 See NIRC, sec. 2, as amended, on the Powers and Duties of the Bureau of Internal Revenue.
92 See NIRC, sec. 171, as amended, on the Authority of Internal Revenue Officer in Searching for Taxable Articles.
93 SECTION 15. Authority of Internal Revenue Officers to Make Arrests and Seizures. - The Commissioner, the Deputy Commissioners, the Revenue Regional Directors, the Revenue District Officers and other internal revenue officers shall have authority to make arrests and seizures for the violation of any penal law, rule or regulation administered by the Bureau of Internal Revenue. Any person so arrested shall be forthwith brought before a court, there to be dealt with according to law.

> SECTION 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and **no search warrant or warrant of arrest shall issue except upon probable cause** to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized. [*Emphasis supplied*]

Thus, the BIR, like any other police or law enforcement agency, is not exempt from the fundamental requirement of obtaining a search warrant from the court before making searches and seizures.

In fact, in its *Memorandum*, plaintiff acknowledges that an arrest or search and seizure must be based on a warrant supported by probable cause or "actual belief or reasonable grounds of suspicion to believe that the accused has committed or is committing a crime."[94]

Undoubtedly, the BIR's exercise of its authority to make arrests and seizures must be made with a valid search warrant issued by a judge and premised on a finding of probable cause, except in instances where warrantless searches and seizures are legally permissible.[95] These instances include: (1) warrantless search incidental to a lawful arrest recognized under Section 12, Rule 126 of the Rules of Court and by prevailing jurisprudence; (2) seizure of evidence in plain view; (3) search of moving vehicles; (4) consented warrantless search; (5) customs search; (6) stop-and-frisk situations (Terry search); and (7) exigent and emergency circumstances.[96]

Plaintiff asserts that the second type of valid warrantless search and seizure, known as seizure in *plain view,* applies in this case.[97] It argues that the ROs had prior justification for their intrusion, as the Mission Order authorized them to conduct surveillance activities within GB BEM's premises. According to plaintiff, when the ROs entered GB BEM's

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94 Plaintiff's Memorandum, par. 154.
95 *Id.*
96 *People v. Dalisay y Bagro*, G.R. No. 258060, August 16, 2023 [Per J. Caguioa, Third Division]; *People v. Gerry Sapla y Guerrero*, G.R. No. 244045, June 16, 2020 [Per J. Caguioa, *En Banc*].
97 Plaintiff's Memorandum, par. 156.

premises to serve the Mission Order, "they can already view several boxes of cigarette products within the area."[98]

The Court remains unconvinced.

The seizure of GB BEM's cigarette raw materials, tobacco products, machines, equipment, and various items cannot be considered as the result of a "search in plain view."

In the case of *People v. Reyes y Abu*,[99] the Supreme Court enumerated the requisites of the "plain view" doctrine, *viz.*:

> **The "plain view" doctrine applies when the following requisites concur**: (1) the law enforcement officer is in a position where they have a clear view of a particular area or has prior justification for an intrusion; (2) said officer inadvertently comes across (or sees in plain view) a piece of incriminating evidence; and (3) it is immediately apparent to such officer that the item they see may be evidence of a crime or a contraband or is otherwise subject to seizure.
>
> In *Caballes v. CA*, We explained that:
>
>> Jurisprudence is to the effect that **an object is in plain view if the object itself is plainly exposed to sight.** Where the object seized was inside a closed package, the object itself is not in plain view and therefore cannot be seized without a warrant. However, if the package proclaims its contents, whether by its distinctive configuration, its transparency, or if its contents are obvious to an observer, then the contents are in plain view and may be seized. In other words, if the package is such that an experienced observer could infer from its appearance that it contains the prohibited article, then the article is deemed in plain view. **It must be immediately apparent to the police that the items that they observe may be evidence of a crime, contraband, or otherwise subject to seizure.** [*Emphasis supplied, citation omitted*]

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98 *Id.* at pars. 157 and 159.
99 G.R. No. 263548 (Notice), August 30, 2023 [Per Resolution, Second Division].

In fine, the "plain view" doctrine applies when the following requisites concur:

> (1) the law enforcement officer is in a position where they have a clear view of a particular area or has prior justification for an intrusion;
>
> (2) said officer inadvertently comes across (or sees in plain view) a piece of incriminating evidence; and,
>
> (3) it is immediately apparent to such officer that the item they see may be evidence of a crime or a contraband or is otherwise subject to seizure.[100]

The Court now determines whether the above requisites were satisfied in this case.

As to the *first* requisite, the Court finds that **there was no prior justification for an intrusion.**

In *People v. Rangaig y Ampuan (Rangaig),*[101] the Supreme Court, in ruling that the prosecution failed to meet the first requirement, reasoned that there was no valid intrusion, as there was no probable cause to enter the premises without a valid warrant of arrest or search warrant, to wit:

> Notably, this Court has held that an informant's tip is not sufficient as probable cause for warrantless arrests. In People v. Yanson, **We held that arrests and seizures cannot be based solely and exclusively on a tip.** It be attended with other circumstances that will bring forth suspicion that a crime has been committed or is actually being committed.
>
> **Exclusive reliance on information tipped by informants goes against the very nature of probable cause.** A single hint hardly amounts to "the existence of such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place to be searched." To maintain otherwise would be to sanction frivolity, opening the floodgates to unfounded

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100 Joaquin G. Bernas, S.J., *The 1987 Constitution of the Philippines: A Commentary* 170 (2009 ed., 2009).
101 G.R. No. 240447, April 28, 2021 [Per J. Leonen, Third Division].

> searches, seizures, and that may be initiated by sly informants. (Citation omitted)
>
> ... ...
>
> Similarly, in this case, after receiving a tip from an informant, the police officers proceeded to the abandoned nipa hut **without conducting any prior surveillance or verification of the facts given by the informant**. There, PO2 Cruz peeked through the door of the hut which was slightly ajar and found the accused-appellants about ten meters away, sitting beside a table with what seemed to be a clear plastic sachet on it along with other paraphernalia, such as foil. This prompted PO2 Cruz to signal his teammates to enter the house and apprehend accused-appellants.
>
> ... ...
>
> Here, the prosecution failed on the first requirement. **There was no valid intrusion by the police officers as they did not have probable cause to enter the premises without a valid warrant of arrest or search warrant**. It is apparent that PO2 Cruz's suspicion was anchored on the informant's tip they received earlier informing them of an on-going pot session in the area. Consequently, the act of peeping through an open door to ascertain what the accused-appellants were doing inside the house cannot be justified. [*Emphasis and underscoring supplied.*]

Indeed, arrests and seizures cannot be based solely on a tip. Exclusive reliance on information provided by informants undermines the very essence of probable cause. Probable cause has been defined as such facts and circumstances which could lead a reasonable, discreet, and prudent man to believe that an offense has been committed, and that the objects sought in connection with the offense are in the place sought to be searched. [102]

In this case, the BIR issued the Mission Order based on an unverified allegation or "tip" contained in a letter dated January 24, 2020, purportedly from PMFTC. The letter neither identified the PMFTC signatory nor bore the company's official letterhead. Moreover, no evidence on record confirms that PMFTC verified the letter as having originated from them.[103]

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102 G.R. No. 234317, May 10, 2021 [Per J. Leonen, Third Division].
103 This was admitted by RO Cruz in his testimony during the hearing dated January 31, 2024. We quote the pertinent portion thereof:

The timeline of events indicates that the BIR Strike Team had sufficient time to obtain a search warrant. However, instead of securing the required search and seizure warrant, the BIR opted to issue a Mission Order, which led to the search and seizure of "cigarette raw materials, tobacco products, machines, equipment and various items."[104] This also resulted in the padlocking of GB BEM's office, three warehouses, and a container van, effectively shutting down its business operations.

Similar to the case of *Rangaig,* plaintiff here failed to establish the first requisite for a valid warrantless search. There was no valid intrusion by the BIR Strike Team as they did not have probable cause to enter GB BEM's premises or personal knowledge of facts and circumstances that could lead the CIR or his representative to believe that an offense involving the illegal manufacture and sale of cigarettes have been committed and that the objects sought in connection with such offense are in the place sought to be searched.[105]

In *Virgilio Evardo y Lopena v. People,*[106] the Supreme Court emphasized the horrid scenarios if courts were to allow intrusive warrantless searches and seizures on the solitary basis of unverified, anonymous tips, to wit:

STENOGRAPHER
You mean to say, upon receipt of that letter, you did not make any verification as to the authenticity of that letter?
JUSTICE VILLENA
It's a yes or no.
MR. CRUZ
No, no.
ATTY. BORJA
Paki-ulit mo nga, excuse me?
STENOGRAPHER
You mean to say, upon receipt of that letter, you did not make any verification as to the authenticity of that letter?
ATTY. BORJA
Q So, you did not verify the authenticity, the correctness of that letter, is that correct before going into operation?
MR. CRUZ
A No.
ATTY. BORJA
Q You mean to say, you go into that operation and verified without first knowing the authenticity and the genuineness of that letter? Is that your practice?
MR. CRUZ
A The Office of the Deputy Commissioner validates the letter.
ATTY. BORJA
Q What was the instruction of the Deputy Commissioner if any?
MR. CRUZ
A A Mission Order was issued Sir.

104 Accused's Memorandum, par. 45.
105 *Supra* note 100.
106 *Supra* note 102.

This Court has maintained that, for purposes of probable cause, "[t]here must be a confluence of several suspicious circumstances. A **solitary tip** hardly suffices as probable cause; items seized during warrantless searches based on solitary tips are inadmissible as evidence."

Any doubt on this was settled in *People v. Sapla*. ...

This Court's pronouncements in *Sapla* came with a **recognition of the dangers of extensive searches (i.e., beyond mere visual surveys)** that are induced by **tips**. It recognized how such searches are a grievous intrusion into our most basic freedoms:

> **Adopting a contrary rule would set an extremely dangerous and perilous precedent wherein, on the sheer basis of an unverified information passed along by an alleged informant, the authorities are given the unbridled license to undertake extensive and highly intrusive searches, even in the absence of any overt circumstance that engenders a reasonable belief that an illegal activity is afoot.**
>
> ... ...
>
> **It is not hard to imagine the horrid scenarios if the Court were to allow intrusive warrantless searches and seizures on the solitary basis of unverified, anonymous tips.**
>
> Any person can easily hide in a shroud of anonymity and simply send false and fabricated information to the police. Unscrupulous persons can effortlessly take advantage of this and easily harass and intimidate another by simply giving false information to the police, allowing the latter to invasively search the vehicle or premises of such person on the sole basis of a bogus tip.
>
> On the side of the authorities, unscrupulous law enforcement agents can easily justify the infiltration of a citizen's vehicle or residence, violating his or her right to privacy, by merely claiming that raw intelligence was received, even if there really was no such information received or if the information received was fabricated.

> Simply stated, **the citizen's sanctified and heavily-protected right against unreasonable search and seizure will be at the mercy of phony tips.** The right against unreasonable searches and seizures will be rendered hollow and meaningless. The Court cannot sanction such erosion of the Bill of Rights. (*Citations omitted; Emphasis supplied*)

Furthermore, even if the BIR Strike Team is clothed with a Mission Order, the intrusion remains invalid, given the infirmities surrounding its issuance and implementation.

To reiterate, the Mission Order was issued pursuant to RMO No. 3-2009.[107] RMO No. 3-2009 covers all internal revenue taxes and provides the guidelines for conducting **surveillance and stock-taking activities** and implementing the administrative sanction of **suspension** and **temporary closure of business** and enforcement of Closure Orders.

The Court finds that the BIR Strike Team failed to comply with the guidelines and procedures set forth in RMO No. 3-2009.

First, the RMO requires a "prelude to surveillance" to acquire "preliminary information on the person to be placed under surveillance." This step provides that before the surveillance, the Head of the investigating office or division must:

1. Acquaint himself with the business organization and economic activity of the subject of surveillance;
2. Prepare the necessary Mission Order; and
3. Brief the implementing officer on the acts to be performed in compliance with the Mission Order within thirty (30) minutes before the actual surveillance.

In this case, there is no indication that items 1 and 3 were carried out; only item 2, the issuance of the Mission Order, was done. In the Judicial Affidavit of RO Cruz, he testified:

[107] Plaintiff's Memorandum, pars. 137 and 148.

8 Q: Why did you begin an investigation of the tax liabilities of **GB BEM CIGARETTE CO., INC., GREGORY G. LIM (President), BENSON G. CHUA (Treasurer), Elsie A. OAFALLAS (Director), GENDY A. BAMBAO (Director), and MARIA CRISTINA G. DAYOS (Corporate Secretary)**, Mr. Witness?

A: It begun after the BIR, RR No. 4-City of San Fernando, Pampanga, received a letter-complaint dated January 24, 2020 from [PMFTC], informing the BIR that GB BEM Cigarette Co., Inc. is illegally manufacturing cigarettes without complying with the BIR's registration and other requirements.

9 Q: What happened next?

A: On the basis of the above-mentioned information, the BIR Deputy Commissioner for Operations Group, Arnel SD. Guballa, issued a Mission Order No. MSO2014-00018128 dated February 5, 2020, authorizing the BIR Revenue Officers to conduct an on-the-spot surveillance and inventory-taking, as well as confiscation and forfeiture of articles subject to excise taxes, at **GB BEM CIGARETTE CO., INC.** with registered address at Building 09-01, Pampanga Economic Zone, Barrio Angeles, Pampanga.

Second, in addition to the failure to conduct the "prelude to surveillance," the actual surveillance was likewise not carried out. RO Cruz admitted during cross-examination that the BIR Strike Team did not conduct surveillance prior to the implementation of the Mission Order:[108]

ATTY. BORJA
Q I'm asking if you have conducted a surveillance?

MR. CRUZ
A No, no Sir.

ATTY. BORJA
Q So, you're not in a position whether or not there was a surveillance indeed by the BIR Strike Team because you were not part of the surveillance, is that correct?

MR. CRUZ
A No Sir.

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[108] TSN, RO Benedicto Augusto Cruz, January 31, 2024, pp. 59–60.

According to the RMO, covert surveillance should precede overt surveillance. However, it appears that the BIR skipped the covert surveillance. Despite this omission and without conducting an independent determination of whether any violation of the NIRC of 1997, as amended, has been committed or is being committed by GB BEM, the BIR issued a Mission Order on February 5, 2020. Subsequently, the BIR Strike Team raided the premises of GB BEM in the Pampanga Economic Zone, Cacutud, Angeles City, seizing "cigarette raw materials, tobacco products, machines, equipment, and various items" found on site.

Third, it is important to note that the RMO permits ROs, during overt surveillance, to "conduct an inventory of all unused *sales invoices, official receipts and such other documents used in the movement of goods,*" as well as "seize unauthorized official receipts or invoices," and complete the Surveillance Form.

In the instant case, however, the Mission Order allowed the ROs to seize **not** invoices and official receipts but GB BEM's goods. The BIR Strike Team conducted an inventory **not** of the documents stated in the RMO but GB BEM's "cigarette raw materials, tobacco products, machines, equipment and other items."

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

The recommendation of the concerned head of office to suspend or temporarily close a business must include documentary proof supporting the specific violation as follows:

1. Failure to Issue Value-Added Tax Invoice/Receipts;
2. Failure to File Value-Added Tax Returns;
3. Understatement of Taxable Sales by 30% or More; and
3. Failure of a Value-Added Tax Subject Person to Register

The recommendation should include the proposed Closure Order, accompanied by the necessary documents, for the approval and signature of the CIR.

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Here, the BIR Strike Team decided to padlock GB BEM's facility and close its operations without evaluating the evidence gathered during the raid. Notably, no recommendation for the closure of GB BEM's facilities was approved or signed by the CIR, nor was any Closure Order issued. This shows that GB BEM was not afforded the opportunity to assail the BIR Strike Team's findings prior to the closure of its facilities.

Finally, Mission Order No. MSO201400018128[109] which served as the basis for the BIR's entry into the premises, provides the activities that may be done by the named ROs. However, it does not authorize the BIR Strike Team to close GB BEM's business and operations, as follows:

> 1. To monitor sales and/or place of business establishment mentioned above under observation or surveillance for violation of bookkeeping rules and regulations, particularly on non-issuance of sales invoice or receipts;
>
> 2. To apprehend violators of revenue laws and regulations governing the activities above mentioned;
>
> 3. To conduct immediate inventory-taking of the goods on hand by the aforementioned taxpayer and reconcile the same with his/its inventory lists as of _____, 20___; and
>
> 4. Others:
>
>   a. To enter any house, building or place where articles subject to excise tax are produced or kept, or/are believed upon reasonable grounds to be produced or kept, so far as may be necessary to examine, discover or seize the same;
>
>   b. **To make seizures of any articles wherein excise taxes has not been paid** and also for the violation of any penal law, rule or regulation administered by the Bureau of Internal Revenue;
>
>   c. To conduct inventory-taking of all products subject to excise tax and check compliance on affixture of internal revenue stamps in accordance with RR No. 7-2014;
>
>   d. To check the authenticity of the affixed stamps using Mobile Verification Device (Intermec) and Taggant Reader;

[109] Exhibit "P-19", Docket – Vol. II, pp. 987–988.

e. To perform other acts necessary to ensure the compliance of provisions of the National Internal Revenue Code of 1997, and its implementing rules and regulations; and

f. To secure any document/accounting record related to the unregistered and untaxed business. [*Emphasis supplied.*]

RMO No. 3-2009 provides that the only grounds for suspension or temporary closure of business are as follows:

(a) Failure to issue receipts or invoices by a VAT-registered or registrable taxpayer;
(b) Failure to file a Value-Added Tax return;
(c) Understatement of taxable sales or receipts by 30%; or
(d) Failure to register.

Apart from the fact that the Mission Order did not authorize the BIR Strike Team to padlock GB BEM's facilities, the Court finds no violation that would justify suspending or closing its business operations.

Given this, the Court finds that the BIR Strike Team's intrusion into GB BEM's premises under the Mission Order is not valid.

Furthermore, even if the *first* requisite of the "plain view" doctrine, *i.e.*, valid intrusion, is met, the *second* and *third* requisites – evidence being inadvertently discovered and immediately apparent – are not satisfied. This was acknowledged by RO Cruz during his re-direct examination before the Court on January 31, 2024.[110] The relevant portion of his testimony is as follows:

ATTY. BARIC
Q So, what prompted you to conduct an **intensive search** of the premises of GB Bem specifically the warehouses at the, specifically the warehouses and the manufacturing plant? What prompted you to go, to enter the factory?

MR. CRUZ
A We discovered that cigarette products with no Permit to Operate excisable products, tobacco products was being produced by the said company, **that's why more**

[110] TSN, RO Benedicto Augusto Cruz, January 31, 2024, pp. 99–102.

intensive inspection was done and we were able to discover that they have a manufacturing plant and manufacturing of cigarette ongoing in the premises.

...

ATTY. BARIC
Q So, you said earlier Mr. Witness that **the basis of your intensive search is the failure of GB Bem to produce the Permit to Operate**, so what is the effect of the failure of GB Bem to produce the Permit to Operate to your further investigation? What is the relevance of this failure to produce the Permit to Operate to the conduct of your subsequent or your further investigation to the said premises?

MR. CRUZ
A The effect will be all manufactured tobacco products would be considered not legal in nature because they have no necessary permits from the Bureau of Internal Revenue to manufacture such products.

ATTY. BARIC
Q So Sir, so **the intensive search which you conducted was due to the fact that there was a reasonable cause on your part to enter the premises and intensively search the premises of GB Bem**?

JUSTICE VILLENA
You're on re-direct, you cannot lead the witness.

ATTY. BARIC
That would be all, your Honors. [*Emphasis and underscoring supplied.*]

The Court notes that both the plaintiff's counsel and its witness consistently described the search as "intensive." By definition, intensive means "highly concentrated,"[111] which is directly inconsistent with the term "inadvertent." If evidence requires an "intensive search" to discover, it implies that it is not "immediately apparent."

In *People v. Valdez*,[112] the Supreme Court held that the "plain view" doctrine cannot be applied if the officers are actually "searching" for evidence against the accused.

[111] Merriam Webster Dictionary, "intensive," *available at* https://www.merriam-webster.com/dictionary/intensive, (last accessed on August 14, 2024).
[112] G.R. No. 129296, September 25, 2000 [Per J. Quisumbing, *En Banc*].

Consequently, the plain view doctrine does not apply in the present case, as all the essential requirements earlier cited are not present.

Evidence obtained and seized from GB BEM are inadmissible, being the fruits of the poisonous tree.

Since the seized products result from an invalid search, no less than the Constitution provides the consequence thereof. Evidence obtained and confiscated from such an unreasonable search and seizure is tainted and must be excluded as the proverbial fruit of the poisonous tree.[113] Section 3(2), Article III of the 1987 Constitution provides:

> (2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

In *People v. Alicando y Briones*,[114] the Supreme Court discussed the doctrine of the fruit of the poisonous tree as follows:

> We have not only constitutionalized the Miranda warnings in our jurisdiction. We have also adopted the libertarian exclusionary rule known as the "fruit of the poisonous tree," a phrase minted by Mr. Justice Felix Frankfurter in the celebrated case of Nardone v. United States. According to this rule, once the primary source (the "tree") is shown to have been unlawfully obtained, any secondary or derivative evidence (the "fruit") derived from it is also inadmissible. Stated otherwise, illegally seized evidence is obtained as a direct result of the illegal act, whereas the "fruit of the poisonous tree" is the indirect result of the same illegal act. The "fruit of the poisonous tree" is at least once removed from the illegally seized evidence, but it is equally inadmissible. The rule is based on the principle that evidence illegally obtained by the State should not be used to gain other evidence because the originally illegally obtained evidence taints all evidence subsequently obtained. ...."

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[113] *Villamor y Tayson v. People*, G.R. No. 200396, March 22, 2017 [Per J. Del Castillo, First Division].
[114] G.R. No. 117487, December 12, 1995 [Per J. Puno, *En Banc*].

Moreover, in *People v. Cariño y Leyva*,[115] the Supreme Court held:

> The questionable and invalid arrest thus makes the subsequent search in the house of appellant also invalid, the exclusionary rule or the doctrine of the fruit of the poisonous tree applies. According to this rule, once the primary source (the "tree") is shown to have been unlawfully obtained, any secondary or derivative evidence (the "fruit") derived from it is also inadmissible. Stated otherwise, illegally seized evidence is obtained as a direct result of the illegal act; whereas the "fruit of the poisonous tree" is the indirect result of the same illegal act. The "fruit of the poisonous tree" is at least once removed from the illegally seized evidence, but it is equally inadmissible. The rule is based on the principle that evidence illegally obtained by the State should not be used to gain other evidence because the originally illegally obtained evidence taints all evidence subsequently obtained.

In this case, the BIR Strike Team's entry into GB BEM's premises without probable cause that an offense under the NIRC has been committed and without a valid search warrant makes the entry illegal and the subsequent search and seizure invalid.

Applying the exclusionary rule or the doctrine of the fruit of the poisonous tree, all evidence, including secondary or derivative evidence, drawn from the illegal entry are inadmissible as evidence. Accordingly, the cigarette products, Apprehension Slip with Nos. APS200400044323, APS200400044322, and APS200400044312; [116] and the Certificates of Inventory attached to Annexes 1 to 6 of the Apprehension Slip,[117] are inadmissible for being fruits of the poisonous tree.

The Court now considers the *first* issue of

> Whether or not accused GB GEM CIGARETTE CO., INC., Gregory G. Lim (President), Benson G. Chua (Treasurer), Elsie A. Oafallas (Director), Gendy A. Bambao (Director) and Maria Cristina G. Dayos (Corporate Secretary) are liable for violation of Section 263 in relation to Sections 253(d) and 256 of the National Internal Revenue Code (NIRC) of 1997, as amended.

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[115] G.R. No. 234155, March 25, 2019 [Per C.J. Gesmundo, First Division].
[116] Exhibit "P-21", including sub-markings, Docket – Vol. II, pp. 991–993.
[117] Exhibit "P-22", "P-23", "P-24", "P-25", and "P-26", Docket – Vol. II, pp. 994–1000.

Accused are not liable for violation of Section 263 of the NIRC of 1997, as amended, for the failure of the plaintiff to establish the elements of the offense.

It bears recalling that accused are charged with violation of Section 263, in relation to Sections 253(d) and 256 of the NIRC of 1997, as amended. Section 263 of the said law provides:

> SEC. 263. *Unlawful Possession or Removal of Articles Subject to Excise Tax Without Payment of the Tax.* - Any person who owns and/or is found in possession of imported articles subject to excise tax, the tax on which has not been paid in accordance with law, or any person who owns and/or is found in possession of imported tax-exempt articles other than those to whom they are legally issued shall be punished by:
>
> ... ...
>
> **<u>Any person who is found in possession of locally manufactured articles subject to excise tax, the tax on which has not been paid in accordance with law</u>**, or any person who is found in possession of such articles which are exempt from excise tax other than those to whom the same is lawfully issued shall be punished with a fine of not less than (10) times the amount of excise tax due on the articles found but not less than One million pesos (₱1,000,000.00) and imprisonment of not less than five (5) years but not more than eight (8) years.
>
> Any manufacturer, importer, owner or person in charge of any article subject to excise tax who removes or allows or causes the unlawful removal of any such articles from the place of production or bonded warehouse, upon which the excise tax has not been paid at the time and in the manner required, and any person who knowingly aids or abets in the removal of such articles as aforesaid, or conceals the same after illegal removal shall, for the first offense, be punished with a fine of not less than ten (10) times the amount of excise tax due on the articles but not less than Fifty million pesos (₱50,000,000.00) and imprisonment of not less than five (5) years but not more than eight (8) years.
>
> The mere unexplained possession of articles subject to excise tax, the tax on which has not been paid in accordance with law, shall be punishable under this Section. [*Emphasis and underscoring supplied.*]

On the other hand, Sections 253(d) and 256, of the NIRC of 1997, as amended, provide:

> SEC. 253. *General Provisions.* -
>
> ... ...
>
> (d)In the case of associations, partnerships or corporations, the penalty shall be imposed on the partner, president, general manager, branch manager, treasurer, officer-in-charge, and the employees responsible for the violation.
>
> ... ...
>
> SEC. 256. *Penal Liability of Corporations.* - Any corporation, association or general co-partnership liable for any of the acts or omissions penalized under this Code, in addition to the penalties imposed herein upon the responsible corporate officers, partners, or employees shall, upon conviction for each act or omission, be punished by a fine of not less than Fifty thousand pesos (P50,000) but not more than One hundred thousand pesos (P100,000).

The violation of Section 263 of the NIRC of 1997, as amended, may be committed in six (6) ways, *viz.*:

1. By any person who owns and/or is found in possession of imported articles subject to excise tax, the tax on which has not been paid in accordance with law;

2. By any person who owns and/or is found in possession of imported tax-exempt articles other than those to whom they are legally issued;

3. **By any person who is found in possession of locally manufactured articles subject to excise tax, the tax on which has not been paid in accordance with law**;

4. By any person who is found in possession of such articles which are exempt from excise tax other than those to whom the same is lawfully issued;

5. By any manufacturer, importer, owner or person in charge of any article subject to excise tax who removes or allows or causes the unlawful removal of any such articles from the place of production or bonded warehouse, upon which

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the excise tax has not been paid at the time and in the manner required; and,

6. By any person who knowingly aids or abets in the removal of such articles as aforesaid or conceals the same after illegal removal.

Based on the allegations in the *Amended Information*,[118] accused are charged with violating Section 263 under the *third* mode: possession of locally manufactured articles subject to excise tax, where the tax has not been paid in accordance with law.

Accordingly, to secure a conviction, plaintiff must prove the following elements beyond reasonable doubt:

1. Locally manufactured articles are subject to excise tax;

2. Accused are found to be in possession of said locally manufactured articles; and,

3. The excise taxes on said locally manufactured articles in possession of the accused have not been paid in accordance with law.

However, with the inadmissibility of the cigarette products, the Apprehension Slips, the Certificates of Inventory, and other seized articles discussed above, plaintiff cannot establish the *second* element, *i.e.*, the possession of locally manufactured articles. It is axiomatic that in crimes involving possession of an item, the item itself constitutes the *corpus delicti* of the crime. Consequently, a conviction cannot be sustained if the item is inadmissible in evidence.

As the element of possession has not been satisfied, the Court finds it unnecessary to discuss the remaining elements, owing to the same constitutional violation discussed earlier. Furthermore, the Court cannot determine the civil liability of accused as the quantity of the cigarette products cannot be properly ascertained due to their exclusion as evidence. Additionally, the violation of accused's right to due process

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[118] Docket – Vol. I, pp. 135–138.

renders the assessment against GB BEM and any collection efforts by the BIR in this case, void.

WHEREFORE, in light of the foregoing, accused GB BEM Cigarette Co. Inc., Gregory G. Lim, Benson G. Chua, Elsie A. Oafallas, Gendy A. Bambao, and Maria Cristina G. Dayos are **ACQUITTED** for failure of plaintiff to prove their guilt beyond reasonable doubt. There being no competent evidence to prove any civil liability on their part, they are also exonerated from the same.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

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

(With Separate Concurring Opinion)
JEAN MARIE A. BACORRO-VILLENA
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

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA CRIM. CASE NO. O-935** (NPS Docket No. XVI-INV-21B-00058)
- versus -	For: Violation of Section 263, in relation to Sections 253(d) and 256, of the National Internal Revenue Code of 1997, as amended
GB BEM CIGARETTE CO., INC., GREGORY G. LIM (President), BENSON G. CHUA (Treasurer), ELSIE A. OAFALLAS (Director), GENDY A. BAMBAO (Director), AND MARIA CRISTINA G. DAYOS (Corporate Secretary), Building 09-01, Pampanga Economic Zone Pulung, Cacutud, Angeles City, Pampanga, Accused.	Members: **DEL ROSARIO,** *P.J., Chairperson,* **BACORRO-VILLENA,** *and* **CUI-DAVID,** *JJ.* Promulgated: NOV 20 2024; 8:30AM

x- x

CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur in the acquittal of the accused, without any civil liability.

The *ponencia,* in pages 21 to 31 thereof, exhaustively elucidates how the plain view doctrine applies and correctly rules that it finds no application to the present case. The *ponencia* likewise aptly points out, in pages 31 to 33 thereof, the consequence of a search and seizure conducted without a valid search warrant, that is, the articles seized are rendered inadmissible in evidence.

In arguing that the Bureau of Internal Revenue (BIR) acted well within its authority in intruding into GB BEM Cigarette Co., Inc.'s (GB BEM) premises and seizing cigarette raw materials, tobacco products, machines, equipment, and various items (pursuant to Mission Order dated February 5, 2020), plaintiff alleges that it is merely giving effect to the supervisory and police powers conferred to it by the National Internal Revenue Code (NIRC) of 1997, as amended, and special laws.

Sections 6 and 171 of the NIRC of 1997, as amended, provides:

> "SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. –
>
> xxx xxx xxx
>
> (C) Authority to Conduct Inventory-taking, Surveillance and to Prescribe Presumptive Gross Sales and Receipts. - The Commissioner may, at any time during the taxable year, order inventory-taking of goods of any taxpayer as a basis for determining his internal revenue tax liabilities, or **may place the business operations of any person, natural or juridical, under observation or surveillance if there is reason to believe that such person is not declaring his correct income, sales or receipts for internal revenue tax purposes.** The findings may be used as the basis for assessing the taxes for the other months or quarters of the same or different taxable years and such assessment shall be deemed prima facie correct." *(Boldfacing supplied)*
>
> "SEC. 171. *Authority of Internal Revenue Officer in Searching for Taxable Articles.* — Any internal revenue officer may, in the discharge of his official duties, enter any house, building or place where articles subject to tax under this Title are produced or kept, or are believed by him upon reasonable grounds to be produced or kept, **so far as may be necessary to examine, discover or seize the same**.
>
> He may also stop and search any vehicle or other means of transportation when upon reasonable grounds he believes that the same carries any article on which the excise tax has not been paid." *(Boldfacing supplied)*

A plain reading of the above-quoted provisions of the NIRC of 1997, as amended, reveals that there is nothing therein which exempts the BIR from obtaining a search warrant prior to entering any house, building or place where exciseable articles are produced or kept. The grant of police power to the BIR does not constitute a blanket authority to intrude, enter and search the premises of taxpayers and fish for violation of law and seize whatever articles are found therein, in complete and wanton disregard of the taxpayer's constitutional right against unreasonable searches and seizure.

To my mind, the authority of the BIR to make arrests and seizures for violation of any penal law, rule or regulation it administers is not unbridled. The same remains subservient to the people's right against unreasonable searches and seizures as found in Section 2, Article III of the 1987 Constitution which provides:

> "ARTICLE III
> BILL OF RIGHTS
>
> xxx xxx xxx
>
> Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and **no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge** after examination under oath or affirmation of the complainant and the witnesses he may produce, and **particularly describing the place to be searched and the persons or things to be seized.**" *(Boldfacing supplied)*

The supremacy of the people's right against unreasonable searches and seizures cannot simply be ignored. On this score, the disquisition in *People of the Philippines vs. Gerry Sapla y Guerrero*[1] is instructive, *viz.*:

> "As eloquently explained by the Court in *People vs. Tudtud (Tudtud)*, 'the Bill of Rights is the bedrock of constitutional government. If people are stripped naked of their rights as human beings, democracy cannot survive and government becomes meaningless. This explains **why the Bill of Rights, contained as it is in Article III of the Constitution, occupies a position of primacy in the fundamental law way above the articles on governmental power**.'
>
> And in the Bill of Rights, the right against unreasonable searches and seizures is 'at the top of hierarchy of rights, next only to, if not on the same plane as, the right to life, liberty and property, x x x for the right to personal security which, along with the right to privacy, is the foundation of the right against unreasonable searches and seizure.
>
> xxx xxx xxx
>
> Hence, as a rule, **a search and seizure operation conducted by the authorities is reasonable only when a court issues a search warrant after it has determined the existence of probable cause through the personal examination under oath or affirmation of the complainant and the witnesses presented before the court, with the place to be searched and the persons or things to be seized particularly described.**

[1] G.R. No. 244045, June 16, 2020.

> **Because of the sacrosanct position occupied by the right against unreasonable searches and seizures in the hierarchy of rights, any deviation or exemption from the aforementioned rule is not favored and is *strictly construed against the government*.**" *(Boldfacing supplied)*

The NIRC, in giving the BIR authority to make arrests and seizures, simply recognized such agency as a law enforcement entity (akin to police officers). But it did not envision BIR to possess powers that blatantly violate the constitutional right against unreasonable searches and seizures much less did it exempt it -- like any other police or law enforcement officers -- from the general rule of securing a search warrant from the court before making searches and seizures.

While there are instances wherein searches and seizures are jurisprudentially declared as reasonable, albeit in the absence of a search warrant, such as: (1) warrantless search incidental to a lawful arrest, (2) seizure of evidence in plain view, (3) search of moving vehicles, (4) consented warrantless search, (5) customs searches, (6) stop and frisk, and (7) exigent and emergency circumstances, the same take into account the 'uniqueness of the circumstances involved, including the purpose of the search or seizure, the presence or absence of probable cause, the manner in which the search and seizure was made, the place or thing searched, and the character of the articles procured.[2]

Plaintiff argues that the valid warrantless search and seizure known as seizure in plain view applies in this case. As aforementioned, the *ponencia* has thoroughly delved on this issue and found the plain view doctrine inapplicable in this case. Considering that the circumstances of the warrantless search and seizure conducted by the BIR in this case cannot be considered as falling within the exceptions to the requirement of securing a search warrant, the BIR should have obtained a search warrant immediately from its receipt of the unsigned letter from Philip Morris Fortune Tobacco Corporation (which alleges that GB BEM is engaged in the illegal manufacture of cigarettes and sale of its products in the local market).

It is the plaintiff's position that a search warrant is not required to enter GB BEM's place of business, discover prohibited articles and seize the same as the Mission Order, issued by BIR Deputy Commissioner Arnel Guballa, takes the place of a search warrant.

I disagree.

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[2] Id.

In *Hortencia Salazar vs. Hon. Tomas D. Achacoso*,[3] the Honorable Supreme Court had the occasion to rule on the validity of the power of high-ranking officials from the Executive Department to issue warrants of arrest and seizure under Article 38 of the Labor Code, prohibiting illegal recruitment. In ruling that the Secretary of Labor is bereft of such authority, the Honorable Supreme Court elucidated, as follows:

> "The Court finds that a lone issue confronts it: May the Philippine Overseas Employment Administration (or the Secretary of Labor) validly issue warrants of search and seizure (or arrest) under Article 38 of the Labor Code? It is also an issue squarely raised by the petitioner for the Court's resolution.
>
> Under the new Constitution, which states:
>
> > . . . no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.
>
> **It is only a judge who may issue warrants of search and arrest**. In one case, it was declared that mayors may not exercise this power:
>
> xxx
>
> Neither may it be done by a mere prosecuting body:
>
> xxx
>
> **We reiterate that the Secretary of Labor, not being a judge, may no longer issue search or arrest warrants. Hence, the authorities must go through the judicial process.** To that extent, we declare Article 38, paragraph (c), of the Labor Code, unconstitutional and of no force and effect.
>
> xxx
>
> Moreover, **the search and seizure order in question, assuming, ex *gratia argumenti*, that it was validly issued, is clearly in the nature of a general warrant**:
>
> xxx
>
> **We have held that a warrant must identify clearly the things to be seized, otherwise, it is null and void**, xxx:
>
> xxx

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[3] G.R. No. 81510, March 14, 1990.

For the guidance of the bench and the bar, we reaffirm the following principles:

1. **Under Article III, Section 2, of the 1987 Constitution, it is only judges, and no other, who may issue warrants of arrest and search;**

xxx." *(Boldfacing supplied)*

Applying the pronouncements in *Salazar* to the present case, I humbly opine that the Mission Order could not be treated as equivalent to a search warrant.

There is no doubt that Deputy Commissioner Guballa is not a judge. As categorically stated in *Salazar*, it is only a judge who may issue warrants of search and arrest. Therefore, any search warrant or Mission Order issued by Deputy Commissioner Guballa, which has for its purpose the conduct of a search and seizure in one's business premises cannot be accorded the validity of a search warrant issued by a judge.

Even assuming that Deputy Commissioner Guballa is authorized to issue search warrant in the form of Mission Order, it was not shown that the Mission Order was issued after Deputy Commissioner Guballa has determined the existence of probable cause by personally examining under oath or affirmation any complainant or witnesses.

Sections 4 and 5, Rule 126 of the 2000 Rules on Criminal Procedure specify the requisites for the issuance of a search warrant, *viz.*:

> "SEC. 4. Requisites for issuing search warrant. A search warrant shall not issue except upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witness he may produce, and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines.
>
> SEC. 5. Examination of complainant; record. The judge must, before issuing the warrant, personally examine in the form of searching questions and answers, in writing and under oath, the complainant and the witnesses he may produce on facts personally known to them and attach to the record their sworn statements, together with the affidavits submitted."

Records are bereft of evidence to show that Deputy Commissioner Guballa complied with the aforesaid requisites.

In search warrant proceedings, probable cause is defined as such facts and circumstances that would lead a reasonably discreet and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place sought to be searched.[4] As succinctly put by Honorable Supreme Court Associate Justice Marvic M.V.F. Leonen, **a solitary tip hardly suffices as probable cause**.[5]

As borne by the records, the Mission Order was issued pursuant to an unsigned letter from Philip Morris Fortune Tobacco Corporation (alleging that GB BEM is engaged in the illegal manufacture of cigarettes and sale of its products in the local market). I submit that a mere anonymous letter is not sufficient to constitute probable cause that would justify the issuance of the Mission Order (if a Mission Order is akin to a search warrant). More is demanded from the BIR prior to the issuance of the Mission Order which the BIR failed to do.

Accordingly, there being no valid warrantless search and seizure, the cigarette raw materials, tobacco products, machines, and equipment inside GB BEM's premises are rendered inadmissible in evidence for being the proverbial fruit of the poisonous tree. As the seized cigarette raw materials, tobacco products, machines, equipment, and various items are the very *corpus delicti* of the crime charged, accused must be acquitted and exonerated from criminal liability.

Even assuming arguendo that the evidence obtained and seized by the BIR from GB BEM's premises are admissible, there is still no basis to hold the accused criminally liable for the crime charged. The Amended Information specifically charged accused for possession of locally manufactured cigarettes or tobacco products **without paying the excise tax.**

Does mere possession of locally manufactured cigarettes or tobacco products make one liable to pay excise tax thereon? In my opinion, the answer is in the negative.

Under Section 130(A)(2) of the NIRC of 1997, as amended, excise tax on locally manufactured exciseable articles is due for payment immediately before removal of said articles from place of

[4] People of the Philippines vs. Amador Pastrana and Rufina Abad, G.R. 196045, February 21, 2018.
[5] People of the Philippines vs. Jaime Sison, et al., G.R. No. 238453, July 31, 2019.

production for domestic sale or consumption. **Put differently, no liability to pay excise tax accrues while the exciseable articles remain within the place of production.**

The pronouncement in *The Asiatic Petroleum Company (Philippine Islands) Ltd. vs. James J. Rafferty, Collector of Internal Revenue*[6] as to why excise tax on exciseable articles becomes due and payable only when they are about to be removed from place of production for the purpose of putting them into domestic market is enlightening, *viz.*:

> "Xxx, **suppose the merchandise should never be removed from the place of production, would the producer ever be liable to pay the internal revenue tax upon it? Suppose before its removal, it should be destroyed by fire or otherwise, does the law authorize the Collector of Internal Revenue to collect the taxes in that case at all? The theory of the law, with reference to the internal revenue tax upon such merchandise, seems to be that the tax is not *due* and *payable* until it is about to be put into the commerce or trade of the country.** The condition of the market at a particular time, or the situation in business generally, might cause the producer to withhold his merchandise and not allow it to be removed from the place of production for months, or even years; **could he, under the above quoted provision, of the law, be required to pay the internal revenue taxes until he saw fit to place his product upon the market?** Xxx xxx . Suppose, for example, that the importer for reasons peculiar to his own interests decides to delay the removal of said merchandise from such bonded warehouse, may he not do so? Under such circumstances, might not he delay the removal for months, or even years? **Under his contract with the government, by virtue of which the internal revenue tax is not payable until the same *is about to be removed from such warehouses*, may he be called upon and compelled to pay the internal revenue tax until that time? Certainly, the payment of taxes cannot be enforced until they are due.** If the Collector of Internal Revenue, by virtue of threats of pains and penalties, compels the payment of taxes before maturity, against the will of the owner of the merchandise, the collection is illegal and the sum so collected may be recovered." *(Boldfacing supplied)*

Indubitably, mere possession by GB BEM of locally manufactured cigarettes or tobacco products does not *ipso facto* require GB BEM to pay excise tax thereon. The obligation to pay excise tax on exciseable articles arises only when the exciseable articles are about to be removed from the place of production, for domestic sale or consumption.

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[6] G.R. No. L-13051, August 10, 1918.

GB BEM is an ecozone export enterprise registered with the Philippine Economic Zone Authority (PEZA). GB BEM's plant or factory (subject of the Mission Order), where the seized cigarettes and tobacco products were found, is situated inside an economic zone (ecozone).

In *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue,*[7] the Supreme Court lengthily discussed the concept of a "separate customs territory", *viz.*:

> "Furthermore, Section 8 of Republic Act No. 7916 mandates that PEZA shall manage and operate the ECOZONE as a **separate customs territory**. **The provision thereby establishes the fiction that an ECOZONE is a foreign territory separate and distinct from the customs territory**. Accordingly, the sales made by suppliers from a customs territory to a purchaser located within an ECOZONE will be considered as exportations. Following the Philippine VAT system's adherence to the Cross Border Doctrine and Destination Principle, the VAT implications are that "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". Thus, *Toshiba* has discussed that:
>
>> 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.**
>>
>> **<u>It is important to note herein that respondent Toshiba is located within an ECOZONE.</u>** An ECOZONE or a Special Economic Zone has been described as –
>>
>> . . . [S]elected areas with highly developed or which have the -Q potential to be developed into agro-industrial, industrial, tourist, recreational, 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; **<u>thus, creating the fiction that the ECOZONE is a foreign</u>**

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[7] *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue,* G.R. No. 190506, June 13, 2016.

> **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**." *(Boldfacing and underscoring supplied)*

Relatedly, Revenue Memorandum Circular (RMC) No. 04-99 clarifies the tax treatment of domestic sales made by a PEZA registered enterprise, *viz.*:

> "SECTION 5. *Tax Treatment Of Sales Made By A PEZA Registered Enterprise.* —
>
> (1) *Sale of goods (i.e., merchandise), by a PEZA-registered enterprise, to a buyer from the Customs Territory (i.e., domestic sales).* — This case shall be **treated as a technical importation made by the Buyer. Such Buyer shall be treated as an importer thereof and shall be imposed with the corresponding import tax/es** (i.e., VAT or VAT plus **excise tax**, as the case may be), pursuant to Sec. 107, Title IV and Title VI, NIRC, in relation to Sec. 26, R.A. No. 7916, as implemented by Sec. 2, Rule VIII, PART V of the PEZA rules and regulations entitled 'Rules and Regulations to Implement Republic Act No. 7916.'Xxx" *(Boldfacing supplied)*

It is clear from the foregoing that when the cigarettes and tobacco products found in GB BEM's premises are intended to be removed from the place of production for domestic sales, the buyer from the custom's territory, and not GB BEM as the manufacturer, shall be liable to pay the excise tax thereon. The buyer is treated as an importer who is obligated to pay the excise tax on said exciseable articles prior to their removal from the ecozone and their entry into the domestic market.

Even assuming that GB BEM as the manufacturer is the one liable to pay excise tax on the cigarettes and tobacco products it manufactured, **no iota of proof was presented by plaintiff which would show that at the time of search and seizure of the articles in GB BEM's premises, the accused were about to remove the seized articles from GB BEM's premises for domestic sale or consumption, without paying the excise tax.** What is evident is that at the time of search and eventual seizure of articles, they were simply sitting in GB BEM's premises and nothing more.

Since it was not established that: *(i)* accused were removing the locally manufactured cigarette or tobacco products from GB BEM's premises; *(ii)* for domestic sale or consumption; and, *(iii)* without paying the excise tax due thereon, no crime (as charged in this case) was committed by the accused; hence, they deserve to be exonerated.

All told, I VOTE for the acquittal of the accused GB BEM Cigarette Co., Inc., Gregory G. Lim, Benson G. Chua, Elsie A. Oafallas, Gendy A. Bambao, and Maria Cristina G. Dayos, there being no crime committed, *sans* any civil liability.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CTA CRIM. CASE NO. O-935

For: Violation of Section 263, in relation to Section 253(d) and 256 of the National Internal Revenue Code (NIRC) of 1997, as amended

- versus -

Members:

DEL ROSARIO, ***P.J.***, *Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, ***JJ.***

GB BEM CIGARETTE CO., INC., GREGORY G. LIM (President), BENSON G. CHUA (Treasurer), ELSIE A. OAFALLAS (Director), GENDY A. BAMBAO (Director), and MARIA CRISTINA G. DAYOS (Corporate Secretary), Building 09-01, Pampanga Economic Zone Pulung, Cacutud, Angeles City, Pampanga,
Accused.

Promulgated:
NOV 20 2024; 8:30 AM

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SEPARATE CONCURRING OPINION

BACORRO-VILLENA, J.:

I concur with the *ponencia* of my esteemed colleague, Associate Justice Lanee S. Cui-David, in acquitting the accused GB BEM Cigarette Co. Inc., Gregory G. Lim, Benson G. Chua, Elsie A. Oafallas, Gendy A. Bambao, and

Maria Cristina G. Dayos for the criminal tax offense under Section 263[1], in relation to Sections 253(d)[2] and 256[3], of the National Internal Revenue Code (**NIRC**) of 1997, as amended. The acquittal proceeds from the plaintiff's failure to conduct a valid search and seizure of the confiscated cigarettes products, apprehension slips, certificates of inventory and other articles, which resulted in the inadmissibility of the said pieces of evidence that would have been used to prove the accused's alleged commission of the criminal tax offense.

The *ponencia* declared that the Bureau of Internal Revenue's (**BIR**'s) authority to make arrests and seizures must be made pursuant to a valid search warrant issued by a judge and premised on the finding of probable cause (except in instances where warrantless searches and seizures are legally permissible).

However, in the case at bar, the seizure was carried out only through a Mission Order (**MO**), which was issued based solely on a "tip" disclosed in an unsigned letter from Philip Morris Fortune Tobacco Corporation (**PMFTC**). The said unsigned letter was neither verified by the BIR nor authenticated by an authorized employee from PMFTC. Moreover, none of the permissible instances for the conduct of warrantless searches and seizures are attendant here.

I would also like to point out that in the recent case of *The Board of Commissioners of the Bureau of Immigration and the Jail Warden, Bureau of Immigration Detention Center v. Yuan Wenle*[4], the Supreme Court differentiated the validity between administrative warrants and judicial warrants. It elaborated that in criminal cases, the prohibition against unreasonable searches and seizures is intended to be strictly applied thereto, thus, warrants for search and seizure should come from a judge after his or her determination of probable cause –

> ...
>
> The aforementioned ruling, when analyzed in conjunction with and in the context of the exchanges by the framers of the 1987 Constitution, connotes that a person's constitutional right to be secured

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1 **SEC. 263.** *Unlawful Possession or Removal of Articles Subject to Excise Tax without Payment of the Tax.*

2 **SEC. 253.** *General Provisions.* –
(d) In the case of associations, partnerships or corporations, the penalty shall be imposed on the partner, president, general manager, branch manager, treasurer, officer-in-charge, and employees responsible for the violation.

3 **SEC. 256.** *Penal Liability of Corporations.*

4 G.R. No. 242957, 28 February 2023; Citation omitted, italics and emphasis in the original text and supplied.

against unreasonable searches and seizures is essentially meant to prevent the government from summarily depriving one of his or her liberty and property rights. Meaning, arrest and search warrants have been required by the Constitution as concrete safeguards against unreasonable searches and seizures. **Relatedly, since a "warrant" (whether one of arrest or of search) is basically utilized by regular courts in criminal cases, the nature of such writ logically suggests that the prohibition against unreasonable searches and seizures was definitely intended by the framers of the 1987 Constitution to strictly apply to criminal cases — where a person's right, liberty, and property is mostly vulnerable to governmental abuses.** This is because, as to non-criminal cases where other compulsory processes are utilized (*e.g.*, subpoenas, injunctions, directives, *etc.*) instead of warrants, the Constitution is silent. It offers some peripheral support to the exception carved out in *Salazar* where authorities other than judges may issue arrest warrants in proceedings not criminal in nature. Hence, due to this observation, the Court is of the view that the **necessity of administrative warrants cannot be disregarded in its entirety — just as the existence of quasi-judicial bodies is imperative to address disputes involving technical matters which justifies the exercise of adjudicative powers by some agencies under the Executive Branch** — due to its ability to address some specialized, exigent or important public need.

...

Hence, for **administrative warrants** to be **valid** and justified, ***all*** of the following conditions must be **present** and shall be **strictly complied with**, to wit:

1. The danger, harm, or evil sought to be prevented by the warrant must be imminent and must be greater than the damage or injury to be sustained by the one who shall be temporarily deprived of a right to liberty or property.

2. The warrant's resultant deprivation of a right or legitimate claim of entitlement must be temporary or provisional, aimed only at suppressing imminent danger, harm, or evil and such deprivation's permanency must be strictly subjected to procedural due process requirements.

3. The issuing administrative authority must be empowered by law to perform specific implementing acts pursuant to well-defined regulatory purposes.

4. The issuing administrative authority must be necessarily authorized by law to pass upon and make final pronouncements on conflicting rights and obligations of contending parties, as well as to issue warrants or orders that are incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it.

5. The issuance of an administrative warrant must be based on tangible proof of probable cause and must state a specific purpose or infraction allegedly committed with particular descriptions of the place to be searched and the persons or things to be seized.

6. **The warrant issued must not pertain to a criminal offense or pursued as a precursor for the filing of criminal charges and any object seized pursuant to such writ shall not be admissible in evidence in any criminal proceeding.**

7. The person temporarily deprived of a right or entitlement by an administrative warrant shall be formally charged within a reasonable time if no such period is provided by law and shall not be denied any access to a competent counsel of his or her own choice. Furthermore, in cases where a person is deprived of liberty by virtue of an administrative warrant, the adjudicative body which issued the warrant shall immediately submit a verified notice to the Regional Trial Court nearest to the detainee for purposes of issuing a judicial commitment order.

8. A violation of any item of these guidelines is a *prima facie* proof of usurpation of judicial functions, malfeasance, misfeasance, nonfeasance, or graft and corrupt practices on the part of responsible officers.

...

From the foregoing, administrative warrants, such as the MO, shall only be valid provided that it does not pertain to a criminal offense or pursued as a precursor for the filing of criminal charges. Moreover, any object seized pursuant to such writ shall not be admissible in evidence in any criminal proceeding.

Applying the above proviso, as the instant case is criminal in nature, the search and seizure conducted against herein accused based solely on the MO is invalid, and thus, the objects seized are inadmissible in evidence in the prosecution of the criminal tax offense.

Well-settled is the principle that evidence obtained and confiscated on the occasion of an unreasonable search and seizure is tainted and should be excluded for being the proverbial fruit of a poisonous tree.[5]

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[5] See *People of the Philippines v. Ronilo Jumarang y Mulingbayan*, G.R. No. 250306, 10 August 2022.