REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

GB GLOBAL EXPREZ, INC., *Petitioner,*	**CTA Case No. 10341**
	Members:
-versus-	**DEL ROSARIO,** *P.J., Chairperson, and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: AUG 31 2021 ; 11:40 a.m.

x- x

DECISION

MANAHAN, *J.*:

This resolves petitioner GB Global Exprez, Inc.'s (GB Global) *Petition for Review*[1] which prayed for the following remedies: (1) that the **Writ of Preliminary Mandatory Injunction** issued on November 23, 2020 be made permanent; (2) that the **Mission Order** No. MS0201400018132 dated July 29, 2020 of respondent be nullified and set aside for non-compliance with Revenue Memorandum Order (RMO) No. 3-2009 and for being violative of its right against unreasonable searches and seizure and right to due process; and, (3) that the **Closure Order** dated August 4, 2020 of respondent be reversed and set aside for lack of legal basis and for being violative of its constitutional right to due process.

THE FACTS

Petitioner is a duly organized and existing corporation registered with the Securities and Exchange Commission (SEC) with Company Registration No. CS-201008416 issued on June 2, 2010.[2] Petitioner is also registered with the Bureau

---

[1] Docket, CTA Case No. 10341, Vol. 1, pp. 8-70.
[2] *Id.*, Vol. IV, Memorandum for the Petitioner, p. 1828.

cm

of Internal Revenue (BIR) with Tax Identification Number (TIN) 007-783-570-000.[3]

Respondent Commissioner of Internal Revenue (CIR) is the head of the BIR with office address at Room 511, BIR National Office Building, BIR Road, Diliman, Quezon City, through which he can be served with notices, orders, resolutions and other legal processes.[4]

Petitioner's Amended Articles of Incorporation states its primary purpose as:

> "To engage in the business of manufacturing, production, sub-contracting, export, import, purchase, sale and distribution of any forms of commodities, goods or merchandise which may be the object of commerce such as but not limited to cigarette manufacturing and processing of tobacco and other related products."[5]

Since August 2010, petitioner was registered as an Ecozone Export Enterprise as shown in the Certificate of Registration No. 10-67[6] issued by the Philippine Economic Zone Authority (PEZA), and in the Registration Agreement[7] entered by and between PEZA and petitioner. Petitioner's registered activity, based on the Registration Agreement, is "limited to manufacture of cigarettes for export and the importation of raw materials, machinery, equipment, tools, goods, wares, articles, or merchandise directly used in its registered operations at the Angeles Industrial Park (AIP)."[8]

On October 26, 2010, petitioner's registered activity was amended to include the manufacture of Cut-Rolled Expanded Stems (CRES) and Cigarettes Tubes at AIP through a Supplemental Agreement[9] executed by and between PEZA and petitioner.

Among others, petitioner manufactures four (4) brands of cigarettes, namely:

---

[3] *Id*, at p. 1829.
[4] Docket, Vol. IV, Pre-Trial Order (PTO), p. 1760.
[5] *Id.*, Vol. IV, Memorandum for the Petitioner, pp. 1828-1829.
[6] *Id.*, Vol. I, Exhibit "P-6", p. 257.
[7] *Id.*, Vol. I, Exhibit "P-7", pp. 270-278.
[8] Docket, Vol. IV, Memorandum for the Petitioner, p. 1830.
[9] *Id.*, Vol. I, Exhibit "P-8", pp. 279-282.

om

a. SOHO in Red and Black Colors (Soho);

b. PROMAX MENTHOL 20 in Green Color (Promax);

c. A380 in Green Color (A380); and

d. BLUE STAR TWO MOON NATIONAL in Blue and Silver Colors (Two Moon).

The instant case is limited to the brands Soho and Two Moon.

On July 29, 2020, a BIR Strike Team, composed of agents and personnel from the National Bureau of Investigation (NBI), Intellectual Property Office (IPO), and a local barangay representative arrived, and entered petitioner's manufacturing facility, at Block 2, Lot 7, AIP, Bo. Calbutbut, Bacolor, Pampanga, purportedly to conduct surveillance of petitioner's business activities.[10] This was pursuant to Mission Order with No. MS0201400018132.[11] On the said date, the BIR Strike Team conducted inspection and inventory-taking of the finished and in-process products, raw materials, supplies, machineries and equipment inside the facility.[12] The BIR Strike Team likewise collected and seized samples of finished and in-process products.[13] Eventually, the BIR Strike Team Leader ordered the closure of the business operations of the petitioner and physically padlocked its manufacturing facility.[14]

On August 5, 2020, petitioner received the CIR's Closure Order,[15] which states:

> "This refers to the On-The-Spot surveillance conducted against your company by the BIR STRIKE TEAM pursuant to Mission Order No. 00018132 dated July 29, 2020.
>
> Please be informed that **your company was closed for manufacturing Two Moon and Soho brands of cigarettes**, which violated the conditions enumerated in the Permit to Operate as manufacturer of cigarette and cigarette filter tube

---

[10] Docket, Vol. IV, Memorandum for the Petitioner, p. 1834; Docket, Vol I, Q&A No. 33, Judicial Affidavit of Mr. Angelito B. Burgos, p. 551.
[11] *Id.*, Vol. I, Exhibit "P-26-2", pp. 294-295.
[12] *Id.*, Vol. IV, Memorandum for the Petitioner, p. 1836.
[13] *Id.* at p. 1837.
[14] *Id.*
[15] *Id.*, Vol. I, Exhibit "P-12", p. 293.

om

> issued to your company by our Bureau's Excise LT Regulatory Division dated December 6, 2010.
>
> Consequently, all **4,786 master cases/boxes of said Two Moon and Soho cigarette products, including the cigarette machines and other related items of the production of cigarettes (i.e., paper tape, labels, cigarette boxes, tobacco raw materials and the likes), shall be seized** for reason of the above violation.
>
> Please be guided accordingly." (*Emphases ours*)

On September 4, 2020, petitioner filed the present *Petition for Review [With Urgent Prayer for an Ex-Parte Status Quo Ante Order and/or Application for Writ of Preliminary Mandatory Injunction]*.

On September 23, 2020, the Court issued a *Temporary Restraining Order*,[16] with the following dispositive portion:

> "**WHEREFORE**, considering that the matter is of extreme urgency and, unless restrained, the petitioner will suffer grave injustice and irreparable injury, respondent, its representatives, agents or any persons acting in his behalf, are **DIRECTED** to **CEASE and DESIST** from proceeding with the hauling and dismantling of petitioner's products and machines, respectively, and from destroying any of the cigarettes hauled from petitioner's plant, **effective immediately**.
>
> xxx
>
> **SO ORDERED**."

On October 27, 2020, the Court issued a Resolution,[17] partially granting the Application for Writ of Preliminary Mandatory Injunction. The Resolution ordered the removal of the padlocks and closing mechanisms attached to petitioner's premises; to allow petitioner to take possession of the properties seized by respondent such as equipment, cigarettes and raw materials, subject to the posting of a surety bond in the amount of Php151,253,655.78. The Resolution, however, denied petitioner's prayer to resume the manufacturing of the cigarette brands, Soho and Two Moon.

---

[16] Docket, Vol. I, pp. 416-419.
[17] *Id.*, Vol. II, pp. 827-863.

On November 23, 2020, the *Writ of Preliminary Mandatory Injunction*[18] was issued.

On November 27, 2020, the *Writ of Preliminary Mandatory Injunction* was executed by this Court's Sheriff.[19]

In the meantime, and within the extended period granted, respondent posted his *Answer*[20] on November 23, 2020 which was received by the Court on December 3, 2020.

Petitioner filed its *Reply (Re: Respondent's Answer dated November 20, 2020) with Motion to Admit*[21] on December 17, 2020.

The Pre-Trial Conference was held on January 28, 2021, with petitioner having submitted its *Pre-Trial Brief* on January 22, 2021. Meanwhile, *Respondent's Pre-Trial Brief Ad Cautelam* was posted on January 22, 2021, and received by the Court on February 1, 2021.

The parties filed *via* email their *Joint Stipulation of Facts and Issues* (JSFI) on February 2, 2021, with hard copies being submitted on February 3, 2021. The JSFI was approved by the Court in the Resolution dated February 10, 2021 and the *Pre-Trial Order* (PTO) was issued on March 18, 2021.

In the meantime, trial proceeded.

On February 11, 2021, petitioner presented its witnesses: Mr. Gregory G. Lim and Mr. Franklin S. Cortez. Petitioner thereafter filed its *Formal Offer of Evidence* on February 22, 2021.

On March 10, 2021, respondent presented his witnesses: Ms. Ma. Rosario O. Puno and Mr. Remedios C. Advincula. Respondent filed his *Formal Offer of Evidence* on March 22, 2021.

---

[18] *Id.*, Vol. II, pp. 1002-1003.
[19] Docket, Vol. II, Sheriff's Implementation of the Writ of Preliminary Mandatory Injunction, pp. 1005-1007.
[20] *Id.*, Vol. III, pp. 1061-1098.
[21] *Id.*, Vol. III, pp. 1152-1195.

cm

On May 20, 2021, the Court issued its Resolution admitting all of the parties' respective pieces of evidence, except for respondent's Exhibit "R-1". However, Exhibit "R-1" was subsequently admitted on reconsideration, in the Resolution dated July 8, 2021.

On June 4, 2021, the parties filed their respective memoranda.

The case was submitted for decision on July 8, 2021.

In the meantime, on July 15, 2021, petitioner filed an ***Ex-Parte* Motion for Early Resolution** informing this Court that respondent is continuously causing irreparable damages to it despite the Court's Writ of Preliminary Mandatory Injunction dated November 23, 2020, as evidenced by: (a) the April 24, 2021 of the Director General, PEZA, cancelling all PEZA transactions of petitioner, including but not limited to its import and export permits, and transfer of goods and machineries; and, (b) a new Mission Order dated May 14, 2021 issued by respondent authorizing the seizure of petitioner's manufactured cigarettes.

ISSUES

Petitioner submits the following issues:

I. Whether or not the Honorable Court has jurisdiction over the present case;

II. Whether or not petitioner, an Ecozone Export Enterprise duly registered with PEZA, is required to register its cigarettes with the BIR;

III. Whether or not Mission Order No. MS0201400018132 and Closure Order dated August 4, 2020 are constitutional and conform to the requirements of RMO No. 3-2009; and,

IV. Whether or not the CIR's manner of implementing Mission Order No. MS0201400018132 and Closure Order dated August 4, 2020, as well as the seizure of petitioner's goods and the closure of petitioner's

om

business are constitutional and conform to the procedure under RMO No. 3-2009.

Respondent, on the other hand, submits the following issues:

I. Whether or not the Honorable Court has jurisdiction over the present case;

II. Whether or not petitioner has complied with its undertaking in the Permit to Operate as Manufacturer of Cigarettes issued by the BIR;

III. Whether or not RMO No. 3-2009 is applicable to the issuance of the Mission Order and seizure of petitioner's illicit articles;

IV. Whether or not there was refusal on the part of petitioner to receive the Mission Order from the BIR; and,

V. Whether or not the Mission Order obtained by the petitioner is the Mission Order issued by the BIR.

The foregoing can be consolidated into three (3) main issues:

1. Whether the Court has jurisdiction over the instant case;

2. Whether the subject Mission Order, Closure Order and subsequent seizure of articles violated petitioner's constitutional rights to due process and privacy; and,

3. Whether the constitutional violations caused grave and irreparable injury to petitioner which entitle it to the relief of a permanent Writ of Injunction.

am

Petitioner's Arguments

Petitioner argues that this Court has jurisdiction over the instant case and insists that, as an Ecozone Export Enterprise duly registered with PEZA, it is not required to register its cigarettes with the BIR under Republic Act (RA) No. 7916, otherwise known as "*The Special Economic Zone Act of 1995*".

Petitioner further argues that the Mission Order No. MS0201400018132 and Closure Order dated August 4, 2020 are unconstitutional and violative of the requirements under RMO No. 3-2009, and that the implementation of said Mission Order and Closure Order as well as the seizure of its goods and closure of its business premises violated the constitutional rights of petitioner under 1987 Philippine Constitution.

Respondent's Arguments

Respondent, on the other hand, argues that this Court has no jurisdiction to interfere in the exercise of respondent's police power and that the instant petition was belatedly filed.

Respondent insists that petitioner as a tobacco manufacturer did not comply with the registration requirements of its cigarettes under the law and that the latter is bound by the laws of the Philippines as clearly stated in the Registration Agreement with PEZA and that such cigarettes are not only unregistered but also illegal and counterfeit.

Respondent avers that the service of his agents of said Mission Order should be presumed regular and that such service did not violate petitioner's right to due process and right to unreasonable search and seizures.

RULING OF THE COURT

The CTA has jurisdiction on the instant case.

Respondent argues that this Court has no jurisdiction in the conduct of BIR's surveillance which is allegedly in the exercise of State's police power.

cm

Section 7(a)(1) of RA No. 1125,[22] as amended by RA No. 9282,[23] provides as follows, to wit:

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

In *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue,*[24] the Supreme Court held:

> "The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. **The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue**...." (*Emphasis ours*)

Such rationale was reiterated in the case of *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*[25], where the Supreme Court ruled that the appellate jurisdiction of this Court is *not* limited to cases which involve decisions of respondent on matters relating to assessments or refunds because the second part of Section 7(a)(1) of RA No. 1125, as amended, covers other cases that arise out of the National Internal Revenue Code (NIRC) or related laws administered by the BIR, to wit:

> "We cannot countenance the CIR's assertion with regard to this point. The jurisdiction of the CTA is governed by Section 7 of Republic Act No. 1125, as amended, and the term "other matters" referred to by the CIR in its argument can be found in number (1) of the aforementioned provision, to wit:

---

[22] AN ACT CREATING THE COURT OF TAX APPEALS.
[23] 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 OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.
[24] G.R. No. 162852, December 16, 2004.
[25] G.R. No. 169225, November 17, 2010.

cm

> Section 7. *Jurisdiction.* - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided -
>
> 1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, **or other matters arising under the National Internal Revenue Code or other law as part of law administered by the Bureau of Internal Revenue**. (Emphasis supplied.)

Plainly, the assailed CTA *En Banc* Decision was correct in declaring that there was nothing in the foregoing provision upon which petitioner's theory with regard to the parameters of the term "other matters" can be supported or even deduced. What is rather clearly apparent, however, is that the term "other matters" is limited only by the qualifying phrase that follows it.

Thus, on the strength of such observation, we have previously ruled that the appellate jurisdiction of the CTA is not limited to cases which involve decisions of the CIR on matters relating to assessments or refunds. **The second part of the provision covers other cases that arise out of the National Internal Revenue Code (NIRC) or related laws administered by the Bureau of Internal Revenue (BIR).**" (*Additional emphasis ours*)

Considering that respondent's surveillance activities find legal basis under Section 15 and Section 115 of the 1997 NIRC, as amended[26], as implemented by RMO No. 3-2009, they certainly fall under "other matters arising under the National Internal Revenue Code", over which this Court has exclusive appellate jurisdiction.

---

[26] 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 the 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.
xxx xxx xxx
Sec. 115. *Power of the Commissioner to Suspend Business Operations of a Taxpayer.* – The Commissioner or his authorized representative is hereby empowered to suspend the business operations and temporarily close the business establishment of any person for any of the following violations:
(a) In case of a VAT-registered Person. –
(1) Failure to issue receipts or invoices;
(2) Failure to file value-added tax return as required under Section 114; or
(3) Understatement of taxable sales or receipts by thirty percent (30%) or more of his correct taxable sales or receipts for the taxable quarter.
(b) Failure of any Person to Register as Required under Section 236.
The temporary closure of the establishment shall be for the duration of not less than five (5) days and shall be lifted only upon compliance with whatever requirements prescribed by the Commissioner in the closure order.

om

Petitioner is required to comply with the registration and reporting requirements of the NIRC and rules and regulations.

As stated by respondent, tobacco products such as cigarettes manufactured by petitioner are highly regulated products and are considered exciseable articles. However, petitioner adamantly argues that it is not required to register its cigarette products with the BIR on the ground that it is registered with PEZA and its products are 100% exported.

The Court agrees with respondent. The mere fact that petitioner's products are 100% exported does not exempt petitioner from complying with the administrative and regulatory provisions relating to the registration, production and sale or export of such cigarette products. It is notable that petitioner does not point to a specific provision of the 1997 NIRC, as amended, exempting petitioner from the registration requirements. In fact, under its Registration Agreement with PEZA,[27] as quoted below, petitioner is required to comply with existing BIR regulations that may apply to its line of business, to wit:

> 13. The REGISTRANT's project shall be entitled to incentives granted to non-pioneer projects under R.A. 7916, as amended, subject to the following terms and conditions:
>
> xxx xxx xxx
>
> 13.12 The REGISTRANT **shall comply with the applicable laws, rules and regulations** of PEZA, **the Bureau of Internal Revenue (BIR)**, Department of Agriculture – Bureau of Plant Industries (DA-BPI), National Tobacco Authority (NTA) and other concerned government agencies on the **importation, local sourcing, manufacturing and exportation of its products**. (*Emphases ours*)

The relevant BIR regulations that specifically provides that manufacturers and exporters of cigarette products must register with the BIR prior to the initial manufacture of such products is Revenue Regulations (RR) No. 3-2006,[28] , the pertinent portion of which is quoted hereinbelow:

---

[27] Docket, Vol. I. Exhibit "P-7", pp. 270-278.

[28] SUBJECT: Prescribing the Implementing Guidelines on the Revised Tax Rates on Alcohol and Tobacco Products Pursuant to the Provisions of Republic Act No. 9334, and Clarifying Certain Provisions of Existing Revenue Regulations Relative Thereto.

om

> "SEC. 23. ADMINISTRATIVE REQUIREMENTS. – All manufacturers, exporters and importers of alcohol or tobacco products shall comply with the following administrative requirements:
>
> A. Registration of New Brands and Variants of Existing and New Brands. Prior to the initial manufacture or importation of new brands and variants of existing brands and variants of new brands, an application for registration thereof shall be filed with the BIR Office where the manufacturer or importer is registered or required to be registered as an excise taxpayer.
>
> xxx xxx xxx" (*Underscoring ours*)

Under the foregoing provision, registration is required prior to the initial manufacture of the exciseable product. We agree with respondent that this mechanism provided in RR No. 3-2006 is to enable the BIR to ascertain whether an exciseable product is subject to excise tax or not. Thus, the requirement for registration is prior to the initial manufacture, regardless of whether the same is for domestic consumption or for exportation.

This is bolstered by Section 18 of the same RR No. 3-2006, which lists the requirements for the exportation of alcohol or tobacco products. Section 18 recognizes that exported products are not subject to excise taxes, however, it provides the conditions before such removal from the plant is made without the prior payment of excise taxes, *to wit*:

> SEC. 18. EXPORTATION OF ALCOHOL OR TOBACCO PRODUCTS. – Alcohol or tobacco products intended for exports may be removed from the place of production without the prepayment of excise tax, subject to the following terms and conditions:
>
> (a) A permit shall be secured from the BIR Office where the manufacturer is registered or required to be registered as an excise taxpayer before the product is removed from the place of production.
>
> (b) A surety bond has been posted to guarantee payment of excise tax which is otherwise due on such removal. For this purpose, the manufacturer-exporter may, at his option, post either a continuing surety bond, or a performance surety bond for each and every export transaction. xxx
>
> xxx xxx xxx

> (c) The products removed from the place of production shall be directly transported, loaded aboard the international shipping vessel or carrier, and shipped directly to the foreign country of destination without returning to the Philippines;
>
> (d) Proof of exportation such as, but not limited to, the documents enumerated below, shall be submitted within thirty (30) days from the date of actual removal from the place of production. xxx
>
> xxx xxx xxx
>
> In case of failure to comply with the above terms and conditions, the removal of the product shall be subject to excise tax, inclusive of penalties. Further, no subsequent application for permit for tax-free importation shall be processed and granted unless all the aforementioned requirements have been fully complied with. (*Underscoring ours*)

The aforesaid provisions are likewise contained in the Permit to Operate as a Manufacturer of Cigarettes,[29] obtained by petitioner from the BIR, *to wit*:

> "Relative thereto, the following conditions shall be complied with in the operations of your manufacturing plant facility:
>
> 1.) A permit shall be secured from this Office prior to the conduct of transactions/activities such as, but not limited to, the following:
>
> **a. Registration of each and every brand/variant of cigarettes and printing of new label/redesigned product labels and secondary containers (reams and master cases) to be used in the manufacture of such brand(s);**
>
> b. Installation, test-run and dismantling of mechanical contrivances/equipment/machines dedicated for the production of cigarette products and filter tubes;
>
> c. Disposal of waste materials; and
>
> d. Alteration/changes in your manufacturing facility as depicted in your submitted and approved plat and plan;
>
> 2.) A certification shall be issued by your authorized company representative, duly attested to by the Revenue Officer of this Office, stating therein the actual number of units, description, serial numbers and the maximum production capacity of each mechanical contrivances/equipment/machines to be installed and used

[29] BIR Records, Exhibit "R-15", pp. 13-15.

> in the manufacture of cigarette products and cigarette filter tubes;
>
> 3.) In case you intend to import raw materials, equipment, mechanical contrivances especially used for the manufacture of cigarettes and filter tubes, a prior Permit to Import and an Authority to Release Imported Goods (ATRIG) shall be secured from this Office prior to the importation and release thereof from customs' custody.
>
> 4.) For each and every exportation of the manufactured cigarettes, cigarette filter tubes and other tobacco products, a prior permit shall be secured from the Large Taxpayers Field Operations Division (LTFOD) before the same shall be exported;" (*Emphasis ours*)
>
> xxx xxx xxx

Clearly, for the BIR to determine whether a product is subject to excise tax or not, such product must first be registered with the BIR.

Thus, the Court finds that petitioner committed violations with respect to these registration and reporting requirements.

BIR Strike Team violated Petitioner's rights to due process and privacy by overriding its own rules and regulations in the issuance and implementation of the Mission Order, Closure Order and attendant seizure of petitioner' goods

Notwithstanding the initial findings that petitioner failed to comply with the BIR registration requirement of its cigarettes intended for export, the Court will determine the validity of respondent's actions. Thus, it is important to establish first what really transpired during the supposed surveillance of respondent's representative on July 29, 2020.

As admitted by Mr. Angelito B. Burgos of the BIR Strike Team in his Judicial Affidavit[30], the following statements reveal

[30] Docket, Vol. I, Exhibit "R-14", pp. 544-562.

the chronological event prior and during the surveillance conducted on that fateful day, to wit:

> "9. Q: You mentioned earlier that you are here to testify on the circumstances surrounding the seizure of illegal articles and items of GB Global. What triggered these events?
>
> A: The recent seizure of illegal articles and items by the BIR Strike Team stemmed from a complaint letter dated 24 July 2020, but received on 27 July 2020, providing information on the operations of an illegal cigarette manufacturing facility run by GB Global. However, dating back to around three years ago, we were already noticing illicit cigarettes pop up in stores around the Pampanga, Tarlac, Nueva Ecija, and Bulacan areas since we were doing tax mapping activities in those parts. I personally saw Two Moon cigarettes being sold in stores around those areas. Also, there have been a number of news report on the proliferation of fake Two Moon cigarettes in different areas of the country.
>
> xxx xxx xxx
>
> 11. Q: You mentioned a Complaint Letter dated 24 July 2020, do you remember the contents of such letter?
>
> A: Yes. Basically, the complaint letter stated that GB Global was illegally manufacturing cigarettes without complying with registration and other administrative requirements of the Tax Code and relevant regulations. It also stated that these products were being sold in domestic markets in Bataan and Cabanatuan without paying the required excise taxes. Furthermore, the complaint letter included pictures and detailed narration of the investigation conducted by the source.
>
> xxx xxx xxx
>
> 14. Q: Upon receiving the complaint letter 24 July 2020, what happened next, if any?
>
> A: On the basis of the complaint letter and after several discussions with the source to assess the credibility of the information, BIR Deputy Commissioner of Operations Arnell SD. Guballa issued a two-page Mission Order No. MSO 2014-00018132 dated 29 July 2020 against the premises of the cigarette-producing facility allegedly owned and operated by GB Global at Block 2, Lot 7, Industrial Park Special Economic Zone, Brgy. Calibutbot, Pampanga, to monitor the sales and/or place of business of GB Global by observation or surveillance for violation of

bookkeeping rules and regulations, particularly on the non-issuance of sales invoice or receipts; to apprehend violators of revenue laws and regulations related governing the activities just mentioned; to conduct immediate inventory-taking of the goods on hand, including all products subject to excise tax, as well as to check compliance on the affixture of revenue stamps thereon and its authenticity; to enter any house, building, or place where articles subject to excise taxes are produced or kept, or/are believed upon reasonable grounds to be produced or kept; to make seizures of any article wherein excise taxes have not been paid, and also for the violation of any penal law, rule, or regulation administered by the BIR; to perform other acts necessary to ensure compliance with the Tax Code and its implementing rules and regulations; and to secure any document/accounting record related to the unregistered and untaxed business, among others.

xxx xxx xxx

19. Q: What happened after the issuance of the Mission Orders, if any?

A: After the Mission Order was issued in the morning of 29 July 2020, we immediately started preparing the necessary documents, as well as coordinating with relevant parties, to aid us in implementation of the Mission Order.

20. Q: What were these preparations?

A: We produced numerous photocopies of the Mission Orders for distribution to relevant parties, like the NBI and barangay officials.

21. Q: You also mentioned that you contacted relevant parties, who were these relevant parties?

A: To aid us in servicing the Mission Orders, we contacted the National Bureau of Investigation Intellectual Property Rights Division (NBI-IPRD) as well as an expert on stamps and cigarettes.

22. Q: What happened next, if any?

A: The BIR Strike Team I mentioned earlier, together with the NBI-IPRD and the expert on stamps and cigarettes assembled at the Kenny Rogers, Petron Lakeshore branch before leading out to Angeles, Pampanga for the implementation of the Mission Order. This was around 11am.

23. Q: After gathering at Lakeshore, what did you do after, if any?

[initials]

A: We went to the address of GB Global as stated in the Mission Order and arrived at around 12:30pm. A few minutes after, we reached the GB Global premises.

24. Q: Once you arrived at the premises, what happened next, if any?

A: We introduced ourselves to the guards at the premises. We stated that we were BIR officials and that we were there to conduct an inspection pursuant to the Mission Order. When we tried asking the employees of GB Global to receive the Mission Order, they refused and started to call their lawyer, Atty. Marcelino Libanan. We handed them a photocopy of the Mission Order for them to show their lawyer.

25. Q: What course of action did you take afterwards, if any?

A: The employees of the GB Global informed us that their lawyer was coming to the premises. Not wanting to cause further stress, we waited around two hours for Atty. Libanan to arrive. When he arrived, we once again tried explain the situation to him and the employees of GB Global, but to no avail.

26. Q: So you waited for two hours for the Atty. Libanan, and once he arrived, he continued to refute your authority?

A: Yes. While waiting for Atty. Libanan to arrive, we asked a member of the local barangay to personally witness and receive the Mission Order considering that they continued to refuse receipt of the Mission Order.

xxx xxx xxx

30. Q: What happened next, if any?

A: We were eventually able to inspect the premises where we saw "Two Moon" and "Soho" branded cigarettes. Given the volume of cigarettes, our group split up to do an inventory-taking of the items. Upon further inspection, the Two Moon cigarettes located in the premises were identical to the ones we previously saw around the local markets. While we were doing an inventory-taking, we simultaneously informed GB Global that we would be closing the premises, and gave them around an hour to close. As such, they started packing while we continued to do an inventory of the cigarettes and other items.

cm

31. Q: What happened next, if any?

    A: After we finished taking an inventory, we made sure that they were able to pack up. We tried asking the representatives of the GB Global to receive an Apprehension Slip with No. 00044313, a List of Violations dated 29 July 2020, and a Certificate of Inventory. However, like the Mission Order, they refused to accept these documents.

32. Q: What transpired after, if any?

    A: We sealed and padlocked the premises. The padlock of the factory was secured with seals. I would also like to stress that padlocking of the factory was to secure the confiscated articles and items. We also left a guard at the premises to monitor the area until we could haul the illegal articles and items.

33. Q: Since the representative of GB Global refused to receive the documents, what did you do, if any?

    A: We served these to the local barangay representative, who personally received these documents at the premises.

xxx xxx xxx

48. Q: What happened next, if any?

    A: We made a report on our investigation and sent a letter to Atty. Libanan, as counsel of GB Global, informing the latter that since we have not received any formal written explanation or submission from GB Global we will be pulling out the articles and items from their premises. Since no arrangements were made in July 29 for the hauling, transport, and storage, the items will thus be pulled out at a later date.

xxx xxx xxx

55. Q: What happened next, if any?

    A: We prepared for the hauling and removal of the GB Global's articles and items by contacting the several agencies.

56. Q: Can you remember which agencies you contacted?

    A: Yes, we contacted PEZA, the local barangay, and DEGAMA Warehousing Waste Management, Inc. by sending separate notices to each one.

xxx xxx

65. Q: What happened next, if any?

A: We pulled out some illicit articles and items on 16 September 2020. (*Portion deleted on October 7, 2020 hearing*)

66. Q: What transpired after, if any?

Since there were articles and items that remained in the premises of GB Global, we turned over its keys to DEGAMA Warehousing Waste Management, Inc. to continue pulling out the illegal articles and items.

67. Q: When did you turn over the keys of the premises to DEGAMA?

A: We effected the turnover on 16 September 2020 via a handwritten document.

xxx xxx

73. Q: What happened after, if any?

A: Since we turned over the keys of the premises to DEGAMA Warehousing Waste Management, Inc., we executed a document before the PEZA authorities to inform them that DEGAMA, as the BIR's authorized hauler and storage company, would thereafter be pulling out assets from GB Global's premises without any BIR on-site presence. This would allow DEGAMA to easily access GB Global's premises.

xxx xxx

75. Q: What happened next, if any?

A: We asked for a certification from the Excise Large Taxpayers (LT) Regulatory Division, through Head Revenue Executive Assistant Felix Paul R. Velasco, on whether GB Global had registered to manufacture Two Moon and Soho cigarette brands.

76. Q: What transpired after, if any?

The Excise LT Regulatory Division issued a Certification dated 29 September 2020 stating that based on their records, the Two Moon and Soho cigarette brands are not registered brands of GB Global,

RMO No. 3-2009 dated January 15, 2009, or the "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", provides for the guidelines and procedure in conducting surveillance and closure of business, to wit:

om

"III. DEFINITION OF TERMS

xxx xxx xxx

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 actual observation and close monitoring of the business activities of such person.

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

xxx xxx xxx

IV. POLICIES

xxx xxx xxx

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. The MOs shall be issued in triplicate/quadruplicate, to be distributed as follows:

on

Original	:	Revenue Officer(s) directed to conduct the surveillance, and to be attached to the report on surveillance after termination of the activity
2nd Copy	:	Investigating Office's/ Division's file copy
3rd Copy	:	Issuing Office's file copy
4th Copy	:	Taxpayer's copy (in case of overt surveillance)

xxx xxx xxx

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.

xxx xxx xxx

2. Conduct of Surveillance

xxx xxx xxx

2.4. Performance of Surveillance Activities

xxx xxx xxx

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.

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. The implementing officer is not precluded from applying additional procedures which he may deem necessary based on his findings or initial evaluation of the case, provided that the same are carried out with due regard for the SUBJECT's legal rights.

xxx xxx xxx

4. Action on Surveillance Results

<u>**If after the conclusion of the surveillance, there is a sufficient ground for the closure of the establishment as provided for under Section 115**</u>

> **<u>of the NIRC, as amended, a recommendation shall be made to effect such closure.</u>**
>
> 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. The Revenue Officer named in the LA shall proceed with the audit and cause the assessment of the taxpayer's internal revenue tax liabilities, based either on: (1) surveillance, pursuant to Section 6 [C]; (2) best evidence rule, as provided under Section 6 [B], NIRC as amended; and/or (3) the result of the tax audit.
>
> xxx xxx xxx
>
> **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 of the correct amount thereof in the case of a VAT-registered or registrable taxpayer; or,
>
>   (d) Failure to register." (*Additional emphasis and underline ours*)

Based on the foregoing guidelines, there are three (3) types of surveillance which may be used by the respondent. Two of which involve surveillance without the knowledge of the subject taxpayer, i.e. Covert Surveillance and Short-Duration Surveillance, while the other one is known to the subject taxpayer, i.e. Overt Surveillance.

In the instant case, the latter type of surveillance was resorted to by the respondent's representative. Hence, the procedure on Overt Surveillance, outlined below, should have been followed by the BIR Strike Team.

First, RMO No. 3-2009 requires that the surveillance team should possess a Mission Order (MO) which the BIR Strike Team had acquired.

om

However, the copy of the MO (Exhibit P-26-29) given to GB Global's representative had some inconsistency or disparity when compared to the copy (Exhibit R-2) presented by the member of the BIR Strike Team, Mr. Angelito B. Burgos.

On the face of the copy of the MO shown by Mr. Burgos, it was dated "July 29, 2020" and had a period covering "July 29, 2020 to August 7, 2020", both were handwritten entries, unlike the copy of GB Global's representative which had none and the only handwritten entry was the signature of a certain Arnel SD. Guballa, Deputy Commissioner.

Such observations were tackled during the cross-examination[31] and re-direct examination[32] of Mr. Burgos and were also inquired into by this Court by way of clarificatory questions[33] to Mr. Burgos, to wit:

"ATTY. DELA CRUZ:

Q: Xxx. And you referred to a Mission Order, and you attached the same your Judicial Affidavit. We also have a copy of the same Mission Order, which is different from the copy you attached to your Judicial Affidavit. How many Mission Orders were issued?

MR. BURGOS

A: One.

ATTY. DELA CRUZ:

Q: Only One. And who issued it?

MR. BURGOS

A: Deputy Commissioner Guballa.

ATTY. DELA CRUZ:

Q: I'll be showing to you our Exhibit "P-26-2". Is this the same Mission Order you are referring to?

MR. BURGOS

A: Yes, the same Mission Order.

---

[31] *Transcript of Stenographic Notes*, Hearing dated October 1, 2020, pp. 61-62.
[32] *Transcript of Stenographic Notes*, Hearing dated October 1, 2020, pp. 80-81.
[33] *Transcript of Stenographic Notes*, Hearing dated October 1, 2020, pp. 98-101, 103, 109.

om

ATTY. DELA CRUZ:

Q: Would you confirm that in Exhibit "P-26-2", there is no date and coverage of period on the Mission Order? Will you confirm that there is no date

MR. BURGOS

A: Can I clarify my answer?

ATTY. DELA CRUZ:

You just confirmed.

MR. BURGOS

A: Yes, there is no date.

ATTY. DELA CRUZ:

Q: And there is also no notations on this Mission Order, will you confirm that?

MR. BURGOS

A: Yes.

ATTY. DELA CRUZ:

Q: And this was the Mission Order that was given to the Petitioner at the time the Strike Force entered the premises, yes or no?

MR. BURGOS

A: It was given because when the lawyer were asking for this copy, the Mission Order, previously, the employee there asked the lawyer to receive it, the lawyers asked through a phone, ask a copy of our authority, so I gave him a photocopy of the Mission Order, a photocopy of the Mission Order, and then they scanned it and sent it to lawyer.

ATTY. DELA CRUZ:

Q: So, this is the one you gave?

MR. BURGOS

A: The photocopy.

xxx

om

ATTY. ALMA JOSE:

Q: Mr. Witness, a while ago, you were confronted with a Mission Order, and the counsel for the petitioner asked you why there was no date. Can you please explain before this Honorable Court why there was no date?

MR. BURGOS

A: Upon issuance of Mission Order, we have the Mission Order photocopied; those photocopied Mission Orders are to be given to the other, like NBI, the Barangay, the PEZA, or other offices that want to secure copies. The photocopy also was the one given to the employee upon the request of the lawyer to see whether the authority is valid. So, I gave the photocopy, which does not have the date to the employee, for him to send it to the lawyer.

xxx

JUSTICE DEL ROSARIO:

Anyway, kindly clarify the Mission Order again. The Court noted that the Mission Order as you caused to be received by the petitioner was undated and does not cover the period that appears in the Mission Order identified as "R-2". Your Mission Order, apparently is different from the Mission Order that the petitioner actually received. You just said that earlier. Why is it that your copy is different from the one that you caused to be received by the petitioner? Isn't that irregular?

MR. BURGOS

A: Because upon issuance of the Mission Order, we have copies being photocopied for other agencies like the NBI, like the Barangay, there are agencies that are asking for a copy of the Mission Order.

JUSTICE DEL ROSARIO:

No. The question is, why did you cause receipt of Mission Order that is not complete in terms of date and the period being covered? You are already there, you are already in the premises of the petitioner. Why is it that you still cause the receipt of a Mission Order without the necessary details?

MR. BURGOS

A: Your Honors, before we proceed to GB Global, which is in Pampanga at the BIR premises, we have the Mission Order be photocopied for those agencies that request for

om

a copy, so we make special extra copies of it.

JUSTICE DEL ROSARIO:

Actually, you are not responding. Anyway, so this is the point, when you asked the petitioner to receive the Mission Order, you still do not have the printout copy of the Mission Order, that is why what you gave to the petitioner was the Mission Order copy without the date yet and without the period, is that it?

MR. BURGOS

A: No. when we are having the (Interrupted)

JUSTICE DEL ROSARIO:

No. When you asked the petitioner to receive the Mission Order, the copy in your possession does not have the date yet, is it not?

MR. BURGOS

A: It has date.

JUSTICE DEL ROSARIO:

Then why did you not give to the petitioner the one with complete details of the Mission Order?

MR. BURGOS

A: Your Honors, the one given, first, they refused to receive it, but the one given to the Barangay has a date.

JUSTICE DEL ROSARIO:

I am referring to the petitioner. Please do not be very evasive. The Court would like to know the facts here. Kindly try to understand the question. You were saying that you have already a fully filled-up Mission Order at the time that you gave a copy to the petitioner. If there is a fully filled-up Mission Order, why did you have to give the petitioner a Mission Order without the details as to the date and the period covered?

MR. BURGOS

A: When I have this Mission Order received, they first refused it. They called their lawyer, and the lawyers asked for an authority, so (Interrupted)

om

JUSTICE DEL ROSARIO:

Yes, precisely.

MR. BURGOS

A: So I handed to him a photocopy, but I did not handed the original, the original, the original copy.

JUSTICE DEL ROSARIO:

Is that normal for you to be giving a Mission Order that is not completely filled-up? When you conduct, let say, a seizure, more or less than a seizure of machinery and products of a petitioner, you just give, let say, taxpayer, an unfilled and incomplete Mission Order? Is that again a normal practice on your part?

MR. BURGOS

A: No, your Honors, what we give, the original, are filled-up forms.

JUSTICE DEL ROSARIO:

Yes, but the question is, if there is already a filled-up form Mission Order, is it not logical that you make a reproduction of the duly filled-up Mission Order so that when you go to a taxpayer, the completely filled-up Mission Order can be given to the taxpayer, rather than giving a blank Mission Order, which anyone can fill-up after an operation, legal or otherwise, has already ben conducted. So, let's make this clear. Whenever you serve a Mission Order, it is your practice to give a taxpayer an unfilled and incomplete Mission Order?

MR. BURGOS

A: No, your Honors.

JUSTICE DEL ROSARIO:

And in this particular case, you have confirmed earlier that you have given the petitioner a Mission Order that is incomplete, is that it?

MR. BURGOS

A: I gave a photocopy to the (Interrupted)

JUSTICE DEL ROSARIO:

Yes, but are incomplete Mission Order to the petitioner,

cmv

is it not?

MR. BURGOS

A: Only a photocopy, but not the original.

xxx

JUSTICE DEL ROSARIO:

The one that you gave to the petitioner; it was an incomplete Mission Order in the sense that there was no date and there was no period covered, is it not?

MR. BURGOS

A: Sir, the one officially received has a date, but the one they asked for a photocopy is not (Interrupted)

JUSTICE DEL ROSARIO:

Officially received by whom?

MR. BURGOS

A: By the Barangay.

xxx

JUSTICE DEL ROSARIO:

So, **the copy that was given to the petitioner was a Mission Order without the date of the issuance, as well as a period covered**?

MR. BURGOS

A: **Yes, your Honors**.

xxx" (*Emphases ours*)

In Question and Answer No. 20 of Mr. Burgos' Judicial Affidavit, he admitted that he prepared "numerous photocopies" of the MO. A close scrutiny of both documents shall reveal that, except for the handwritten entries as to the date and period covered in Mr. Burgos' copy, **all are typewritten**.

It appears that what was given to GB Global's representative was a photocopy of the MO prior to making the handwritten entries as to the date and period covered. Thus, the original MO was tampered **after the issuance of said MO**.

om

Second, under RMO No. 3-2009, the surveillance team, after informing the subject taxpayer of their purpose and duties of the implementing officer as stated in the MO, shall conduct the inventory taking of "all unused sales invoices, official receipts and such other documents used in the movement of goods" then seize the "unauthorized official receipts or invoices" and issue the Apprehension Slip (AS). A report of said apprehension should be made on the day after such.

Nowhere in the said RMO does it provide that the goods or the product of the subject taxpayer should be the subject of inventory taking and seizure. In the instant case, as admitted by Mr. Burgos, the BIR Strike team made an inventory not of the documents stated in RMO No. 3-2009 ,but of the goods of GB Global particularly the "Two Moon" and "Soho" cigarette brands. Hence, the BIR Strike Team did not follow its own rules and regulations pertaining to surveillance procedure.

Third, RMO No. 3-2009 provides 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."

Pursuant to Item B(3) of RMO No. 3-2009, prior to the issuance of a Closure Order, the following procedures should be observed, to wit:

3. Confrontational Requirements

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

xxx xxx xxx

The Review Boards must act on reports within *five (5)* days from receipt thereof. The Review Boards shall convene, upon the initiative of the chairperson, whenever necessary.

If a report is approved by a Review Board, the concerned Regional Director or the ACIR, Enforcement Service/LTS, as the case may be, *shall, in his capacity as Chair of the Review Board, sign an issue to the taxpayer concerned a Forty-*

om

Eight (48) Hour Notice, requiring him to explain under oath within forty eight (48) hours why he should not be dealt with administratively, by suspension of business or temporary closure of his establishment, and/or criminally, for violation of pertinent provisions of the Tax Code.

In cases concerning duly validated discrepancies in sales/purchases covered by Letter Notices under the Tax Reconciliation System or the Third-Party Information Program, a Letter Notice and follow-up letters sent and duly received by the taxpayer shall be considered as sufficient compliance with the 48-Hour Notice.

3.2 Upon *the taxpayer's* admission of the explanation, or if none is submitted on or before the deadline; *the Review Board headed by the Regional Director or the ACIR, Enforcement Service/LTS, shall decide whether or not to terminate the case, or to pursue administrative/criminal action against the taxpayer, as the case may be.*

3.3 *If a Review Board deems it necessary to pursue administrative or criminal action against a non-compliant taxpayer, it shall cause the preparation of a 5-Day VAT Compliance Notice (VCN) [Annex "D"], which shall be issued in lieu of the 10-Day VCN, to expedite the resolution of the case at hand. The 5-Day VCN shall be signed by the Chair of the Review Board concerned.*

3.3.1 *The 5-Day VCN, with details of the findings of the investigating office as approved by the Review Board, shall be served immediately to the taxpayer by the Regional Director / ACIR-LTS / ACIR-Enforcement Service, as the case may be.*

3.3.2 *The 5-Day VCN shall likewise state the particular provision(s) of the NIRC that was/were violated by the taxpayer, and for which rectification must be done, including payment of the required deficiency taxes and penalties due therefor.*

3.3.3 *The taxpayer may again refute the findings of the BIR within two (2) days from receipt of the VCN, and submit his response to the Review Board.*

3.3.4 *The Review Board shall, in turn, immediately transmit the taxpayer's response to the Investigating Office concerned, for evaluation.*

> 3.3.5 *The Investigating Office concerned shall, within three (3) days from receipt thereof, evaluate, a taxpayer's response to a 5-Day VCN, and prepare the corresponding response thereto. The response letter shall then be signed by the Chair of the Review Board.*
>
> 3.3.6 *Upon receipt by the BIR of the protest, the running of the five (5)-day compliance period is deemed suspended, and shall resume only upon receipt by the taxpayer of the BIR's resolution on the protest.*

C. Execution and Enforcement

1. In the event that a taxpayer –

   - Refuses, neglects or fails to submit within the prescribed period, a response to a VCN;
   - Submitted a response that was later found to be insufficient; or,
   - Refuses, neglects or fails to comply with the terms of the 5-Day VCN,

   the Review Board concerned shall prepare a memorandum report recommending the closure of the establishment, for the approval of the Commissioner. Said report shall include the proposed Closure Order (Annex "E"), supported by the necessary documentation, for the approval and signature of the Commissioner.

   The Closure Order shall be prepared in quintuplicate (five [5] copies), to be distributed as follows:

   xxx

   Each Investigating Office must nominate at least three (3) non-compliant taxpayers per month, for issuance of Closure Orders.

2. The signed Closure Order shall be returned by the Office of the Commissioner, together with all supporting documents, to the Review Board concerned, for immediate service to the non-compliance taxpayer.

3. The service of the Closure Order shall be accompanied by a copy of the memorandum report of the Review Board concerned, duly approved by the Commissioner, indicating therein the basis for the Closure.

4. However, if in the interim the non-compliant taxpayer rectifies the violation pursuant to Section VIII

cm

(Compliance by Taxpayer) hereof, the Chair of the Review Board concerned shall desist from implementing the Closure Order, and shall immediately communicate such information to the Commissioner.

5. The execution of the Closure Order shall consist in the physical closing of the doors or other means of ingress in the establishment, and the sealing thereof, with the appropriate security devices (padlocks, etc) and the BIR's official seal.

6. Where deemed necessary, the execution of the Closure Order shall be carried out with the assistance of elements of the Philippine National Police (PNP) or Barangay Officials in the locality, in accordance with the Memorandum of Agreement between the Bureau of Internal Revenue and the PNP or concerned Barangay Officials.

7. To create an immediate impact on the public's consciousness, and to increase taxpayer awareness of the BIR's intensified campaign to pursue non-compliant taxpayers, the Implementation of the Closure Order and Temporary Suspension for a particular taxpayer to be carried out by a team of revenue officials led by the Regional Director/ the ACIR-ES/LTS, and the Head of the Investigating Office concerned, or in appropriate instances, by the Commissioner of Internal Revenue, must be widely publicized through press releases, press conferences, and, when possible, the televised coverage of the actual closure/ suspension of business operations of a non-compliant taxpayer.

8. All reports and documents signed by the Commissioner in relation to the implementation of this Order shall not require the concurrence of other BIR officials as mandated in previous issuances.

9. The closure and temporary suspension of business under a duly-approved Closure Order shall not preclude the Bureau from filing the appropriate charges, if evidence so warrants, against the taxpayer concerned, or in the case of corporate taxpayers, against the responsible officers of the corporation, under the Run After Tax Evaders (RATE) Program of the Bureau.

In the instant case, the BIR Strike Team there and then decided to close down GB Global's facility without evaluating first the supposed evidence that it gathered during the surveillance activity, making a recommendation on such closure to the higher office of BIR that issued the MO, and informing the petitioner of its initial findings and recommendation in order to give it the opportunity to explain its position. This only shows that GB Global was not given an opportunity to assail the Strike Team's findings prior to the closure of its facilities.

What was appalling in the instant case is that the BIR Strike Team did not validate if the allegations in the complaint letter were true or not. The Strike Team merely relied on the allegations in the said complaint letter and immediately proceeded to GB Global's premises and when they saw that the two brands of cigarettes were in the latter's premises, they immediately assumed that they were illegal articles allegedly illegally manufactured and sold in the domestic market.

As admitted by the Team Leader of said BIR Strike Team, Mr. Remedios C. Advincula, Jr., they have no prior knowledge as to the legitimate manufacturer of the Two Moon and Soho brands of cigarettes and the one selling such brands locally outside the PEZA territory but merely assumed that such is the petitioner, to wit:[34]

> "JUSTICE SAN PEDRO:
>
> Number two, in the course of your investigation, did you determine if petitioner is the only manufacturer of Two Moon cigarettes? Are there any other manufacturers of Two Moon cigarettes in the Philippines and globally?
>
> MR. ADVINCULA:
>
> A: During that, I was not able to determine who is the main manufacturer of Two Moon cigarettes.
>
> JUSTICE MANAHAN:
>
> My question is (Interrupted)
>
> MR. ADVINCULA:
>
> A: That's only the time when I get there, and inspection the premises and saw these Two Moon cigarettes and Soho.

---

[34] *Transcript of Stenographic Notes*, Hearing dated March 10, 2021, p. 86-90.

JUSTICE SAN PEDRO:

> Mr. Advincula, please listen carefully. My question is, did you in the course of your investigation before going to the premises of petitioner, determine if petitioner is the only manufacturer of Two Moon cigarettes? Are there other manufacturers (Interrupted)

MR. ADVINCULA:

A: Yes, there are other manufacturer.

JUSTICE SAN PEDRO:

> So, there are other. Okay, so that leads me to my next questions, which is, do you have any proof that the cigarettes that you said were illicitly sold, was actually sold by the petitioner? Because there other manufacturers. Before proceeding to petitioner's plant, did you have any proof that those cigarettes being sold to that area were actually manufactured by petitioner and not any other manufacturer?

MR. ADVINCULA:

A: We concluded it because in our previous raids, we are able apprehend, to confiscate this Two Moon in following plant in Tarlac, in Nueva Ecija, in Bulacan, and in Mindanao also.

JUSTICE SAN PEDRO:

> Yes, there is no question about that. My question is, do you have any proof that the manufacturer of these illicit cigarettes reported to your office was actually the petitioner? Did you have receipts, did you have testimony from the vendors?

MR. ADVINCULA:

A: Yes, your Honors.

JUSTICE SAN PEDRO:

> You have?

MR. ADVINCULA:

A: Because there is an informer, your Honors. The informer told us that, that company is

om

manufacturing Two Moon cigarettes.

JUSTICE SAN PEDRO:

And that company was the one selling these cigarettes in that area?

MR. ADVINCULA:

A: Yes, your Honors.

JUSTICE SAN PEDRO:

My next question is, how did you verify that these were sold by petitioner, and that your answer is that you had informants.

MR. ADVINCULA:

Your Honors?

JUSTICE SAN PEDRO:

My next question is how did you verify that these were sold by petitioner, and that is your answer, through your informants?

MR. ADVINCULA:

A: Because that cigarette is frequently sold in the public market.

JUSTICE SAN PEDRO:

Yes, but my question is who was the seller of those particular cigarettes? Were you able to verify that those particular cigarettes sold were manufactured by petitioner, considering your earlier testimony, that there are other manufacturers?

MR. ADVINCULA:

A: No, except the informer.

JUSTICE SAN PEDRO:

All right, next question is, I refer to your Exhibit "R-4", at the time that you served this, did you already know that the brands were not registered? And if so, how did you know? Was there any certification to that effect from your office? Because in Exhibit "R-4", there was a handwritten notation that the violation

om

is Section 23.

MR. ADVINCULA:

A: Yes, your Honors.

JUSTICE SAN PEDRO:

How did you now at that point? Was there already a certification that the petitioner have not registered its brand?

MR. ADVINCULA:

A: In our several raids, we are able to know in our records of the BIR that Two Moon cigarettes are not registered in our Excise Large Taxpayer Regulatory Division.

JUSTICE SAN PEDRO:

So, you knew this before July 29?

MR. ADVINCULA:

A: Yes, your Honors.

JUSTICE SAN PEDRO:

And then during cross-examination, you testified that you conducted other raids, and those raids resulted in the confiscation of counterfeit cigarettes, that's correct?

MR. ADVINCULA:

A: Yes, your Honors."

The BIR Strike Team's evidence of alleged domestic sale of the said cigarette brands (i.e., Soho and Two Moon) by petitioner was based only on a tip and not from its own actual knowledge. Respondent neither adduced any evidence that petitioner is actually selling said brands of cigarettes in the local market outside the PEZA territory nor petitioner manufactured the Soho and Two Moon brands which are allegedly being sold in the local market.

It should be emphasized that the production facility of petitioner is within the PEZA area which is considered a

om

separate territory as held in *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.), Inc.*[35], to wit:

> This Court agrees, however, that PEZA-registered enterprises, which would necessarily be located within ECOZONES, are VAT-exempt entities, not because of Section 24 of Rep. Act No. 7916, as amended, which imposes the five percent (5%) preferential tax rate on gross income of PEZA-registered enterprises, in lieu of all taxes; but, rather, because of Section 8 of the same statute which establishes the fiction that ECOZONES are foreign territory.
>
> It is important to note herein that respondent Toshiba is located within an ECOZONE. An ECOZONE or a Special Economic Zone has been described as -
>
> . . . [S]elected areas with highly developed or which have the 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; thus, creating the fiction that the ECOZONE is a foreign territory**. As a result, sales made by a supplier in the Customs Territory to a purchaser in the ECOZONE shall be treated as an exportation from the Customs Territory. Conversely, sales made by a supplier from the ECOZONE to a purchaser in the Customs Territory shall be considered as an importation into the Customs Territory. (*Emphases ours*)

Thus, it is important for the BIR Strike Team to have a personal knowledge or probable cause to believe that GB Global indeed sold these brands of cigarettes outside the PEZA area prior to the closure of its facilities. However, the Strike Team merely relied on the allegations in the complaint letter.

The failure of the BIR Strike Team to observe and follow properly its own rules and regulations is tantamount to a violation of GB Global's right to due process. The importance of a taxpayer's right to due process has been elucidated by the

[35] G.R. No. 150154, August 09, 2005.

Supreme Court in *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*[36], to wit:

> "... **The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules** is a denial of Metro Star's right to due process...
>
> xxx xxx xxx
>
> It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. **In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution**. Thus, while "taxes are the lifeblood of the government," the power to tax has its limits, in spite of all its plenitude." (*Emphasis ours*)

Thus, the succeeding action and issuances of the BIR Strike Team were all null and void.

Respondent argues that RMO No. 3-2009 is not applicable in this particular case considering that such order is for value-added tax (VAT) transaction while the issue herein is that of an excise tax.

Among the objectives in Item No. II of RMO No. 3-2009 is the consolidation of the policies, guidelines and procedures to be observed in the conduct of surveillance operations and the enforcement of the administrative sanction of suspension and temporary closure of business as provided in the following related BIR issuances:

RMO No.	Subject
54-2000	Prescribes the guidelines and procedures for the conduct of surveillance on the business operations of any person, in order to establish a prima facie basis for the **assessment of internal revenue tax liabilities**.

[36] G.R. No. 185371, December 08, 2010.

57-2000	Prescribes the guidelines in the implementation of the administrative sanction of suspension and temporary closure of business.
20-2002	Amending Pertinent Provisions of Revenue Memorandum Order No. 57-2000 Relative to the Confrontational Requirements, Execution and Enforcement of Closure Orders as well as the Duration and the Lifting Thereof.
31-2002	Implementing Section 7 of Revenue Regulations No. 12-2002, as amended by Revenue Regulations No. 17-2002 and Revenue Regulations No. 18-2002, on the Institution of Closure Proceedings and the Filing of Criminal Action Against Taxpayers Who Have Not Responded to the Letter Notices Sent by BIR under the RELIEF System.
35-2007	Amending Certain Provisions of Revenue Memorandum Order No. 57-2000 as amended by Revenue Memorandum Order No. 20-2002 Relative to the Authorized BIR Official Designated to Approve Reports of the Review Board in Relation to the Conduct of Surveillance and Other Relevant Documents Pertaining Thereto.

(*Emphasis ours*)

As shown above, **RMO No. 3-2009 covers all internal revenue taxes and not VAT transaction alone**. Even the BIR Strike Team relied on the said RMO No. 3-2009 as the basis of its enforcement of the assailed MO as admitted during the cross-examination of Mr. Burgos during the Hearing dated October 1, 2020, to wit:[37]

JUSTICE MANAHAN:

PJ, clarificatory questions. So, you are saying that because your Strike Force and BIR Strike Team is newly formed.

MR. BURGOS:

A: Yes, your Honors.

[37] *Transcript of Stenographic Notes*, Hearing dated October 1, 2020, pp. 87-88.

JUSTICE MANAHAN:

Q: That you are not governed by any existing guidelines in the conduct of your on-the-spot surveillance?

MR. BURGOS:

A: We don't have any written guidelines.

JUSTICE MANAHAN:

So, you are saying that you are not governed by the provisions of the Revenue Memorandum Order No. 3-2009, which pertains to the amendment and consolidation of the guidelines in the conduct of surveillance and stock-taking activities and implementation on administrative sanction of suspension and temporary closure of business? You are saying that when you conducted that July 29 surveillance on the GB Global Exprez, you are not governed by this RMO?

MR. BURGOS:

A: The provision that you said, your Honors, are being used by all the examiners and the investigators.

JUSTICE MANAHAN:

So, I am asking, if you confirm that you are saying that you are new strike team, there are no guidelines to govern your conduct of that surveillance?

MR. BURGOS:

A: We are following whatever guidelines that is issued by the BIR.

JUSTICE MANAHAN:

So, you are governed by this RMO.

MR. BURGOS:

A: Yes Ma'am, but not specific guideline was created for the Strike Team. I was referring that no specific guidelines for strike team.

JUSTICE MANAHAN:

am

> **So, you agree that this RMO governs the conduct of your surveillance?**
>
> MR. BURGOS:
>
> **A: Yes Ma'am.**
> (*Emphasis ours*)

Thus, the RMO itself and the testimony of respondent's Strike Team belie such allegation.

On the seizure of petitioner's cigarettes, Section 15 of the 1997 NIRC, as amended, provides:

> "**SEC. 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."

Notably, said provision on the making of "arrests and seizures", is subject to the limitation under Section 2, Article III-Bill of Rights of the 1997 Philippine Constitution which provides:

> "**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."

Undoubtedly, respondent and his representatives have the power or authority to make arrests and seizures for the violation of any penal law, rule or regulation administered by the BIR. However, the exercise of such authority to make arrests and seizures must be made with a valid search warrant and the only exception, just like in arrest, is under Section 5(a), Rule 113 of the Rules of Criminal Procedure, when, in respondent or his representative's presence, the

Om

taxpayer to be searched has committed, is actually committing, or is attempting to commit an offense under the 1997 NIRC, as amended, other laws or rules or regulations administered by him.

In the case of *People of the Philippines v. Jerry Sapla y Guerrero a.k.a. Eric Salibad y Mallari*[38], the Supreme Court ruled that:

> "As eloquently explained by the Court in *People v. 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 the 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 search and seizure."
>
> The right of the people against unreasonable searches and seizures is found in Article III, Section 2 of the 1987 Constitution, which reads:
>
>> 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.
>
> 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.
>
> 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

---

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

rule is not favored and ***is strictly construed against the government***.

xxx xxx xxx

There are, however, instances wherein searches are reasonable even in the absence of a search warrant, taking into account the "uniqueness of 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."

The known jurisprudential instances of reasonable warrantless searches and seizures are:

(1) warrantless search incidental to a lawful arrest;

(2) seizure of evidence in plain view;

(3) search of a moving vehicle;

(4) consented warrantless search;

(5) customs search;

(6) stop and frisk; and

(7) exigent and emergency circumstances." (*Emphasis and underscoring ours*)

In order to avail of such exception in warrantless searches, there should be a probable cause or personal knowledge of the facts and circumstances which would lead the respondent or his representative to reasonably conclude that an offense or infraction is committed under the 1997 NIRC, as amended, laws or rules or regulations administered by him, and that the objects sought in connection with such offenses or infraction are in the place sought to be searched.[39]

However, as discussed above, the BIR Strike Team merely relied on the allegations or "tip" in said complaint letter without proper validation, and immediately proceeded to GB Global's premises, then, when they saw that the two brands of cigarettes were in the latter's premises, they immediately assumed that those articles or items were illegal articles which were allegedly illegally manufactured and sold in the domestic market.

The BIR Strike Team need not personally witness the commission of such offense or infraction. However, it must, at least, have personal knowledge of the facts and circumstances

[39] *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 2009 Edition, Joaquin G. Bernas, S.J., p. 170.

Cm

indicating that the place sought to be searched contains the objects allegedly illegally sold in the domestic market. The complaint letter or a hearsay tip by itself does not justify a warrantless search.[40]

Thus, the BIR Strike Team should have secured first a search warrant from the court prior to the entry of petitioner's premises, and in the absence of a valid search warrant, the succeeding actions of the BIR Strike Team were all illegal. Such strict requirement of the law was explained in *The United States v. Lorenzo Arceo, et al.*[41], to wit:

> "The inviolability of the house is one of the most fundamental of all the individual rights declared and recognized in the political codes of civilized nations. No one can enter into the home of another without the consent of its owners or occupants.
>
> The privacy of the home — the place of abode, the place where a man with his family may dwell in peace and enjoy the companionship of his wife and children unmolested by anyone, even the king, except in the rare cases — has always been regarded by civilized nations as one of the most sacred personal rights to which men are entitled. Both the common and the civil law guaranteed to man the right of absolute protection to the privacy of his home. The king was powerful; he was clothed with majesty; his will was the law, but, with few exceptions, the humblest citizen or subject might shut the door of his humble cottage in the face of the monarch and defend his intrusion into that privacy which was regarded as sacred as any of the kingly prerogatives. The poorest and most humble citizen or subject may, in his cottage, no matter how frail or humble it is, bid defiance to all the powers of the state; the wind, the storm and the sunshine alike may enter through its weather-beaten parts, but the king may not enter against its owner's will; none of the forces dare to cross the threshold even the humblest tenement without its owner's consent.
>
> "A man's house is his castle," has become a maxim among the civilized peoples of the earth. His protection therein has become a matter of constitutional protection in England, America, and Spain, as well as in other countries."

The BIR Strike Team discharged its surveillance, search and seizure activities under the mistaken belief that the MO *per se* authorized the Team to seize petitioner's goods as

---

[40] *Mario Veridiano y Sapi v. People of the Philippines*, G.R. No. 200370, June 7, 2017.
[41] G.R. No. 1491, March 5, 1904.

admitted during the testimony of Mr. Remedios C. Advincula, Jr. in the Hearing dated March 10, 2021, to wit:[42]

"ATTY. BAYONA:

Q: So, Mr. Witness, how do you conduct your surveillance or monitoring? And was there any issuance of the operation conducted on July 29, 2020?

MR. ADVINCULA:

A: The BIR Strike Team acted on the basis of the Mission Order issued by then Commissioner and delegated to the Deputy Commissioner. And the basis of the complaint coming from a third party. So, with that, the instruction of the Mission Order is very specific, directing the BIR Strike Team to implement the Mission Order in the basis of Section 171 and Section 15 of the NIRC, your Honors.

ATTY. BAYONA:

Q: And Mr. Witness, is the implementation of the Mission Order last July 29, 2020, is it a closure or a seizure?

MR. ADVINCULA:

A: Seizure, your Honors."

A close scrutiny of the MO reveals that the Two Moon and Soho brands of cigarettes as the subjects to be seized from petitioner's premises were not indicated on the face of the MO itself as admitted by Mr. Advincula, the Team Leader of the BIR Strike Team, to wit:[43]

"ATTY. CONDUCTO, II:

Only yes or no, Mr. Witness.

Q: I am referring you to Exhibit "R-2" again. Do you confirm that there is no expressed reference to Two Moon and Soho brands of cigarette, or may I rephrase, are the words Two Moon and Soho found expressly on your Mission Order?

MR. ADVINCULA:

---

[42] *Transcript of Stenographic Notes*, Hearing dated March 10, 2021, p. 75.
[43] *Id.*, p. 68.

A: The instruction is (Interrupted)

JUSTICE MANAHAN:

Yes or no, Mr. Witness.

MR. ADVINCULA:

A: Yes, Sir. The word Two Moon is not stated, your Honors."

The MO is not equivalent to a valid search warrant issued by the court. A search warrant must have particularity on the subject matter to be seized as held in *People of the Philippines v. Amador Pastrana and Rufina Abad*[44], the Supreme Court ruled:

> **It is elemental that in order to be valid, a search warrant must particularly describe the** place to be searched and the **things to be seized**. The constitutional requirement of reasonable particularity of description of the things to be seized is primarily meant to enable the law enforcers serving the warrant to: (1) readily identify the properties to be seized and thus prevent them from seizing the wrong items; and (2) leave said peace officers with no discretion regarding the articles to be seized and thus prevent unreasonable searches and seizures. It is not, however, required that the things to be seized must be described in precise and minute detail as to leave no room for doubt on the part of the searching authorities. (*Emphasis ours*)

What was surprising in this raid is the fact that respondent and his agents equated unregistered goods with counterfeit goods as admitted during the testimony by Mr. Advincula, Jr. in the same Hearing, to wit:[45]

"ATTY. BAYONA:

Q: Mr. Witness, why did you seize the products of GB Global?

MR. ADVINCULA:

A: The product of GB Global are unregistered brands, (inaudible) because it violated the BIR chapter 8 of the NIRC, National Internal Revenue

[44] G.R. No. 196045, February 21, 2018.
[45] *Transcript of Stenographic Notes*, Hearing dated March 10, 2021, pp. 74, 85-86, 90-91

Code, it states that, "Administrative provision regulating the business of a person engaged manufacturing of excisable goods", and they violated also Revenue Regulation 3-2006 Section 23, which requires the GB Global to register its brands, the brands of cigarettes, in particularly the Two Moon and the Soho. (inaudible) the exact replica of the container (inaudible) registered with the BIR. So, I am saying that cigarette for export, the name, the address of the manufacturer and the assessment number issued by the BIR should be printed and the (inaudible) sticks containing (inaudible) master case or box of cigarettes must be (inaudible) including the name of the brands of the cigarettes must be printed also in the master case in a separate box containing 500 box.

xxx xxx xxx

JUSTICE SAN PEDRO:

In your answer, you said that around 2018, you received report from Revenue Officer that illicit cigarettes were being sold in that area. First, what do you mean when you say illicit?

MR. ADVINCULA:

A: Elicit means illegal.

JUSTICE SAN PEDRO:

In what sense?

MR. ADVINCULA:

A: Unregistered cigarettes.

JUSTICE SAN PEDRO:

So, already your purpose was because this were not registered with the BIR, not that they were counterfeit?

MR. ADVINCULA:

A: Counterfeit also is the same, your Honors.

xxx xxx xxx

JUSTICE SAN PEDRO:

But do you agree that the subject cigarettes

am

here are not counterfeit?

JUSTICE SAN PEDRO:

They are not counterfeit?

MR. ADVINCULA:

A: Counterfeit, your Honors. We seized counterfeit cigarettes and unregistered brands of cigarettes.

JUSTICE SAN PEDRO:

The cigarettes that you seized in this instant case are counterfeit? They did not have any registration with the IP Office? No registration?

MR. ADVINCULA:

A: No registration.

JUSTICE SAN PEDRO:

To the IP Office?

MR. ADVINCULA:

A: With the BIR.

JUSTICE SAN PEDRO:

Yes, that's different. BIR no registration of brand means that they violated your BIR laws. My question is, counterfeit, meaning that there were not authorized by the original owner of the brand?

MR. ADVINCULA:

A: Yes, your Honors.

JUSTICE SAN PEDRO:

So, here, before your raids, you testified that you were able to seize counterfeit cigarettes. But in this case, do you admit that the cigarettes seized were not counterfeit?

MR. ADVINCULA:

A: Counterfeit, your Honors.

JUSTICE SAN PEDRO:

Why, why do you say counterfeit?

MR. ADVINCULA:

A: Your Honors, Section 23 were violated by this GB Global Exprez, considering that the name, the address and manufacturer and the assessment number issued by the BIR is not printed on their packs.

JUSTICE SAN PEDRO:

Mr. Witness, isa na lang po ano. Yung sinasabi niyong counterfeit the definition niyo is based on violation of BIR rules?

MR. ADVINCULA:

A: Yes.

JUSTICE SAN PEDRO:

Not intellectual property rules? Kasi magkakaiba po tayo ng counterfeit. And tinatanong ko, counterfeit, meaning, fake cigarettes ba ito?

MR. ADVINCULA:

A: Fake cigarettes, your Honors. Unregistered cigarettes brands."

As stated in Section 26(b) and (c) of RR No. 3-2006, **any corporation, association, or partnership liable for any** of the acts or **omissions** in violation of the 1997 NIRC, as amended, as implemented by said regulation **shall be fined treble the aggregate amount of deficiency taxes, surcharges and interest** or any person liable for any acts or omission prohibited under the same shall be criminally liable under Section 254 of said law. Nowhere in the provision of said regulations does it provide that the failure of petitioner, as a corporate entity, to register its two brands of cigarettes with the BIR will be meted out the penalty of confiscation or seizure of said goods and/or machineries.

Based on the foregoing, the closure of petitioner's business and seizure of equipment, raw materials and finished products is an overkill considering the nature of the offense, i.e., the alleged failure of petitioner to register the Two Moon and Soho cigarette brands. Besides, the respondent failed miserably to marshal substantial empirical evidence that establishes the participation of the petitioner in the alleged domestic sale of these two cigarette brands which are intended for export. The Court cannot gloss over the fact that for the past nine (9) years that petitioner had been subjected to regular tax investigations, and for which it had faithfully settled all the tax deficiencies that resulted from said audits[46], this issue of non-registration with the BIR of its manufactured cigarettes was never flagged down. Thus, the exercise of police power by the respondent in glaring and flagrant violation of the constitutional rights of petitioner to due process and privacy cannot be countenanced.

Even RR No. 7-2014, *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,*[47] does not impose closure as a penalty for violations of the provisions thereof, *to wit*:

> SECTION 1. SCOPE. – Pursuant to the provisions of Section 8, in relation to Sections 244 and 245 of the National Internal Revenue Code (NIRC) of 1997, as amended, these Regulations are hereby promulgated to prescribe the affixture of new internal revenue stamps on imported and **locally manufactured cigarettes, whether for domestic sale or for export**, and the use of the Internal Revenue Stamp Integrated System (IRSIS) for the ordering, distribution and monitoring thereof.
>
> xxx
>
> SEC. 11. MONITORING OF STAMPS AND CIGARETTE 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 devises issued for the purpose.
>
> **In the case of discrepancies found during the conduct of surveillance, the appropriate excise taxes**

---

[46] Docket, Vol. 1, Paragraph 111, Petition for Review, p. 45; *Transcript of Stenographic Notes*, Hearing dated October 1, 2020, pp. 32, 38, 41, and 42.
[47] July 7, 2014

> **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.** (*Emphasis ours)*

Clearly, the abovequoted provision does not provide for closure of the business as an appropriate penalty, during the conduct of surveillance. Even the assessment and collection of excise taxes shall be made "**after verification**". The penalty of confiscation and forfeiture applies to untaxed cigarettes found during the conduct of surveillance.

This is not the same case for petitioner. Petitioner's products, at the time of seizure were inside its factory found within a PEZA-registered zone, and were meant for export, hence not subject to excise tax. Said products were not being taken out of the factory to be brought into customs territory, and therefore, as of the time of the surveillance and subsequent seizure, should not have been considered subject to excise tax.

Thus, even under RR No. 7-2014, there is no reason for respondent to have seized petitioner's products and raw materials considering that, at the moment of seizure, said products were not subject to excise tax and there could have been no excise taxes that could have been imposed, assessed and collected.

Petitioner suffered and continues to suffer grave and irreparable injury that entitles it to the relief of the writ of injunction

Indeed, while taxes are the lifeblood of the government, such power to tax must be exercised fairly lest the tax collector kills the hen that lays the golden egg.[48]

Petitioner has presented the testimony of its witnesses, uncontroverted by respondent, as to the damages suffered by petitioner arising from loss of employment of petitioner's employees, deterioration of raw materials and finished products, irreversible and great financial loss, and impairment

---

[48] *Roxas v. Court of Tax Appeals,* G.R. No. L-25043, April 26, 1968.

of goodwill and reputation by failing to comply with its obligations towards its buyers and suppliers.

As testified by Mr. Franklin G. Cortez (Mr. Cortez), petitioner's Plant Manager:

> "Q32: Ano ang estado ngayon ng planta ng GBGEI?
> A32: Simula po ng 29 Hulyo 2020 hanggang sa kasalukuyan, ito ay nakasarado at hindi *operational*, at walang taong nakakapasok dito.
>
> Q33: Paano ang trabaho ng mga empleyado ng GBGEI at ang produksyon ng kumpanya?
> A33: Wala po. Tigil po mula nang isinara kami ng BIR nuong 29 Hulyo 2020. Yung sinabi ko po kanina na nakakagawa ang GBGEI ng 900 hanggang 1000 *boxes* ng sigarilyo kada buwan ay imposible na dahil hindi na nag-*ooperate* ang GBGEI dahil sa pagpapasara ng BIR.
>
> Q34: Gaano karaming empleyado ang apektado ng pagpapasara ng BIR ng planta ng GBGEI?
> A34: Mga 102 na empleyado.
>
> Q35: Kung alam mo at meron man, ano ang ginawa ng mga empleyado matapos matigil ang kanilang pagtatrabaho sa planta?
> A35: Sila po ay lumapit sa akin para magpahayag na sila ay nihihirapan dahil sa biglaang pagkawala ng kanilang kabuhayan. Humihingi rin po sila ng tulong sa GBGEI at ngayon po ay patuloy na nakikibalita kung kelan sila maaaring makabalik sa trabaho.
>
> Q36: Ano ang nagging responde ng GBGEI, kung meron man?
> A36: Ninanais man ng GBGEI na tumulong, wala ito sa posisyon dahil patuloy ang pagkalugi nito dahil sa pagsara ng planta.
>
> Q37: Ano pa, kung meron man, ang epekto ng pagpapasara sa planta at pagtigil ng operasyon ng kumpanya?
> A37: Dahil din po sa pagpapasara ng planta, may mga obligasyon ang GBGEI sa mga *buyers* at *suppliers* ng *raw materials* na hindi nito matutugunan o magagampanan.
>
> Q38: Anong obligasyon sa mga buyers ang iyong tinutukoy?
> A38: May mga *pending orders* po na kailangan i-*manufacture* at i-*deliver* for *export*. Sa katunayan meron din pong mga ibang brands ng sigarilyo na hindi nakumpiska ng BIR pero naka-*store* lamang sa planta na kailangan na din pong i-deliver.

Q39: Anong pruweba mo na may mga *brands* ng sigarilyo na hindi nakumpiska pero naka-*store* lamang sa planta na kailangan na din i-deliver?
A39: Yung mga naiwan po na sigarilyo at produkto ng GBGEI pagkatapos i-padlock ng BIR ang planta ng GBGEI.

Q40: Nabanggit mo din na may mga obligasyon sa mga *suppliers* ang hindi matutugunan, ano ang iyong mga tinutukoy?
A40: Marami din pong *suppliers* and hindi mababayaran ng kumpanya. Maliban pa dito, meron din pong mga *pending orders* ng materyales na kailangan kanselahin.

Q41: Anong epekto ng kawalang kakayahan ng GBGEI na gampanan o tugunan ang mga obligasyon nito sa mga buyers at suppliers?
A41: Maari pong mawalan ng kumpiyansa at tiwala ang mga buyers at suppliers sa GBGEI at tuluyang masira ang pangalan at imahe ng GBGEI sa industriya.

Q42: Ano ang pruweba mo na masisira ang pangalan at imahe ng GBGEI sa industriya?
A42: Sa loob po ng Ecozone sa Angeles Industrial Park, ang GBGEI lamang po ang nag-iisang gumagawa ng sigarilyo. Kung hindi po ito makakapag-*operate*, sigurado lahat ng mga *buyers* na nakaasa sa amin ay madidismaya at posible po na hindi na bumili sa amin.

Q43: Ano pa, kung meron man, ang epekto ng pagpapasara sa planta at pagtigil ng operasyon ng kumpanya?
A43: Marami din pong mga materyales ang maaring masayang at masira kung hindi agad-agarang ma-proseso kung matatagalan ang pagbubukas ng planta.

Q44: Anu-ano ang mga materyales na ito?
A44: Yung cut-leaves na tobacco na nasisira or nag-e-*expire* sa loob ng dalawang (2) buwan; at yung *cigarette filters* na magde-*deteriorate* ang *menthol level.* Yung *menthol level* ay yun *flavor* ng sigarilyo. Kapag nasira ito, bale wala na yung mga sigarilyo kasi hindi na magagamit.

xxx

Q46: Anong katunayan mo na magiging dahilan ang pagpapasara ng kumpanya sa pagkakatanggal sa trabaho ng mga empleyado?
A46: Sa ngayon po kaming lahat na empleyado ay naka-*forced leave. No work, no pay* po kami lahat. Wala po

ang

itong pinagkaiba kung tatanggalin na kami ng tuluyan na pagpapasara ng planta ng GBGEI."[49]

Petitioner also showed that its operations were severely impacted when PEZA refused to approve its Import Permits due to the BIR's *Closure Order*. Petitioner also continues to incur demurrage and storage fees. Petitioner further avers that while some losses are quantifiable, the same are irreparable. Petitioner's witness, Mr. Gregory G. Lim, testified as follows:

"Q56: What effects did the closure have on GBGEI's business, if any?
A56: AS a result of GBGEI's closure, its applications for Import Permits were disapproved by the Zone Manager of Angeles Industrial Park.

Q57: Why was it disapproved?
A57: The Zone Manager required us to seek clearance from the BIR first.

Q58: What was the result of the non-approval of GBGEI's Import Permit applications?
A58: GBGEI's imported raw materials are currently detained at the Manila International Container Port or MICP.

Q59: What does this mean?
A59: These imported raw materials, despite having been paid by GBGEI, cannot be used for production since they are being detained due to the non-approval of GBGEI's Import Permit applications. In the meantime, GBGEI demurrage and detention expenses will keep on piling up until and unless we can pull out these imported raw materials from MICP. However, as I have said, we cannot pull out these materials because our Import Permit applications were disapproved.

Q60: How much demurrage and detention expense is GBGEI expecting to incur because of its inability to pull-out the said raw materials since the closure?
A60: As for the detention expenses for twelve (12) containers, the running amount so far is Php1.6 million. For the demurrage, as of last week, around Php800,000, but that amount increases in increments of php5,000 to Php6,000 per day of detention.

Q61: What did you do then, if any?
A61: GBGEI wrote a letter dated 11 August 2020 to the PEZA Director General appealing for the immediate approval of our Import Permit applications.

---

[49] Exhibit "P-26", *Sinumpaang Salaysay Panghukuman ni Franklin S. Cortez dated 03 September 2020*, pp. 6-8.

xxx

Q83: How can these losses be irreparable?
A83: While these losses are quantifiable, GBGEI cannot recover them as damages from the CIR. Thus, it is impossible for GBGEI to recoup its losses resulting from its closure caused by the CIR. And if these losses become too substantial, these may ultimately lead to the permanent closure of GBGEI."[50]

Aggravating the grave and irreparable injury that had been earlier suffered by petitioner is the blatant defiance of the earlier Writ of Preliminary Injunction by respondent when it issued another MO dated May 14, 2021 authorizing the seizure of petitioner's manufactured cigarettes as cited by petitioner in its ***Ex-Parte* Motion for Early Resolution** filed on July 15, 2021, not to mention the PEZA cancellation of its authority to transact business pending the final resolution of this case.

Parenthetically, despite the issuance of the writ of preliminary injunction last November 23, 2020, petitioner, in its *Omnibus Motion* filed on February 24, 2021, averred that respondent failed to return back 91 cases of Two Moon cigarette brand and erroneously returned 1,333 cases of said brand which petitioner claims, were fake brands which petitioner did not actually produce. However, respondent insisted that the latter were included in those boxes seized from petitioner's premises.

Now, the question is, where did these brands of cigarettes allegedly not manufactured by petitioner come from?

As culled from the earlier aforequoted testimony of respondent's witness, Mr. Advincula, BIR was able to apprehend and confiscate Two Moon cigarette brands in several plants in Tarlac, Nueva Ecija, Bulacan, and Mindanao during their previous raids.

Further, based on the testimonies of the petitioner's witnesses[51], it was only the BIR Strike Team that made the inventory taking on-site. Thus, petitioner's authorized

---

[50] Exhibit "P-25" *Judicial Affidavit of Mr. Gregory G. Lim*, September 3, 2020, pp. 11-16.
[51] Mr. Gregory G. Lim and Mr. Franklin S. Cortez.

am

representatives were not able to counter-authenticate the goods that were seized.

The possibility of the seized cases of cigarettes from petitioner's premises to be mingled with those previously confiscated from several plants cannot be discounted in the absence of such counter-authentication.

Moreover, the SOHO brand was registered with the Intellectual Property Office (IPO) on June 23, 2016, while the TWO MOON brand was registered with the IPO only on December 1, 2019.

While the Court cannot clearly determine when production of SOHO commenced, the commercial manufacturing of TWO MOON began in July 2020.

Thus, while respondent alleges that the BIR Strike Team has been investigating the sale of TWO MOON in the provinces way back in 2018, respondent failed to sufficiently prove that said TWO MOON products were produced and sold by petitioner from 2018 up to the present. Even respondent's witness admitted during trial that there are other entities manufacturing the TWO MOON brand.

WHEREFORE, in light of the foregoing, petitioner GB Global Exprez, Inc.'s *Ex-Parte Motion for Early Resolution* is **NOTED**. The present Petition for Review is hereby **PARTIALLY GRANTED** and the *Writ of Preliminary Injunction* dated November 23, 2020 is hereby made **PERMANENT**. Accordingly, Mission Order dated July 29, 2020, Mission Order dated May 14, 2021 and Closure Order dated August 4, 2020 are **CANCELLED and SET ASIDE**.

Respondent Commissioner of Internal Revenue is further **ORDERED** to:

(i) RETURN all items it seized and confiscated from petitioner GB Global Exprez, Inc. in connection with this case, specifically the dismantled cigarette manufacturing equipment (including all items and accessories appurtenant thereto) as well as all cigarettes and raw materials; and,

om

(ii) ALLOW petitioner GB Global Exprez, Inc. to resume business operations;

(iii) ALLOW petitioner GB Global Exprez, Inc. to manufacture Two Moon and Soho brands of cigarettes, upon compliance with registration requirements thereof in accordance with Revenue Regulations No. 3-2006 and other pertinent rules and regulations.

Respondent Commissioner of Internal Revenue is **DIRECTED** to explain within five (5) days from receipt hereof why he and his representatives should not be cited in contempt for violating this Court's *Writ of Preliminary Injunction*, specifically for issuing Mission Order dated May 14, 2021 and again seizing petitioner's manufactured cigarettes.

Let a copy of this Decision be furnished to Hon. Charito B. Plaza, Director General, Philippine Economic Zone Authority, and Mr. Danilo V. San Gabriel, Officer-in-Charge, Angeles Industrial Park-Special Economic Zone.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

See Concurring Opinion
ROMAN G. DEL ROSARIO
Presiding 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

GB GLOBAL EXPREZ, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10341

Members:

DEL ROSARIO, *P.J., Chairperson,*
and
MANAHAN, *JJ.*

Promulgated:

AUG 3 1 2021 ; 11:40 a.m.

x- x

CONCURRING OPINION

DEL ROSARIO, P.J.:

I wish to expound on the right of the Bureau of Internal Revenue (BIR) to exercise police powers vested upon it by the National Internal Revenue Code (NIRC) and on the requirement to register tobacco products with the BIR.

In arguing that the BIR acted well within its authority in confiscating petitioner's cigarette manufacturing equipment (including all items and accessories appurtenant thereto) as well as all cigarettes and raw materials and eventually closing petitioner's manufacturing plant (pursuant to Mission Order dated July 19, 2020 and Closure Order dated August 4, 2020), BIR invokes its right to enforce police powers as provided under Section 2 of the NIRC of 1997, as amended, *viz.*:

> "SEC 2. *Powers and duties of the Bureau of Internal Revenue.* – The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and its powers and duties shall comprehend the assessment and collection of all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. The Bureau shall give effect to and administer the supervisory and police powers conferred to it by this Code or other laws."

In addition thereto, the BIR likewise relies on Sections 15 and 171 of the NIRC of 1997, as amended, which state:

> "SEC. 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.
>
> "SEC. 171. *Authority of Internal Revenue Officer in Searching for and Testing 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, test, 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.
>
> Xxx."

Respondent insists that the NIRC does not require a search warrant or court order before internal revenue officers may validly conduct searches and seizures. Respondent claims that there was no violation of petitioner's right against unreasonable search and seizure as the BIR Strike Team acted in the valid exercise of police power when they performed the acts being complained of by petitioner.

I find respondent's proposition disturbing, to say the least. The mere grant of police power to an administrative agency does not constitute a blanket authority to intrude, enter and search the premises of private property to verify and confirm whether an offense is being committed.

Otherwise stated, 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 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.**

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)*

---

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

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 are jurisprudentially declared as reasonable, albeit in the absence of a search warrant, such as: (1) 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]

In the present case, there is nothing on record which would show that the circumstances of the warrantless search and seizure conducted by the BIR Strike Team fall within the above enumerated exceptions to the requirement of securing a search warrant. While the BIR had sufficient time to obtain a search warrant from its receipt of the anonymous letter on July 27, 2020, the BIR, through Deputy Commissioner Arnel SD. Guballa, instead issued a Mission Order two (2) days thereafter.

Thus, I humbly submit that the BIR Strike Team violated the right of petitioner when it entered its premises, conducted searches and made seizures of articles found therein, *sans* a valid search warrant issued in accordance with the requirements laid down in Section 2, Article III of the 1987 Constitution.

The next concern is whether the Mission Order issued by BIR Deputy Commissioner Arnel SD. Guballa may be considered as equivalent to the search warrant required under Section 2, Article 2 of the 1987 Constitution.

In *Hortencia Salazar vs. Hon. Tomas D. Achacoso*,[3] the Honorable Supreme Court had the occasion to rule on the validity of

---

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

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
>
> For the guidance of the bench and the bar, we reaffirm the following principles:
>
> 1. **Under Article III, Section 2, of the l987 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 submit that the Mission Order could not be treated as equivalent to a search warrant.

First, 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.

Second, 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 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 anonymous letter which alleges that Two Moon and Soho brands of cigarettes are being sold in the domestic market. To my mind, a mere anonymous letter is not sufficient to constitute probable cause that would justify the issuance of the Mission Order. More is demanded from the BIR prior to the issuance of the Mission Order which the BIR failed to do.

Truth to tell, there is no iota of proof presented by respondent that petitioner manufactured and caused the withdrawal of the Two Moon and Soho brands of cigarettes from the Philippine Economic Zone Authority (PEZA) zone for sale in the domestic market. Differently put, there is nothing on record which would point to the fact that petitioner withdrew cigarettes from Angeles Industrial Park, not to export them, but to sell them in the domestic market.

The fact that the Two Moon and Soho brands of cigarettes are being sold in the local market does not automatically prove that the same were manufactured by petitioner. For one, the Team Leader of the BIR Strike Team was candid in admitting that there are other manufacturers of Two Moon aside from petitioner, *viz.*:

> "JUSTICE SAN PEDRO:
>
> Mr. Advincula, please listen carefully. My question is, did you in the course of your investigation before going to the premises of petitioner, determine **if petitioner is the only manufacturer of Two Moon cigarettes? Are there other manufacturers** (Interrupted)

---

[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.

MR. ADVINCULA:

A: **Yes, there are other manufacturers**."[6] *(Boldfacing supplied)*

For another, during trial, petitioner was insistent that the Two Moon and Soho brands of cigarettes which were allegedly being sold in the domestic market were fake or counterfeit as shown in the marked difference between the packaging and logos of the Two Moon and Soho brands manufactured by petitioner and those found by respondent in the domestic market. This claim of petitioner was not sufficiently rebutted by respondent.[7]

Indeed, the hackneyed proposition that the Two Moon and Soho brands of cigarettes being sold in the domestic market is manufactured by petitioner *sans* any showing, directly or circumstantially, of movement of such items from petitioner's premises to the domestic market, is simply too flawed and fallacious.

In fine, without any evidence as to the involvement of petitioner in the alleged domestic sale of Two Moon and Soho brands of cigarettes (which brands are intended for export and which were seized inside the manufacturing plant of petitioner), I submit that probable cause is wanting in this case and the issuance of Mission Order was unjustified.

Third, the Mission Order failed to particularly describe the place to be searched and the articles to be seized.

Aside from furnishing petitioner with undated Mission Order, with no details as to the date of the submission of the required report and the period covered, the Mission Order was couched in general terms. The Mission Order directed the BIR Strike Team to:

> "1. To monitor the sales and/or place of business establishment of mentioned above under observation or surveillance for violation of bookkeeping rules and regulations, particularly on non-issuance of sales invoice or receipts;
>
> 2. To take an inventory on the number of active units of cash register/point-of-sale machines authorized to issue receipts in lieu of the regular sales invoices or receipts and check taxpayers compliance with the provisions of Revenue Regulations (RR) No. 4-80, as amended by RR No. 10-99, governing the use of cash

---

[6] Transcript of Stenographic Notes, Hearing dated March 10, 2021, pp. 86-90.
[7] Transcript of Stenographic Notes, Hearing dated February 11, 2021, pp. 44-53.

register and point-of-sale machines in lieu of registered sales invoices or receipts;

3. To apprehend violators of revenue laws and regulations related governing the activities mentioned in the preceding paragraphs 1 and 2;

4. To conduct immediate inventory-taking of the goods on hand by the aforementioned taxpayer and reconcile the same with his/its inventory list as of ____________________, 20___; and

5. Others: PLEASE SEE ATTACHED PAGE"

Attached Page:

"5. OTHERS

a. **To enter any <u>house</u>, <u>building</u>, or <u>place</u> 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 article wherein excise taxes have not been paid and also for the violation of any penal law, rule or regulation administered by the BIR;

c. To check the authenticity of the affixed stamps using Mobile Verification Device (Intermec) and Tagant Reader;

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

e. To secure any document/accounting record related to the unregistered and untaxed business. (Boldfacing supplied)

No less than respondent's witness, Mr. Remedios C. Advincula, admitted during his cross-examination that the Mission Order gives him a blanket authority to seize any item found inside petitioner's premises that violates the NIRC, and to determine on the spot whether or not there is a violation of the NIRC or its implementing regulations being committed by petitioner, *viz.*:

"ATTY. CONDUCTO, II:

xxx.

Q: Mr. Witness, you asserted earlier that this Mission Order gives you the authority to close down petitioner or GB Global's business, correct?

CM

MR. ADVINCULA:

A: **Yes.**

ATTY. CONDUCTO, II:

Q: So are you saying that this Mission Order, or earlier, you stated **that this power to close petitioner's business is based on the phrase 'to make seizure'**, correct?

MR. ADVINCULA:

A: **Correct**.

ATTY. CONDUCTO, II:

Q: So are you saying Mr. Witness that **you are given a blanket authority in the Mission Order to actually seize any item that would violate any BIR law**?

MR. ADVINCULA:

A: **Yes**.

ATTY. CONDUCTO, II:

Q: So, apparently, Mr. Witness, **the authority given to you was to make a determination on the spot whether or not there is a violation of the taw law or regulation being committed by the petitioner**?

MR. ADVINCULA:

A: **Yes, Sir**.

ATTY. CONDUCTO, II:

Q: So, you are the one that is going to make a final determination that GB Global is committing a violation of the law, correct?

MR. ADVINCULA:

A: **Yes, Sir**."[8] *(Boldfacing supplied)*

Evidently, the Mission Order was a *carte balance* grant of total and absolute power to the BIR Strike Team to enter any house, building or place, and fish for violation of law and seize whatever

---

[8] Transcript of Stenographic Notes, Hearing dated March 10, 2021, pp. 69-70.

articles are found therein, in complete and wanton disregard of petitioner's constitutional right against unreasonable searches and seizures.

Considering that the search of petitioner's premises, the seizure of petitioner's cigarette manufacturing equipment (including all items and accessories appurtenant thereto) as well as all cigarettes and raw materials, and the eventual closure of petitioner's manufacturing plant were conducted *sans* a valid search warrant, I concur with the *ponencia* in granting relief to petitioner.

Anent the requirement to register petitioner's tobacco products with the BIR, I joined the *ponencia* in holding that petitioner is required to register its tobacco products with the BIR.

It is worthy to note that there is a distinction between the requirement to register tobacco products manufactured in the Philippines and the requirement to pay excise tax thereon.

The requirement to register tobacco products with the BIR is primarily for regulation and control, particularly to address the proliferation of domestic sales of tobacco products in the Philippines *sans* payment of appropriate taxes. On the other hand, the imposition of excise taxes on tobacco products is a revenue raising measure that applies only to those specifically covered by law.

Pursuant to Section 23 (A) of Revenue Regulations (RR) No. 03-2006, all manufacturers exporters and importers of alcohol and tobacco products are required to comply with the administrative requirements laid down therein, among which is the filing of an application for registration of new brands and variants of existing brands <u>prior to their initial manufacture or importation</u>. RR No. 03-2006 also specifically requires that in case the brand is intended for export, the applicant is required to submit to the BIR an exact replica of the proposed label which shall prominently indicate that the same is "FOR EXPORT ONLY". **Exporters are covered by said registration requirement, without any distinction as to whether said exporters are located in a PEZA zone or not.**

The registration of exciseable products with the BIR does not *ipso facto* result in the imposition of excise tax. Under Section 129 of the NIRC of 1997, as amended, excise taxes are imposed when two (2) conditions are met, *viz.*: <u>first</u>, that the articles subject to tax belong to any of the categories of goods enumerated in Title VI of the NIRC;

om

and, second, that said articles are for domestic sale or consumption, excluding those that are actually exported.[9]

As a manufacturer and exporter of exciseable articles, petitioner is required to register its products with the BIR in compliance with the provisions of RR No. 03-2006. While a PEZA zone is regarded as a foreign territory where locators are assured of free flow or movement of goods, with the least intervention from the government, it does not follow that the government has completely stripped itself of its inherent authority to regulate the locators therein.[10]

Thus, the mere fact that petitioner is located inside the PEZA zone and registered with PEZA as 100% exporter of tobacco products does not exempt it from complying with the regulatory requirements of the BIR. After all, petitioner remains to be a BIR-registered taxpayer that is obliged to follow its applicable rules and regulations.

As aforestated, since RR No. 03-2006 is explicit that manufacturers and exporters of exciseable products, without any exception, are required to register their products with the BIR, it is incumbent upon petitioner to comply with said requirement, consistent with its undertaking in its Registration Agreement with PEZA that it shall comply with the applicable laws, rules and regulations of the BIR.

ROMAN G. DEL ROSARIO
Presiding Justice

---

[9] Exxonmobil Petroleum and Chemical Holdings, Inc. – Philippine Branch vs. Commissioner of Internal Revenue, G.R. No. 180909, January 19, 2011.
[10] Applying by analogy the pronouncement of the Supreme Court in Agriex Co., Ltd. vs. Hon. Titus B. Villanueva, Commissioner, Bureau of Customs, G.R. No. 158150, September 10, 2014, involving Freeport zones.