REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

CLIREF ENTERPRISES, INC., ALFREDO V. PAGARIGAN, and LUZ N. PAGARIGAN,
(Km. 326 Willarey Avenue, Urbano Velasco Extension, Pinagbuhatan, Pasig City)
-At-Large-
Accused.

CTA Crim. Case No. O-966
(NPS Docket No. XVI-INV-19J-00367)
For: Violation of Section 255 in relation to Sections 253(d) and 256, of the NIRC of 1997, as amended

Members:

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

Promulgated:
MAR 03 2023 9:15 am

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RESOLUTION

In the Resolution dated January 24, 2023, the Court directed the prosecution to amend the Information and submit proof of actual receipt of the Preliminary Assessment Notice (PAN), Formal Assessment Notice (FAN), and Formal Letter of Demand (FLD).

Section 4, Rule 9 of the Revised Rules of the Court of Tax Appeals states:

> SEC.4. Warrant of arrest.- Within ten days from the filing of the information, the Division of the Court to which the case was raffled shall evaluate the resolution of the public prosecutor and its supporting evidence. **The Division may immediately dismiss the case if it finds that the evidence on record clearly fails to establish probable cause.** If the Division finds probable cause, it shall issue a warrant of arrest signed by the Chairman of the Division. **In case of doubt on the existence of probable cause, the**

> **Division may order the prosecutor to present additional evidence, ex parte, within five days from notice.** (Emphasis supplied)

The Records Verification dated February 10, 2023 states that the prosecution failed to amend the Information and submit proof of actual receipt of the PAN, FAN and FLD.

After evaluating the Information together with its supporting documents, the Court finds that there is no probable cause to issue a warrant of arrest.

On December 2, 2022, an Information was filed against accused Cliref Enterprises, Inc., Alfredo V. Pagarigan, and Luz N. Pagarigan indicting them of violation of Section 255, in relation to Sections 253(d) and 256, of the National Internal Revenue Code (NIRC) of 1997, as amended, the accusatory portion of which states:

> That on or about August 3, 2017, in Pasig City, and within the jurisdiction of this Honorable Court, accused Cliref Enterprises, Inc., and its responsible officers, accused Alfredo V. Pagarigan, president, and Luz N. Pagarigan, treasurer, registered with the Bureau of Internal Revenue with Tax Identification No. 006-717-952, a domestic corporation engaged in general construction services, required by law to pay value-added tax, did then and there, wilfully, unlawfully and knowingly fail to pay deficiency value-added tax in the amount of Seven Million One Fifty Three Thousand One Hundred Seventy Nine Pesos and Sixty Four Centavos (P7,153,179.64), exclusive of interest for taxable year 2010, despite final assessment notice, including prior and post notices and demands to pay, the latest of which is the Demand Before Suit dated August 3, 2017, to the damage and prejudice of the Government of the Republic of the Philippines.
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> **CONTRARY TO LAW.**

In support thereof, the following documents were attached to said Information:

1. Resolution dated May 28, 2020 issued by Assistant State Prosecutor John R. Resado, recommending that accused Cliref Enterprises, Inc., Alfredo V. Pagarigan, and Luz N. Pagarigan be charged for violation of Section 255, in relation to Sections 253(d) and 256, of the NIRC of 1997, as amended;

2. A letter dated October 3, 2019 of the then Commissioner of Internal Revenue (CIR) Caesar R. Dulay to the Secretary of the Department of Justice (DOJ) stating the authority and approval for the filing and institution of criminal Complaint against accused Clivef Enterprise, Inc., Alfredo V. Pagarigan, and Luz N. Pagarigan; and

3. Joint Complaint-Affidavit (JCA) of Atty. Rowell B. Vicente, Paula Marie C. Bea, Jennifer P. Enriquez and Ma. Luisa V. Enriquez executed on October 3, 2019 and filed with the DOJ on even date, with the following attachments:

a. General Information Sheet;[1]
b. Letter of Authority dated July 29, 2011;[2]
c. First Notice dated September 2, 2011;[3]
d. Letter Notice with Details;[4]
e. Second Final Notice dated January 20, 2012;[5]
f. Letter dated February 23, 2012;[6]
g. Notice of Informal Conference dated June 28, 2012;[7]
h. Amended Notice for Informal Conference dated October 8, 2012;[8]
i. Memorandum Report with Revenue Officer's Audit Report (IT, VAT) dated November 8, 2012;[9]
j. Memorandum dated February 22, 2013 issued by the Assessment Division;[10]
k. Undated Notice for Informal Conference;[11]
l. Memorandum Report with Revenue Officer's Audit Report dated April 8, 2013;[12]
m. Memorandum issued by the Assessment Division dated July 2, 2013;[13]

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[1] Annexes "A," JCA.
[2] Annex "B," JCA.
[3] Annex "C," JCA.
[4] Annex "D" and "D-1," JCA.
[5] Annex "E," JCA.
[6] Annex "F," JCA.
[7] Annex "G," JCA.
[8] Annex "H," JCA.
[9] Annex "I," JCA.
[10] Annex "J," JCA.
[11] Annex "K," JCA.
[12] Annex "L," JCA.
[13] Annex "M," JCA.

n. Amended Notice for Informal Conference dated July 5, 2013;[14]
o. Memorandum Report with Revenue Officer's Audit Report dated July 9, 2013;[15]
p. Preliminary Assessment Notice dated October 23, 2013;[16]
q. Formal Letter of Demand and Assessment Notices dated November 22, 2013;[17]
r. Preliminary Collection Letter dated September 2, 2014;[18]
s. Registry Receipt;[19]
t. Final Notice Before Seizure dated September 26, 2014;[20]
u. Registry Receipt;[21]
v. Warrant of Distraint and/or Levy;[22]
w. Demand Before Suit dated August 3, 2017;[23] and
x. Registry Receipt.[24]

In the case of *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals*,[25] the crime of failure to pay tax was committed only after receipt of the final notice and demand for payment was coupled with the willful refusal to pay the taxes due within the allotted period. The Supreme Court ruled as follows:

> Inasmuch as the final notice and demand for payment of the deficiency taxes was served on petitioners on July 3, 1968, it was only then that the cause of action on the part of the BIR accrued. This is so because **prior to the receipt of the letter-assessment, no violation has yet been committed by the taxpayers. The offense was committed only after receipt was coupled with the willful refusal to pay the taxes due within the alloted period**. The two criminal informations, having been filed on June 23, 1970, are well-within the five-year prescriptive period and are not time-barred. (Boldfacing supplied)

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[14] Annex "N," JCA.
[15] Annex "O," JCA.
[16] Annex "P," JCA.
[17] Annex "Q", "Q-1", Q-2," JCA.
[18] Annex "R," JCA.
[19] Annex "R-1," JCA.
[20] Annex "S," JCA.
[21] Annex "S-1," JCA.
[22] Annex "T" to "T-6," JCA.
[23] Annex "U," JCA.
[24] Annex "U-1," JCA.
[25] G.R. Nos. 48134-37, October 18, 1990.

Therefore, absent any proof that the final notice and demand for payment was received by the taxpayer, it cannot be said that an offense has been committed because prior to the receipt of the letter-assessment, no violation has yet been committed.

In the instant case, the prosecution claimed that the FLD and Assessment Notices were sent to accused through registered mail on November 22, 2013. However, the records of the case will show that there was no evidence that the FLD and Assessment Notices both dated November 22, 2013 were received by the accused.

Absent proof of receipt, these assessments could not have attained finality, there is no willful failure to pay tax and there is insufficiency to show that the accused sought to be arrested probably committed the crime charged.

Assuming for the sake of argument that accused indeed received the alleged FAN and FLD, the case should still be dismissed on the ground that the Information was filed beyond the five-year prescriptive period provided under Section 281 of the NIRC of 1997, as amended.

Section 281 of the NIRC of 1997, as amended, provides:

> **SEC. 281.** ***Prescription for Violations of any Provision of this Code.*** - All violations of any provision of this Code shall prescribe after five (5) years.
>
> Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.
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> The prescription shall be interrupted when proceedings are instituted against the guilty persons and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.
>
> The term of prescription shall not run when the offender is absent from the Philippines.

In the present case, the information states that the crime of unlawful and willful failure and refusal to pay taxes was allegedly committed "on or about August 3, 2017". Considering that the subject Information was filed before this Court on December 2, 2022 or more than five (5) years and four (4) months from the alleged date of the commission of the crime, it is clear that the subject Information was filed beyond the five-year prescriptive period provided under Section 281 of the NIRC of 1997, as amended.

WHEREFORE, this case is hereby **DISMISSED** for clear failure of the evidence on record to establish probable cause and by reason of prescription of the offense charged.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

(on leave)
CATHERINE T. MANAHAN
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice