16-000199-0011

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM. CASE NO. O-558

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

EMERSON TOLENTINO MAGDAENO, BAYSHORE CHEMICAL IMPORTER (No. 252 Zuzuaregi St., Old Balara, Quezon City),
Accused.

NOTICE OF RESOLUTION

To:

PROSECUTOR GENERAL RICHARD ANTHONY D. FADULLON
ASST. STATE PROS. ALEJANDRO C. DAGUISO
Department of Justice
Padre Faura, Ermita
Manila

COMMISSIONER OF INTERNAL REVENUE
Thru: Prosecution Division
Room 704, BIR National Office Bulding
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

DIRECTOR
Thru: General Services Division
National Bureau of Investigation
1257 Vtech Tower corner Ma. Clara Street
Araneta Avenue, Quezon City

PNP CHIEF
Thru: CIDG
Philippine National Police
National Headquarters
Camp BGen Rafael Tagle Crame
EDSA, Quezon City

CHIEF, WARRANT AND SUBPOENA SECTION
Quezon City Police District
Camp BGen Tomas Karingal
Sikatuna Village, Diliman, Quezon City

GREETINGS:

You are hereby notified by these presents that on **November 18, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

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

Atty. Margarette Y. Guzman
Executive Clerk of Court III

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PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

EMERSON TOLENTINO MAGDAENO, BAYSHORE CHEMICAL IMPORTER (No. 252 Zuzuaregi St., Old Balara, Quezon City),
Accused.

CTA CRIM. CASE NO. O-558

For: Violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended.

Members:

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

Promulgated:

NOV 18 2024; 3:00PM

x -x

RESOLUTION

On May 18, 2016, the prosecution filed an *Information*[1] charging accused **Emerson Tolentino Magdaeno**, sole proprietor of **Bayshore Chemical Importer**, with violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, allegedly committed as follows:

> "That prior to April 2014 and thereafter, in Quezon City, and within the jurisdiction of this Honorable Court, the above-named accused, a Filipino citizen and engaged in the business of importing/wholesaling, with obligation under the law to file Value Added Tax (VAT) return on or before the 25th day of the month following the end of each quarter, having a VATable sales of Php204,785,114.37 did then and there, willfully, unlawfully, and feloniously under declare its sales revenue by 100% and consequently fail to pay the basic VAT relative to

[1] Docket, pp. 6-7.

> the sales resulting in deficiency VAT for taxable year 2008 in the amount of **Twenty Four Million Five Hundred Seventy Four Thousand Two Hundred Thirteen and 72/100 Pesos only (Php24,574,213.72)**, exclusive of surcharges and interest, despite final assessment notice, including prior and post notices and formal demand to pay, the last being in the nature of demand before suit issued by the BIR in April 2014, to the damage and prejudice of the government.
>
> CONTRARY TO LAW."

In a Resolution promulgated on July 26, 2016,[2] the Court found probable cause to issue a warrant of arrest against accused Magdaeno, and set bail for his provisional liberty at Php20,000.00.

Despite the issuance of the Warrant of Arrest on August 10, 2016, accused remains at large. To avoid indefinitely prolonging this case on the Court's docket, the Court ordered it archived in a Resolution dated July 3, 2017.[3]

In reviewing archived cases, the Court noted that multiple cases have been delayed due to the authorities' failure to apprehend accused. Upon examining the factual background of this case, the Court found that the Formal Letter of Demand/Final Assessment Notice (FLD/FAN) issued in this case emanated from a Letter Notice (LN) rather than a valid Letter of Authority (LOA).

It must be emphasized that to sustain a conviction for willful failure to pay tax under Section 255 of the NIRC of 1997, as amended,[4] the following elements must be satisfied:

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[2] Docket, pp. 58-60.

[3] Docket, p. 87.

[4] SEC. 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.*— **Any person required under this Code or by <u>rules</u> and regulations** promulgated thereunder to pay any tax make a return, keep any record, or supply correct the accurate information, **who willfully fails to pay such tax**, make such return, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, **at the time or times required by law or <u>rules</u> and regulations** shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of internal revenue office wherein the same was actually filed shall, upon conviction therefore, be punished by a fine of not less than Ten thousand pesos (P10,000) but not more than Twenty thousand pesos (P20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years.

1. The taxpayer is required by the NIRC of 1997, as amended, or its rules and regulations to pay the tax;

2. The taxpayer failed to pay the tax at the time required by the NIRC of 1997, as amended, or its rules and regulations; and,

3. The taxpayer's failure to pay the tax was willful.

For the *first* element, tax becomes payable only after the taxpayer undergoes an assessment process. As explained by the Supreme Court in *Commissioner of Internal Revenue v. Fitness by Design, Inc.*[5] (*Fitness by Design*), an assessment for tax due may be done by: (1) the taxpayer himself/herself; and/or (2) the Commissioner of Internal Revenue (CIR) or his/her duly authorized representative. In case an assessment is issued by the latter, such must comply with the due process requirements. As held in *Fitness by Design:*

> "**The assessment process starts with the filing of tax return and payment of tax by the taxpayer**. The initial assessment evidenced by the tax return is a self-assessment of the taxpayer. The tax is primarily computed and voluntarily paid by the taxpayer without need of any demand from government. If tax obligations are properly paid, the Bureau of Internal Revenue may dispense with its own assessment.
>
> **After filing a return, the Commissioner or his or her representative may allow the examination of any taxpayer for assessment of proper tax liability**. The failure of a taxpayer to file his or her return will not hinder the Commissioner from permitting the taxpayer's examination. The Commissioner can examine records or other data relevant to his or her inquiry in order to verify the correctness of any return, or to make a return in case of noncompliance, as well as to determine and collect tax liability.
>
> **The indispensability of affording taxpayers sufficient written notice of his or her tax liability is a clear definite requirement. Section 228 of the National Internal Revenue Code and Revenue Regulations No. 12-99, as amended, transparently outline the procedure in tax assessment**." *(Boldfacing supplied)*

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[5] G.R. No. 215957, November 9, 2016.

Violation of the taxpayer's due process rights renders the tax assessment void. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue (BIR) and its officers and agents cannot be overreaching in their efforts but must perform their duties in accordance with the law, with their own rules of procedure, and always with regard to the basic tenets of due process.[6]

An assessment commences with the issuance of a LOA by the CIR or his or her representative under Section 6 (A) of the NIRC of 1997, as amended.[7] The LOA is "*the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers and enables said revenue officer to examine the books of accounts and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.*"[8]

The LOA is an indispensable part of the due process rights of a taxpayer. In cases where the BIR conducts an audit without a valid LOA, or in excess of the authority duly provided therefor, the resulting assessment shall be *void and ineffectual*.[9]

In their *Joint Complaint-Affidavit*,[10] Revenue Officers Roel A. Zafra, Benedicto R. Bacani, and Federico P. Doria, Jr. aver, *viz*:

> "5. **Pursuant to a Letter Notice No. LN039-RLF-08-00-00049** addressed to Respondent MAGDAENO it was disclosed that there was a 100% under-declaration on sales per summary list of purchases submitted by their customers on local purchases." (*Boldfacing supplied*)

The Preliminary Assessment Notice[11] (PAN) and the FLD[12]/FAN[13] further confirm that the assessment was made pursuant to **Letter Notice No. LN039-RLF-08-00-00049** rather than an LOA.

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[6] *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., et seq.*, G.R. Nos. 201398-99, October 3, 2018.

[7] SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —

(A) Examination of Returns and Determination of Tax Due. — After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.

[8] *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*, G.R. No. 242670, May 10, 2021.

[9] *AFP General Insurance Corporation v. Commissioner of Internal Revenue*, G.R. No. 222133, November 4, 2020.

[10] Docket, pp. 16-21.

[11] Annex "C", Docket, pp. 26-27.

[12] Annex "E", pp. 29-30.

[13] Annex "E-2", p. 33.

In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*,[14] the Supreme Court nullified a deficiency VAT assessment against Medicard Philippines, Inc. because the assessment lacked an LOA issued by the CIR before issuing the PAN and FLD/FAN. The Supreme Court found that the LN issued to Medicard Philippines, Inc. was never converted into an LOA. According to the Supreme Court:

> "What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. **Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void**." (*Boldfacing supplied*)

Applying the foregoing pronouncement in the instant case, and considering that the LN issued against accused was not converted into an LOA, the assessment issued against accused Emerson Tolentino Magdaeno is void and bears no valid fruit.[15]

In conclusion, since there is no valid assessment, the charge of Willful Failure to Pay Tax cannot stand.

WHEREFORE, premises considered, CTA Crim. Case No. O-558 is hereby **WITHDRAWN** from the archives and accordingly **DISMISSED**.

The *Warrant of Arrest* issued against accused **EMERSON TOLENTINO MAGDAENO** is hereby **RECALLED and SET ASIDE**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

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[14] G.R. No. 222743, April 5, 2017.

[15] *Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation and Liquigaz Philippines Corporation v. Commissioner of Internal Revenue*, G.R. Nos. 215534 and 215557, April 18, 2016.