22-000016-0062

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10726

HAWAIIAN-PHILIPPINE COMPANY,
Petitioner,

- versus -

NOTICE OF RESOLUTION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo St., Legaspi Village, Makati City

ATTY. FELIX PAUL R. VELASCO III
ATTY. AYESHA HANIA B. GUILING-MATANOG
Bureau of Intenral Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

BANIQUED AND BELLO
Suite 803, 8th Floor, Jollibee Centre
San Miguel Avenue, Ortigas Center
1605 Pasig City

GREETINGS:

You are hereby notified by these presents that on **February 25, 2025,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **February 27, 2025.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

HAWAIIAN-PHILIPPINE COMPANY, *Petitioner,*	**CTA CASE NO. 10726**
	Members:
-versus-	**DEL ROSARIO,** *P.J., Chairperson,* **BACORRO-VILLENA,** *and* **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: FEB 25 2025; 3:00PM

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RESOLUTION

CUI-DAVID, J.:

This resolves respondent's *Motion for Reconsideration Re: Decision dated 13 November 2024 (Motion),* filed personally on December 4, 2024, and by electronic mail (e-mail) on December 5, 2024, with petitioner's *Comment [to Respondent's Motion for Reconsideration Re: Decision dated 13 November 2024],* filed personally on January 2, 2025, and by e-mail on January 3, 2025.

Respondent seeks reconsideration of the *Decision* promulgated on November 13, 2024 (assailed *Decision*), which disposed of the case as follows:

> **WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**.
>
> Accordingly, the Formal Letter of Demand and Final Assessment Notice Nos. IT-2017-00047, VT-2017-00014, WG-2017-00011, WE-2017-00049, and administrative penalties are **CANCELLED** and **SET ASIDE**. Furthermore, the Final Decision on Disputed Assessment issued on September 10, 2021, assessing petitioner of deficiency income tax, value-added tax, final withholding VAT, and expanded withholding

tax for the fiscal year ending September 30, 2017, are **REVERSED** and **SET ASIDE**.

SO ORDERED.

Respondent argues that the assessments for value-added tax (VAT) covering the second quarter of fiscal year (FY) ending September 30, 2017, expanded withholding tax (EWT) for March and April 2017, and final withholding VAT (FWV) for the same periods, had not yet prescribed when the Formal Letter of Demand (FLD) and Final Assessment Notices (FAN) were issued and served on petitioner on December 22, 2020, pursuant to Revenue Memorandum Circular (RMC) Nos. 136-2020,[1] 52-2021,[2] 80-2021,[3] and 93-2021.[4]

Respondent further argues that there was no violation of petitioner's right to due process because petitioner was informed of the legal and factual bases of the assessments and was given the opportunity to respond by filing a Reply to the PAN and a Protest against the FLD. Respondent insists that petitioner remains liable for the deficiency income tax (IT), VAT, FWV, EWT, and compromise penalty, as stated in the Final Decision on Disputed Assessment (FDDA).

On the other hand, petitioner argues that the assessments are partially prescribed, as the original prescriptive period expired before the declaration of the community quarantine on March 16, 2020.

Petitioner further contends that its right to due process was violated because it was unable to determine how the revenue officers arrived at their computations of tax deficiencies. While it filed a Reply to the PAN and a Protest against the FLD/FAN, these submissions merely provide an intelligent guess based on the documents available at hand and that petitioner, in contesting the assessments, was faced with the risk that failure to do so would result in the Bureau of

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1 Clarification on the Suspension of the Statute of Limitation Provided Under Revenue Regulations (RR) No. 11-2020, December 7, 2020.

2 Suspension of the Running of the Statute of Limitations on Assessment and Collection of Taxes Pursuant to Section 223 of the National Internal Revenue Code of 1997, as Amended, Due to the Declaration of Enhanced Community Quarantine in Metro Manila, Bulacan, Cavite, Laguna, and Rizal (NCR Plus), and Other Applicable Jurisdictions, April 14, 2021.

3 Clarifying the Suspension of the Statute of Limitations on Assessment and Collection of Taxes Due to the Declaration of Quarantine in Various Areas in the Country, June 25, 2021.

4 Suspension of the Running of the Statute of Limitations on Assessment and Collection of Taxes Pursuant to Section 223 of the National Internal Revenue Code of 1997, as Amended, Due to the Declaration of Enhanced Community Quarantine (ECQ) and Modified ECQ (MECQ) in the National Capital Region (NCR) and Other Areas of the Country, August 6, 2021.

Internal Revenue (BIR) retaining the items of assessments and treating them as final, executory, and unappealable.

Petitioner further emphasizes that it is not liable for deficiency IT, VAT, FWV, or EWT for FY ending September 30, 2017. Petitioner also claims that respondent's arguments in this *Motion* merely repeat those raised in his Answer, which have already been thoroughly addressed in the assailed *Decision*. As such, petitioner contends that this *Motion is pro forma* and should be denied outright by the Court.

The instant *Motion* is without merit.

As outlined in the assailed *Decision*, the extended period for tax assessments under RMC No. 136-2020 —covering VAT for the second quarter of FY ending September 30, 2017, as well as EWT and FWV for March and April 2017— had already prescribed between November 12, 2020, and December 12, 2020.[5] This occurred before the issuance and service of the FLD/FAN to petitioner on December 22, 2020.

Respondent cannot invoke RMC Nos. 52-2021 and 80-2021, as these were issued after the FLD/FAN had already been served on petitioner. These circulars were issued in response to the declaration of Enhanced Community Quarantine (ECQ) in Metro Manila, Bulacan, Cavite, Laguna, and Rizal (collectively referred to as the "NCR Plus" bubble) from March 29, 2021, to April 4, 2021, and subsequently extended from April 5, 2021 to April 11, 2021. Similarly, RMC No. 93-2021, which declared ECQ in Metro Manila from August 6, 2021, to August 20, 2021, is also inapplicable.

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[5] The extended periods to assess are as follows:

Tax Type	Last Day Prescribed for filing of tax return	Actual filing date of tax return	End of 3-year period to assess	Extended period to assess (RMC No. 136-2020)	Prescribed when FAN/FLD was deemed made on 12/22/2020
VAT					
2nd quarter	04/25/2017	04/24/2017	04/25/2020	11/23/2020	Yes
EWT					
Mar. 2017	04/14/2017	04/11/2017	04/14/2020	11/12/2020	Yes
Apr. 2017	05/14/2017	05/12/2017	05/14/2020	12/12/2020	Yes
FWV					
Mar. 2017	04/10/2017	None	04/10/2020	11/08/2020	Yes
Apr. 2017	05/10/2017	None	05/10/2020	12/08/2020	Yes

RMC Nos. 52-2021, 80-2021, and 93-2021 explicitly state that the suspension of the statute of limitations for assessing and collecting deficiency taxes applies only in areas under ECQ or Modified Enhanced Community Quarantine (MECQ). is in effect. These suspensions were necessary because ECQ and MECQ restricted movement within these jurisdictions, effectively preventing the service of assessment notices—whether personally or by substituted service—as well as the issuance of Warrants of Distraint or Levy and Warrants of Garnishment needed to enforce tax collection.[6]

Significantly, the NCR was not under ECQ or MECQ from November 12, 2020, to December 12, 2020.[7] As such, the extensions provided under RMC Nos. 52-2021, 80-2021, and 93-2021 do not apply in this case.

Respondent's assertion that the cancellation of the assessment is unwarranted because petitioner's right to due process had not been violated lacks merit. As established in *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.* (*Avon*),[8] due process in tax assessments encompasses two fundamental elements: (1) providing taxpayers with a fair and reasonable opportunity to present their case; and (2) ensuring that the BIR gives due consideration to the arguments and evidence submitted by taxpayers.

Failure to comply with the second element renders any explanation ineffective and may lead to wasted time and resources for all parties involved. Thus, it is essential for the BIR to carefully consider the taxpayer's response to the PAN before issuing a final assessment rather than proceeding without adequately evaluating those arguments.

Furthermore, upon examining the assessments, the Court noted that the persistent absence of specific factual bases was a critical factor in the cancellation of the deficiency assessments. Respondent has failed to address these detailed findings in the present *Motion*.

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6 RMC Nos. 80-2021 & 93-2021.

7 *President Duterte retains Metro Manila's GCQ status from December 1 to 31*, December 1, 2020, PRESIDENTIAL COMMUNICATIONS OFFICE, *available at* https://pco.gov.ph/news_releases/president-duterte-retains-metro-manilas-gcq-status-from-december-1-to-31/ (last accessed on February 3, 2025); Announcement, November 1, 2020, *available at* https://nationalarchives.gov.ph/5815-2/ (last accessed on February 3, 2025); Azer Parrocha, *Metro Manila, 6 other areas to remain under GCQ until Nov. 30*, October 27, 2020, PHIL. NEWS AGENCY, *available at* https://www.pna.gov.ph/articles/1119801 (last accessed on February 3, 2025).

8 G.R. Nos. 201398-99 & 201418-19, October 3, 2018 [Per J. Leonen, Third Division].

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WHEREFORE, premises considered, the instant *Motion for Reconsideration Re: Decision dated 13 November 2024* is **DENIED** for lack of merit.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice