REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

ASIAN FUELS INC., ALFRED S. ARANETA and ANTHONY JAMES S. ARANETA
Accused.

CTA CRIM. CASE NO. O-825
For: Violation of Section 255 of the NIRC of 1997, as amended.

Members:

CASTAÑEDA, JR., *Chairperson,*
MINDARO-GRULLA, and
BACORRO-VILLENA, *JJ.*

Promulgated:

JUN 03 2020
4:05 p.m.

x - x

RESOLUTION

Records show that on March 4, 2020, the prosecution filed the Information against herein accused Asian Fuels Inc., and its officers, Alfred Joseph S. Araneta and Anthony James S. Araneta, in their capacities as its treasurer and president respectively, for violation of Section 255 of the National and Internal Revenue Code (NIRC) of 1997, as amended, allegedly committed as follows:

> "That on or about May 28, 2013 and thereafter, in Taguig City and within the jurisdiction of this Honorable Court, Asian Fuels Inc., a registered taxpayer engaged in the retail business of liquefied petroleum gas and other fuel products, with obligation under the law to pay its correct income tax for taxable year 2008, through its Treasurer Alfred Joseph S. Araneta and President Anthony James S. Araneta, did then and there, wilfully, unlawfully, and feloniously fail to pay the correct income

tax with the Bureau of Internal Revenue for taxable year 2008 in the amount of Eleven Million Six Hundred Seventy Five Thousand Two Hundred Twenty Six and 29/100 pesos only (Php11,675,226.29), exclusive of surcharges and interests, despite service of notices and demand letters for them to pay the said tax, to the damage and prejudice of the Government.

CONTRARY TO LAW."

Pursuant to Section 4 of Rule 9 of the 2005 Revised Rules of the Court of Tax Appeals, as amended,[1] the Court shall determine the existence or non-existence of probable cause.

Corollary thereto, the prosecution presented Certified True Copies of the following supporting documents for the examination of the Court:

1. Resolution (on the motion for Reconsideration) dated July 5, 2019, signed by Assistant State Prosecutor Alejandro C. Daguiso, Senior Deputy State Prosecutor Miguel F. Gudio, Jr., and Prosecutor General Benedicto A. Malcontento;

2. Investigation Data Form with NPS Docket Number XVI-INV-18K-00995;

3. Referral letter dated November 29, 2018; and

4. Joint Complaint-Affidavit of Revenue Officers Edgiele R. Sambo, Rhodora C. Balazo, Dominador O. Agustin and Ramon Victor V. Mejos III, with attached annexes.

After a careful consideration of the allegations in the Information and personally examining and evaluating the supporting documents submitted, the Court finds that the right to institute the criminal action has already prescribed.

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[1] 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 Chairperson 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.

In resolving the issue of prescription of the offense charged, the following should be considered: (1) the period of prescription for the offense charged; (2) the time the period of prescription starts to run; and (3) the time the prescriptive period was interrupted.[2]

Relevantly, Section 281 of the 1997 NIRC, as amended, states:

> "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.
>
> **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."(Emphasis supplied)

From the foregoing, the period of prescription for the offense charged is five years. As to the time the period of prescription starts to run, the above provision states that prescription shall begin to run from the day of the commission of the violation of the law, or if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.

In this regard, it must be noted that in the case of *Tupaz vs. Ulep*[3], which similarly involves the offense of failure to pay tax despite demand, the Supreme Court determined the day of the commission of the violation of the law and prescription of the criminal action in this manner:

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[2] *Romualdez vs. Marcelo, et al.,* G.R. Nos. 165510-33, July 28, 2006.
[3] G.R. No. 127777, October 1, 1999.

> "Petitioner was charged with failure to pay deficiency income tax after repeated demands by the taxing authority. In *Lim, Sr. vs. Court of Appeals,* we stated that by its nature **the violation could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayer**. Hence, it cannot be said that the offense has been committed as early as 1980, upon filing of the income tax return. This is so because prior to the finality of the assessment, the taxpayer has not committed any violation for nonpayment of the tax. **The offense was committed only after the finality of the assessment coupled with taxpayer's willful refusal to pay the taxes within the allotted period**. In this case, when the notice of assessment was issued on July 16, 1984, the taxpayer still had thirty (30) days from receipt thereof to protest or question the assessment. Otherwise, the assessment would become final and unappealable. As he did not protest, the assessment became final and unappealable on August 16, 1984. Consequently, when the complaint for preliminary investigation was filed with the Department of Justice on June 8, 1989, the criminal action was instituted within the five (5) year prescriptive period." (Emphasis supplied)

The allegation in the Information and its supporting documents reveal that the Final Assessment Notice (FAN) was issued on November 16, 2012 and became final and executory, and demandable after the accused failed to file its protest. Hence, the assessment attained finality on December 16, 2012. Furthermore, the supporting documents attached to the Information show that after the issuance of the Preliminary Collection Letter dated February 13, 2013, the complainant Bureau of Internal Revenue (BIR) subsequently issued the Final Notice Before Seizure dated May 28, 2013, stating that the accused still refused to pay despite demand. Clearly, when the referral letter and complaint affidavit for preliminary investigation was filed before the Department of Justice on November 29, 2018, and the Information was later filed before this Court on March 4, 2020, the five-year prescriptive period provided under Section 281 of the 1997 NIRC, as amended, had already lapsed.

WHEREFORE, CTA Criminal Case No. O-825 is **DISMISSED** on the ground of prescription.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice