REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

SMC STOCK TRANSFER SERVICE CORPORATION,
Respondent.

CTA EB No. 889
(CTA Case No. 7944)

Present:

Del Rosario, *P.J.*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis- Liban, *JJ.*

Promulgated:
JUN 26 2013 ________ 9:50 a.m.

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DECISION

CASTAÑEDA, JR., *J.* :

Before the CTA *en banc* is the petition for review of petitioner Commissioner of Internal Revenue ("CIR", respondent in the division case) filed on April 27, 2012 seeking to set aside the Decision[1] and the Resolution[2] promulgated on January 10, 2012 and March 23, 2012, respectively, by the CTA Third Division in the case entitled *"SMC Stock Transfer Service Corporation vs. Commissioner of Internal Revenue"* docketed as CTA Case No. 7944.

CIR prays that respondent SMC Stock Transfer Service Corporation ("SMCSTSC", petitioner in the division case) be ordered to pay deficiency Income Tax and Value Added Tax in the amounts of P1,967,886.29 and P1,668,549.83, respectively, for taxable year 2004, plus 25% surcharge and 20% annual interest for late payment from January 23, 2009 until fully paid,

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[1] *Rollo*, pp. 24 – 42; Penned by Associate Justice Amelia R. Cotangco-Manalastas and concurred in by Associate Justices Lovell R. Bautista (Chairperson) and Olga Palanca-Enriquez (retired on December 17, 2012).
[2] *Id., pp.* 43-45.

pursuant to Sections 248 (A) and 249 (B) of the 1997 Tax Code, as amended.[3]

The dispositive portion of the assailed Decision reads:

> **WHEREFORE**, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Formal Letter of Demand and Assessment Notices dated December 22, 2008 are hereby **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED.**[4]

The dispositive portion of the assailed Resolution states:

> **WHEREFORE**, in view of the foregoing, respondent'[5]s "Motion for Reconsideration," is **DENIED** for lack of merit
>
> **SO ORDERED.**[6]

THE FACTS

The facts[7] of this case as found by the CTA Third Division are as follows:

> Petitioner SMC Stock Transfer Service Corporation is a domestic corporation, duly organized and existing under and by virtue of the law of the Republic of the Philippines, providing services as a stock transfer agent of companies listed with the Philippine Stock Exchange.
>
> On the other hand, respondent Commissioner of Internal Revenue is the head of the Bureau of Internal Revenue (BIR) and is vested by law with the power to decide, approve and issue assessments of internal revenue taxes. She holds office at the BIR National Office Building, Diliman, Quezon City.
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> For taxable year 2004, petitioner filed its Annual Income Tax Return on April 12, 2005. Likewise, petitioner filed its

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[3] *Rollo*, pp. 19-20.
[4] *Id.*, p. 41.
[5] Refers to CIR, petitioner in this *en banc* case.
[6] *Rollo*, p. 45.
[7] Assailed Decision, pp. 1-5 (Citations Omitted); Division Docket, pp. 366-384; Petitioner refers to SMCTSC; Respondent refers to CIR.

Quarterly VAT Returns for taxable year 2004 on the following dates:

Period (2004)	**Date Filed**
1st Quarter	April 19, 2004
2nd Quarter	July 20, 2004
3rd Quarter	October 20, 2004
4th Quarter	January 20, 2005

On September 2, 2005, petitioner received a Letter of Authority (LOA) No. 200000092407 dated August 26, 2005, issued by Revenue District Office (RDO) No. 41 under Revenue Region No. 7 of the BIR, authorizing Revenue Officer Elisa San Juan and Group Supervisor Monica Dimaculangan to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2004 to December 31, 2004.

To accommodate a verbal request made by Ms. Dimaculangan, petitioner executed a Waiver of the Statute of Limitations under the National Internal Revenue Code (NIRC) dated October 26, 2007 (hereafter referred to as the "First Waiver"). The effectivity of the First Waiver was not to go beyond January 31, 2008.

Pursuant to the LOA, RDO No. 41 issued a Notice for Informal Conference (Post Reporting Notice), which was received by petitioner on February 4, 2008; informing petitioner of the purported findings of deficiency taxes.

Similar to the First Waiver, by way of accommodation of the verbal request of Ms. Dimaculangan, petitioner executed another Waiver of the Statute of Limitations dated February 14, 2008 (hereafter referred to as the "Second Waiver"), effective up to May 15, 2008.

In a letter dated February 15, 2008, petitioner replied to the Post Reporting Notice, with comments and explanations to the findings of deficiency assessments.

Due to the insistence and representation of Ms. Dimaculangan that the execution of the First Waiver and the

Second Waiver was necessary for the BIR to issue a "no assessment" recommendation regarding their examination of petitioner for taxable year 2004 and subsequently a tax clearance, petitioner executed another Waiver of the Statute of Limitations dated August 4, 2008 (hereafter referred to as the "Third Waiver"). The effectivity of the Third Waiver was not to go beyond December 31, 2008. In addition, the Third Waiver provided:

> "The intent and purpose of this waiver is to afford the Commissioner of Internal Revenue ample time to carefully consider the explanations, reconciliation worksheets and documents that have been submitted and to prepare their **no assessment/payment recommendation** for submission from District office to Regional office. xxx" (*Emphasis supplied*)

On December 16, 2008, petitioner received a Preliminary Assessment Notice (PAN) dated December 5, 2008, informing petitioner that it has deficiency income tax liability amounting to P1,938,395.64 and deficiency VAT liability amounting to P1,644,154.34.

By way of protest to the PAN, petitioner filed with the BIR on December 24, 2008, a letter dated December 17, 2008, objecting to the deficiency assessments and pointing out that the BIR can no longer make a valid assessment since the period within which it may validly do so has already prescribed.

Despite petitioner's protest, respondent issued a Formal Letter of Demand dated December 22, 2008 and two Assessment Notices dated December 22, 2008 for deficiency income tax and VAT. The Formal Letter of Demand and the Assessment Notices were received by petitioner on January 5, 2009. Petitioner was not furnished with the copy of Schedule "A" mentioned in the Formal Letter of Demand.

Thereafter, petitioner, through a letter dated January 23, 2009, filed its protest and reiterated its position against the subject tax assessments. The letter was duly received by respondent on January 26, 2009.

On June 9, 2009, petitioner received the denial of the protest by way of a letter captioned "Demand Before Suit" dated May 30, 2009 from respondent's representative demanding payment of the alleged deficiency VAT/income taxes under Assessment Notice No. F-41-039 for taxable year 2004, under threat of criminal action, within ten (10) days from receipt.

In response, petitioner sent a letter dated June 15, 2009, resubmitting its position that respondent's right to make the assessment has already prescribed.

Thereafter, on July 8, 2009, SMCSTSC filed a Petition for Review in the CTA.

On January 10, 2012, the CTA Third Division granted SMCSTSC's Petition for Review, thus, the Formal Letter of Demand and Assessment Notices dated December 22, 2008 were cancelled and set aside.

On March 23, 2012, CIR's motion for reconsideration was denied for lack of merit.

On April 12, 2012, the Court *en banc* granted CIR's "Motion for Extension of Time to File Petition for Review" filed on April 10, 2012.

On April 27, 2012, CIR filed the Petition for Review *en banc*.

On May 14, 2012, SMCSTSC filed its "Comment/Opposition (to Petitioner's Petition for Review)".

In a resolution dated May 25, 2012, both parties were required to submit their respective Memorandum within a non-extendible period of thirty (30) days from receipt of the said resolution. CIR and SMCSTSC submitted their respective "Memorandum" on July 9, 2012 and July 12, 2012, respectively. In a resolution dated August 1, 2012, this case was submitted for decision.

Hence, this Decision.

ISSUES[8]

WHETHER RESPONDENT WAS SUFFICIENTLY INFORMED OF THE FACTUAL AND LEGAL BASIS OF THE FINAL ASSESSMENT NOTICES

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[8] *Rollo*, pp. 10-11.

WHETHER THE FLD AND THE ASSESSMENT NOTICES HAVE FACTUAL AND LEGAL BASIS

WHETHER THE AUTHORITY OF PETITIONER TO ASSESS RESPONDENT FOR DEFICIENCY INCOME TAX AND VALUE ADDED TAX FOR TAXABLE YEAR 2004 HAS ALREADY PRESCRIBED.

THIS COURT'S RULING

The petition is denied.

This Court finds that the CTA Third Division exhaustively discussed the issue on prescription of assessments for deficiency income tax for taxable year 2004 and deficiency value added tax (VAT) for the 1st, 2nd, 3rd, and 4th quarters of 2004 in the assailed Decision.

Pertinent to this case is Section 203 of the National Internal Revenue Code of 1997 (NIRC) which states:

> "SEC. 203. *Period of Limitation Upon Assessment and Collection.* — Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."

Based on the foregoing provision, internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of the return or from the day the return was filed, whichever is later.

The time of filing of income tax and VAT returns are provided in Section 77 (B) and Section 114 (A) of the NIRC.

Section 77 (B) of the NIRC requires that "The final adjustment return shall be filed on or before the fifteenth (15th) day of April, or on or before the fifteenth (15^{th}) day of the fourth (4^{th}) month following the close of the fiscal year, as the case may be."

As regards VAT, which is computed and paid on a purely quarterly basis without need for a final adjustment at the end of the taxable year[9], Section 114 (A) of the NIRC requires the filing of the quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter.

Applying the foregoing provisions of law in this case, We quote with approval the findings of the CTA Third Division in the assailed Decision[10], as follows:

> As for petitioner's income tax, the return is required to be filed and the payment is to be made on or before the fifteenth (15^{th}) day of April following the close of taxable year 2004.[11] The Annual Income Tax Return for taxable year 2004 was filed on April 12, 2005,[12] which is earlier than the last day allowed by law, which is April 15, 2005. Hence, the three-year period shall be counted from April 15, 2005. Accordingly, **respondent[13] had until April 15, 2008, within which to assess petitioner for the subject deficiency income tax for taxable year 2004.**
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> On the other hand, the law requires that the VAT Return be filed quarterly within twenty-five (25) days following the close of each taxable quarter.[14] In this regard, records reveal that petitioner filed its Quarterly VAT Returns for taxable year 2004 on April 19, 2004[15], July 20, 2004[16], October 20, 2004[17] and January 20, 2005[18]. Therefore, **respondent had until April 25, 2007, July 25, 2007, October 25, 2007 and January 25, 2008 within which to assess petitioner for deficiency VAT covering the first, second, third, and fourth quarters of taxable year 2004**, respectively.
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> Based on the foregoing dates, **respondent's Formal Letter of Demand and Assessment Notices dated December**

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[9] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. Nos. 141104 & 148763, June 8, 2007, 524 SCRA 73, 94.
[10] pages 8-9 of the said Decision.
[11] In accordance with Section 77(B) of the NIRC of 1997, as amended.
[12] Exhibit "A".
[13] refers to CIR, petitioner in this *en banc* case.
[14] Pursuant to Section 114 of the NIRC of 1997, as amended.
[15] Exhibit "B".
[16] Exhibit "C".
[17] Par. 2, Stipulation of Facts, JSFI; docket, pp. 110-111.
[18] Exhibit "E".

> **22, 2008[19], which were all received by petitioner[20] on January 5, 2009, were issued beyond the 3-year prescriptive period provided by law.** *(Emphasis Supplied).*

Based on the foregoing discussions, the assessment notices issued dated December 22, 2008 were issued by the CIR beyond the 3-year prescriptive period. However, there are three (3) Waivers of the Statute of Limitations in this case. If these waivers are validly executed, the original 3-year period may be extended.

The exception to the 3-year period of assessment by agreement of the Commissioner and the taxpayer is provided in Sec. 222(b) of the NIRC, as follows:

> "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —
>
> xxx xxx xxx
>
> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon."

Clearly, the 3-year period of assessment may, however, be extended if the Commissioner and the taxpayer have agreed in writing to its assessment after such time. Such agreement must be made before, not after, the expiration of the original period and may further be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

The clear import of the provision (Section 332 [b], Tax Code, now Sec. 222 (b) of the NIRC) is that it does not authorize extension once prescription has attached.[21]

It is necessary, therefore, to resolve whether or not the three (3) Waivers of the Statute of Limitations in this case are valid which will authorize the extension of the original three-year prescriptive period on the assessment of taxes. ge

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[19] Exhibits "7", "8" and "9".
[20] Refers to SMCSTSC, respondent in this *en banc* case.
[21] *Republic of the Philippines vs. Rita Lim De Yu*, No. L-17438, April 30, 1964, 10 SCRA 737, SC *en banc* Decision.

CIR avers that her authority to assess SMCSTSC for deficiency income tax and value added tax for taxable year 2004 has not yet prescribed because of the waivers executed .

CIR's contention is untenable.

Though the statute of limitations on assessment and collection of national internal revenue taxes benefits both the Government and the taxpayer, it principally intends to afford protection to the taxpayer against unreasonable investigation.[22] To give effect to the legislative intent, these provisions on the statute of limitations on assessment and collection of taxes shall be construed and applied liberally in favor of the taxpayer and strictly against the Government.[23]

In *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*[24], the Supreme Court ruled that the waiver of the statute of limitations is not a waiver of the right to invoke the defense of prescription. It is an agreement between the taxpayer and the BIR that the period to issue an assessment and collect the taxes due is extended to a date certain. Also, in the said case, it was emphasized that "As a corollary, the exceptions to the law on prescription should perforce be strictly construed."

In determining whether the subject waivers effectively extended the 3-year period provided under Section 203 of the NIRC, the CTA Third Division correctly applied the procedures for the proper execution of the waiver enumerated by the Supreme Court in the case *Commissioner of Internal Revenue vs. Kudos Metal Corporation*[25]. The said procedures are in accordance with Revenue Memorandum Order (RMO) No. 20-90[26] issued on April 4, 1990 and Revenue Delegation Authority Order (RDAO) No. 05-01 issued on August 2, 2001, to wit:

"1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase 'but not after ______ 19 ___', which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.

2. The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a

[22] *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*, G.R. No. 139736, October 17, 2005, 473 SCRA 205, 225.
[23] *Id.*, 226.
[24] G.R. No. 162852, December 16, 2004, 447 SCRA 214.
[25] G.R. No. 178087, May 5, 2010, 620 SCRA 232.
[26] *"Subject: Proper Execution of the Waiver of the Statute of Limitations Under the National Internal Revenue Code"*, April 4, 1990.

corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.

3. The waiver should be duly notarized.

4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.

5. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement."

In this case, the CTA Third Division found that the waivers are defective for failure to comply with the above-mentioned requisites.

In *Commissioner of Internal Revenue vs. FMF Development Corporation*[27], the Supreme Court categorically stated that RMO No. 20-90 must be strictly followed.

In this case, however, after scrutiny of the waivers, indeed, these waivers failed to comply with RMO No. 20-90 and RDAO No. 05-01.

In *Philippine Journalist, Inc.* case, *supra.,* the Supreme Court ruled that the rationale of a waiver is explained in RMO No. 20-90. Pertinent portion of the said decision is quoted below:

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[27] G.R. No. 167765, June 30, 2008, 556 SCRA 698.

"RMO No. 20-90 explains the rationale of a waiver:

> . . . The phrase "but not after _________ 19___" should be filled up. This indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription. **The period agreed upon shall constitute the time within which to effect the assessment/collection of the tax in addition to the ordinary prescriptive period.** (Emphasis supplied)"[28]

Based on the foregoing, it is clear that the period agreed upon in the waiver must be complied with. The period agreed upon is a time in addition to the ordinary prescriptive period.

Pertinent data of the three (3) Waivers of the Statute of Limitations are summarized, as follows:

Pertinent Detail	**First Waiver**	**Second Waiver**	**Third Waiver**
a)Date Executed	October 26, 2007	Feb. 14, 2008	August 4, 2008
b)Date Accepted	October 26, 2007	Feb. 14, 2008	August 5, 2008
c) Period Effective	not later than January 31, 2008	not later than May 15, 2008	not later than Dec. 31, 2008

To recall, CIR had until April 15, 2008 to assess SMCSTSC for deficiency income tax for taxable year 2004; CIR had until April 25, 2007, July 25, 2007, October 25, 2007 and January 25, 2008 within which to assess SMCSTSC for deficiency VAT covering the first, second, third, and fourth quarters of taxable year 2004, respectively.

We emphasize that a waiver of the statute of limitations is an agreement between the taxpayer and the CIR to extend to a date certain the period to issue an assessment and collect the taxes. It is essential that the said waiver/agreement must be made before the expiration of the original period of prescription or before the expiration of the period previously agreed upon.

In this case, it is clear that even before the First Waiver was executed and accepted on October 26, 2007, the 3-year period to assess VAT for the 1st, 2nd, and 3rd quarters of taxable year 2004 have already lapsed on April 25, July 25, and October 25, 2007, respectively. Thus, if this First Waiver complied with RMO No. 20-90, only the period to assess deficiency VAT for the 4th quarter of 2004 had been extended until January 31, 2008. Technically, the original period of assessment for deficiency income tax for

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[28] *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue, supra,* Note 23.

taxable year 2004 has not yet prescribed so the benefit of the waiver is not extended to it.

As regards the Second Waiver which was executed and accepted on February 14, 2008, it is apparent that this waiver was made after the period agreed upon in the First Waiver. It is pointed out that the last day to assess deficiency VAT for the 4th quarter of 2004 has been extended until January 31, 2008 only. The right to assess the 4th quarter of VAT for 2004, therefore, has already prescribed even before the Second Waiver was executed. In effect, if the Second Waiver complied with RMO No. 20-90, only the period to assess deficiency income tax was extended by the Second Waiver until May 15, 2008.

With respect to the Third Waiver, it was executed on August 4, 2008 and accepted on August 5, 2008. Clearly, the said Waiver was made beyond May 15, 2008, the expiry date of the Second Waiver. We reiterate the findings of the CTA Third Division, pertinent portions of the assailed Decision[29] read:

> It must be emphasized that at the time of the execution and acceptance of the Third Waiver, there was already no more period to extend. Also, while it appears that a notary public signed the Third Waiver, a closer examination of the same would show that the said waiver failed to contain an Acknowledgment stating that the signatory on a single occasion appeared in person before the notary public and presented an integrally complete instrument or document and represented to the notary public that the signature on the instrument or document was voluntarily affixed by him for the purposes stated in the instrument or document. As a result, the Third Waiver failed to validly extend the period provided by law for the assessment of tax.

Clearly, the right of the government to assess had prescribed in this case, thus, there is no more need to discuss the substantive validity of the disputed assessments.

Based on the foregoing discussions, We find no reversible error to disturb the assailed Decision and Resolution of the CTA Third Division.

WHEREFORE, premises considered, the Petition for Review *en banc* is **DENIED**. Accordingly, the Decision and the Resolution promulgated on January 10, 2012 and March 23, 2012, respectively, by the CTA Third Division in the case entitled "*SMC STOCK TRANSFER*

[29] page 16 of the assailed Decision.

SERVICE CORPORATION vs. COMMISSIONER OF INTERNAL REVENUE" docketed as CTA Case No. 7944 are **AFFIRMED**.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice