**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

## SECOND DIVISION

**2100 CUSTOMS BROKERS, INC.,**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA CASE NO. 8972**

Members:

**CASTAÑEDA, JR.,** *Chairperson,*
**CASANOVA,** *and*
**MANAHAN,** *JJ.*

Promulgated:

SEP 20 2017

3:45 p.m.

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# RESOLUTION

For the Court's resolution is respondent's **Motion for Reconsideration**, filed through registered mail on March 16, 2017 and received by the Court on April 5, 2017, with petitioner's **Comment and Opposition (to the Motion for Reconsideration dated March 15, 2017)**, filed on April 4, 2017.

Respondent seeks to reconsider the Court's Resolution dated February 22, 2017, which cancelled the assessments for petitioner's deficiency value added tax (VAT) and deficiency withholding tax on compensation for fiscal period ending March 31, 2007 for having been issued beyond the prescriptive period, based on the following grounds:

a. petitioner was assessed by respondent for deficiency income tax, VAT and withholding tax on compensation for fiscal year ending March 31, 2007 within the prescriptive period under Section 222(b) of the 1997 Tax Code, in view of the Waiver of the Defense of Prescription under the Statute of Limitations on the

National Internal Revenue Code (NIRC) duly executed by petitioner; and

b. Even assuming that the First Waiver is defective, petitioner is already estopped from questioning the validity of its Waivers when it repeatedly delivered a Waiver which allowed the Revenue Officers to rely on them. The taxpayer did not raise any objection against the validity of the Waivers until this case is filed to the Court.

On the other hand, petitioner claims that: (a) the motion merely reiterated the arguments stated in respondent's Memorandum dated October 18, 2016; (b) the motion failed to prove that the doctrine of estoppel applies in this case; (c) the admission of *in pari delicto* on the part of the respondent simply justified the February 22, 2017 Resolution; (d) the payment of the deficiency withholding tax on compensation and offer to pay the amount of deficiency VAT assessment have no bearing on the issue of prescription; and (e) respondent never disputed the fact that the waiver is tainted with irregularity.

Respondent's motion has no merit.

Respondent contends that the assessments for deficiency income tax, VAT and withholding tax on compensation for fiscal year ending March 31, 2007 were within the prescriptive period under Section 222(b) of the 1997 Tax Code, in view of the execution of Waivers.

It is worthy to note that the issue on the validity of the Waivers was previously raised by respondent in his Memorandum dated October 18, 2016, which the Court had already discussed and resolved in the assailed Resolution, as follows:

> An examination of the records reveals that petitioner executed two (2) Waivers of the Defense of Prescription Under the Statute of Limitations of the NIRC. The First and Second Waivers were dated December 15, 2009 and November 18, 2010, respectively.
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> The determination of whether the period to assess has already prescribed depends on the validity of these

waivers executed by both petitioner and respondent to extend the period to assess. Hence, the Court shall examine if these waivers were executed in accordance with the requirements of the law, implementing rules and jurisprudential pronouncements.

Considering that the First Waiver was allegedly issued on December 15, 2009, the right of respondent to assess petitioner has already prescribed with respect to the following taxes: (1) deficiency VAT for the first and second quarters of 2009; and (2) deficiency withholding tax on compensation for the months of April 2006 to October 2006 xxx

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In the case of *Commissioner of Internal Revenue vs. Standard Chartered Bank*, the Supreme Court outlined the procedure for the proper execution of a waiver, 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.
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> 2. **The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a 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**.
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> 3. The waiver should be duly notarized.
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> 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.**'

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Upon review of the records, the Court finds the First Waiver void in view of the following defects: (1) Mr. Ariel Agcaoili was not given any duly notarized written authorization to sign the waiver; and (2) petitioner was not furnished the copy of the waiver duly signed by respondent and showing the date of acceptance. It must be noted that respondent did not bother to offer or present any evidence proving the existence of a duly notarized written authorization in favor of Mr. Ariel Agcaoili to sign the waiver. Furthermore, respondent did not provide any evidence as to the fact of receipt of petitioner of the signed and accepted First Waiver. Notably, the copy of the First Waiver found in the BIR Records shows that a certain Mario L. Enriquez received a copy of the waiver on January 7, 2010. However, petitioner presented evidence to prove that the said person is not an employee of petitioner during the period of December 9, 2009 to January 2010, which respondent failed to controvert. Hence, the Court finds that petitioner

> was not notified of the acceptance of the First Waiver and of the perfection of their agreement.
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> Taking into consideration the foregoing defects in the First Waiver, the period to assess the tax liabilities of petitioner for the fiscal year ending March 31, 2007, was therefore never extended. Consequently, when the Second Waiver was subsequently executed and there being no assessment having been issued as of that time, prescription has already set in. Consequently, the Second Waiver is also void considering that period sought to be extended has already prescribed in view of the invalidity of the First Waiver.
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> Since the waivers in this case are defective and invalid, the prescriptive period to assess deficiency VAT for the third and fourth quarters and deficiency withholding tax on compensation for the months of November 2006 to March 2007 for fiscal year ending March 31, 2007 was never suspended or tolled. Consequently, the FAN dated November 15, 2010 assessing petitioner for deficiency VAT and deficiency withholding tax on compensation for fiscal period ending March 31, 2007, is void.

In the case of *San Juan, Jr. vs. Judge Cruz, et al.*[1], the Supreme Court ruled that:

> xxx It bears stressing however that while the motion for reconsideration filed by petitioner assailing the December 2, 2003 Order of the trial court based on the same grounds as those alleged in his first motion is not *pro forma*, such second motion for reconsideration can nevertheless be denied on the ground that it is merely a rehash or a mere reiteration of grounds and arguments already passed upon and resolved by the court. xxx

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[1] G.R. No. 167321, July 31, 2006.

The foregoing argument, being a mere reiteration of respondent's argument, does not warrant reconsideration of the assailed Resolution.

Moreover, respondent claims that assuming for the sake of argument that the Waivers were defective, petitioner, however, is estopped from questioning their validity since both parties are equally culpable or *in pari delicto*.

In the case of the *Commissioner of Internal Revenue vs. Philippine Daily Inquirer, Inc.*[2], the Supreme Court held that:

> The CIR also argues that PDI is estopped from questioning the validity of the Waivers. We do not agree. As stated by the CTA, the BIR cannot shift the blame to the taxpayer for issuing defective waivers. The Court has ruled that the BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO 20-90 and RDAO 05-01 which were issued by the BIR itself. A waiver of the statute of limitations is a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations and thus, it must be carefully and strictly construed.

Since the two (2) Waivers in this case are defective, they do not produce any effect and did not suspend the three-year prescriptive period under Section 203 of the NIRC of 1997, as amended. As such, the Court sustains its cancellation of the assessments for petitioner's deficiency VAT and deficiency withholding tax on compensation for fiscal period ending March 31, 2007 for having been issued beyond the prescriptive period.

Respondent further contends that petitioner admitted payment of the deficiency withholding tax on compensation and offered to pay the amount of deficiency VAT assessment in its Protest Letter against the Final Decision on Disputed Assessment (FDDA) dated August 16, 2011. He claims that if petitioner is certain that the assessments issued against them were prescribed already, it will not pay the deficiency withholding tax on compensation and will not offer to pay the deficiency VAT assessment. Said argument, however, cannot be used to circumvent the law on prescription.

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[2] G.R. No. 213943, March 22, 2017.

In the case of *Commissioner of Internal Revenue vs. Basf Coating + Inks Phils., Inc.*[3], the Supreme Court discussed the importance of the law on prescription in the assessment of tax, as follows:

> Prescription in the assessment and in the collection of taxes is provided by the Legislature for the benefit of both the Government and the taxpayer; for the Government for the purpose of expediting the collection of taxes, so that the agency charged with the assessment and collection may not tarry too long or indefinitely to the prejudice of the interests of the Government, which needs taxes to run it; and for the taxpayer so that within a reasonable time after filing his return, he may know the amount of the assessment he is required to pay, whether or not such assessment is well founded and reasonable so that he may either pay the amount of the assessment or contest its validity in court x x x. It would surely be prejudicial to the interest of the taxpayer for the Government collecting agency to unduly delay the assessment and the collection because by the time the collecting agency finally gets around to making the assessment or making the collection, the taxpayer may then have lost his papers and books to support his claim and contest that of the Government, and what is more, the tax is in the meantime accumulating interest which the taxpayer eventually has to pay.

It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution.[4]

**WHEREFORE**, premises considered, respondent's **Motion for Reconsideration** is **DENIED** for lack of merit.

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[3] G.R. No. 198677, November 26, 2014.
[4] *Ibid.*

**SO ORDERED.**

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

**CAESAR A. CASANOVA**
Associate Justice

Catherine T. Manahan
**CATHERINE T. MANAHAN**
Associate Justice