REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

GLOBAL CARS PHILS., INC.,
Respondent.

CTA EB NO. 2883
(CTA CASE NO. 10225)

Present:

RINGPIS-LIBAN, *P.J.,*
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and
ANGELES, *JJ.*

Promulgated:
JAN 07 2026 3:35

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DECISION

ANGELES, J.:

Before the Court *En Banc* is a *Petition for Review*[1] filed by the Commissioner of Internal Revenue (petitioner) against Global Cars Phils., Inc. (respondent), seeking the reversal of the September 7, 2023 *Decision*[2] (Assailed Decision) and the February 15, 2024 *Resolution*[3] (Assailed Resolution) of the Special Third Division (Court in Division) in CTA Case No. 10225, entitled *Global Cars Phils., Inc. v. Commissioner of Internal Revenue.*

The Assailed Decision granted respondent's Petition for Review filed before the Court in Division, and cancelled the deficiency assessment issued by petitioner against respondent for the period covering July 1, 2013 to June 30, 2014.

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[1] EB Docket, pp. 14 to 35.
[2] EB Docket, pp. 42 to 56, Penned by Associate Justice Maria Rowena Modesto-San Pedro, concurred by Associate Justice Ma. Belen M. Ringpis-Liban.
[3] EB Docket, pp. 58 to 59.

ANTECEDENTS

Petitioner is the head of the Bureau of Internal Revenue (BIR) duly appointed to exercise the powers and perform the duties of his office, including the power to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code of 1997, as amended (Tax Code).[4]

Respondent is a corporation duly organized under the laws of the Republic of the Philippines, and may be served with summons, pleadings, and other court processes through its legal counsel, Gorriceta Africa Cauton & Saavedra, with address at 15/F and 4/F Strata 2000, F. Ortigas Jr. Road, Ortigas Center, 1605 Pasig City.[5]

Prior to the filing of the instant *Petition*, the Court in Division narrated the facts of this case, to wit:[6]

> On 9 March 2015, [respondent] received a Letter of Authority ("LOA") with reference numbers SN: eLA201200004326 and LOA-124-2015-00000014 authorizing the examination of its books of accounts and other accounting records for all internal revenue taxes for the period from 1 July 2013 to 30 June 2014.
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> On 20 June 2016, [respondent], through its Vice President and Chief Finance Officer, Mr. Alfie M. Adriano, executed a Waiver of Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code ("Waiver of the Defense of Prescription").
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> Thereafter, the BIR issued a Preliminary Assessment Notice ("PAN") on 27 October 2017 assessing [respondent] for deficiency Income Tax, VAT, Expanded Withholding Tax ("EWT"), and administrative penalties.
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> On 18 December 2017, [respondent] received from the BIR a Formal Letter of Demand ("FLD"), dated 14 December 2017, assessing [respondent] for deficiency VAT and administrative penalties in the amount of ₱22,574,918.74.
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> On 31 May 2018, [respondent] then received a Final Decision on Disputed Assessment ("FDDA"), dated 25 May 2018, issued by the Excise LT Audit Division II of the Large Taxpayers Service, assessing [respondent] for ₱23,813,453.52.

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[4] Petition for Review, EB Docket, pp. 2 to 3.
[5] *Id.*
[6] EB Docket, pp. 43 to 45.

On 12 November 2019, [respondent] received a copy of the Final Decision on its Request for Reconsideration issued by [petitioner] denying the [respondent]'s request for reconsideration and reiterating the arguments as well as the details of the assessment stated in the FDDA. [Respondent] was requested to pay deficiency VAT and administrative penalties in the amount of ₱25,380,274.63.

Aggrieved, [respondent] filed the instant case on 12 December 2019. [Petitioner] filed his Answer with Opposition on 9 March 2020.

[Respondent] and [petitioner] filed their Pre-Trial Briefs on 29 October 2020 and 28 October 2020, respectively. Following this, the Pre-Trial Conference was held on 3 November 2020.

The parties filed their Joint Stipulation of Facts and Issues ("JSFI") on 3 December 2020. On 15 February 2021, the Court issued a Pre-Trial Order.

During trial, [respondent] presented the following witnesses:

(1) Allan S. Laxina, its Assistant Vice President and Corporate Tax Head; and
(2) Lyka M. Jimenez, its Sales Administration Head.

[Respondent] formally offered its documentary evidence on 14 July 2021. [Petitioner] filed its Comment/Opposition on 29 July 2021. Then, in a Resolution dated 4 December 2021, the Court admitted all of [respondent]'s formally offered evidence except for Exhibit P-15.

Meanwhile, [petitioner] presented its sole witness Revenue Officer Maria Leonora Raquel.

On 24 March 2022, [petitioner] formally offered his evidence without [respondent]'s Comment. In a Resolution, dated 30 June 2022, the Court admitted all of [petitioner]'s formally offered exhibits except Exhibit R-9 for failure to have the same marked.

Thereafter, [petitioner] filed his Memorandum on 8 August 2022 while [respondent] filed its Memorandum on 5 September 2022. The case was then submitted for decision on 7 September 2022.

Petitioner received a copy of the Assailed Decision on September 21, 2023,[7] the dispositive portion of which reads:

WHEREFORE, premises considered, the instant Petition for Review filed by Global Cars Phils., Inc. is **GRANTED.** Accordingly, the Formal Letter of Demand and Assessment Notices dated 14 December 2017, Final Decision on Disputed Assessment

[7] Notice of Decision, EB Docket, p. 41.

> dated 4 November 2019, and Final Decision dated 4 November 2019 are hereby **CANCELLED AND WITHDRAWN**.
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> **SO ORDERED.**[8]

Petitioner filed a *Motion for Reconsideration*[9] on September 29, 2023, while respondent filed its *Comment (To Respondent's Motion for Reconsideration dated 28 September 2023)*[10] on December 18, 2023.

The Court in Division promulgated the Assailed Resolution, denying petitioner's *Motion for Reconsideration (of the Decision promulgated on 07 September 2023).*[11] The dispositive portion of the said Resolution reads:

> **ACCORDINGLY,** petitioner's Motion for Reconsideration (of the Decision promulgated on 07 September 2023) is hereby **DENIED** for lack of merit. The Decision, dated September 7, 2023, is hereby **AFFIRMED**.
>
> **SO ORDERED.**

<u>PROCEEDINGS BEFORE THE COURT *EN BANC*</u>

On March 11, 2024, petitioner filed a *Motion for Extension of Time to File Petition for Review.*[12] The Court granted the same in a Resolution[13] dated March 13, 2024, allowing petitioner to file his petition within a non-extendible period of fifteen (15) days or until March 27, 2024.

On March 26, 2024, the Court received the present *Petition for Review.* Respondent filed its *Comment/Opposition (to Petitioner's Petition for Review dated 22 March 2024)* on June 21, 2024.[14]

On April 15, 2024, respondent filed a Manifestation stating that the copy of the Petition for Review it received from petitioner was incomplete, lacking pages 8 to 12.[15] On April 22, 2024, petitioner filed a Manifestation informing the Court that it had furnished respondent

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[8] EB Docket, p. 55.
[9] Division Docket, pp. 1472 to 1491.
[10] Division Docket, pp. 1493 to 1505.
[11] EB Docket, pp. 58 to 59.
[12] EB Docket, pp. 1 to 5.
[13] EB Docket, p. 6.
[14] EB Docket, pp. 157 to 170.
[15] EB Docket, pp. 60 to 62.

with a complete copy of the Petition for Review consisting of twenty-two (22) pages.[16] Thereafter, the Court directed respondent to file its Comment on the Petition for Review.[17]

On June 21, 2024, the Court received respondent's *Comment/Opposition (to Petitioner's Petition for Review dated 22 March 2024)* filed via registered mail on June 10, 2024.[18]

On July 1, 2024, the Court referred the case to the Philippine Mediation Center - Court of Tax Appeals (PMC-CTA) for mediation pursuant to Section II of the Interim Guidelines for Implementing Mediation in the Court of Tax Appeals.[19] Eventually, the PMC-CTA filed a *No Agreement to Mediate* on September 17, 2024.[20]

On October 10, 2024, the case was submitted for decision.[21]

ASSIGNMENT OF ERRORS

Petitioner assigns the following errors allegedly committed by the Court in Division:

I.

WITH ALL DUE RESPECT, THE HONORABLE COURT IN DIVISION ERRED IN RULING ON MATTERS THAT WERE NEVER SUBSTANTIATED IN THE ADMINISTRATIVE LEVEL.

II.

WITH ALL DUE RESPECT, THE HONORABLE COURT IN DIVISION ERRED IN RULING THAT THERE WAS A VIOLATION OF RESPONDENT'S RIGHT TO DUE PROCESS, AND THUS, THE ASSESSMENT IS VOID.

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[16] EB Docket, pp. 105 to 107.
[17] EB Docket, p. 156.
[18] EB Docket, pp. 157 to 170.
[19] EB Docket, p. 172.
[20] EB Docket, p. 173.
[21] EB Docket, p. 174.

III.
WITH ALL DUE RESPECT, THE HONORABLE COURT ERRED IN RULING THAT RESPONDENT'S SALES TO WESTCOAST AUTOMOTIVE CORPORATION ARE SUBJECT TO VAT ZERO-RATING.[22]

ARGUMENTS OF THE PARTIES

Petitioner's arguments[23]

Petitioner contends that the Court in Division erred in ruling on matters that were not substantiated or raised at the administrative level. He argues that respondent questioned for the first time on appeal the validity of the Preliminary Assessment Notice (PAN) and Formal Letter of Demand (FLD) due to the alleged non-receipt of certain annexes. These issues were never raised in respondent's reply to the PAN, protest to the FLD, or request for reconsideration of the Final Decision on Disputed Assessment (FDDA). Thus, petitioner submits that respondent is barred by laches and estoppel from raising such defenses.

Petitioner likewise argues that respondent's participation in the proceedings without objection constitutes an implied admission of the validity of the aforesaid notices and their respective service on respondent.

Petitioner further contends that the Court in Division erred in ruling that the assessments are void for violation of respondent's right to due process. He explains that both the PAN and FLD informed respondent of the factual and legal bases of the assessments and were accompanied by Details of Discrepancies. These, petitioner argues, were sufficient to notify respondent of the nature and bases of the deficiency assessments, and to allow it to present its defenses.

He also points out that respondent was able to file its reply to the PAN, protest to the FLD, and request for reconsideration of the FDDA. These actions show that respondent was given full opportunity to be heard. Citing jurisprudence, petitioner submits that procedural due process only requires notice and a reasonable opportunity to explain one's side, both of which were satisfied in this case.

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[22] Petition for Review, Assignment of Errors, EB Docket, p. 18.
[23] EB Docket, pp. 18 to 20.

In addition, petitioner contends that the Court in Division erred in ruling that respondent's sales to Westcoast Automotive Corporation (WAC) are subject to VAT zero-rating. He invokes Revenue Memorandum Circular (RMC) Nos. 25-99 and 50-2007, which provide that sales of ordinary cars or vehicles to the Philippine Economic Zone Authority (PEZA), Subic Bay Metropolitan Authority (SBMA), or Freeport Zone-registered enterprises are not automatically subject to zero percent (0%) VAT. The exemption applies only if the vehicles are used exclusively within the Freeport Zone.

Petitioner stresses that respondent failed to show that the automobiles sold to WAC were used exclusively within the Subic Freeport Zone. Thus, these transactions should be subject to the regular twelve percent (12%) VAT. Citing *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*[24] and *Commissioner of Internal Revenue v. Toshiba Information Systems (Philippines)*,[25] petitioner emphasizes that only goods or services destined for consumption outside the taxing authority's territory may be zero-rated under the cross-border doctrine.

Finally, petitioner claims that respondent is liable for administrative penalties. He invokes Section 255 of the Tax Code, and Revenue Memorandum Order (RMO) No. 7-2015, which authorize the imposition of penalties for failure to pay deficiency taxes.

Respondent's counter-arguments[26]

Respondent maintains that the Court in Division correctly ruled on the validity of the PAN and FLD. It argues that the Court of Tax Appeals (CTA) is not precluded from resolving issues raised for the first time on appeal since it is a court of record that tries cases *de novo* and may consider evidence not presented at the administrative level.

On the issue of due process, respondent argues that the assessments are void because petitioner failed to furnish it with Annex "A-7" of the PAN and Annex "B-1" of the FLD. These omissions deprived it of the opportunity to understand the factual and legal bases of the assessment. Respondent relies on Section 228 of the Tax

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[24] G.R. No. 153866, February 11, 2005.
[25] G.R. No. 150154, August 9, 2005.
[26] EB Docket, pp. 157 to 167.

Code, Revenue Regulations (RR) No. 12-99, and *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*,[27] which require that assessments clearly state the law and facts on which they are based.

Respondent further argues that its sales to WAC are properly subject to zero percent (0%) VAT. It avers that WAC is a registered Freeport Zone enterprise and that sales to such entities qualify as export sales under Republic Act (RA) No. 7227, otherwise known as the Bases Conversion and Development Act (BCDA) of 1992. Citing *Carworld, Inc. v. Commissioner of Internal Revenue*[28] and *Coconut Oil Refiners Association, Inc., et al. v. Hon. Executive Secretary Ruben Torres, et al.*,[29] respondent maintains that the law does not require that goods be used exclusively within the Freeport Zone and that the mere administrative issuances, such as the cited revenue circulars, cannot restrict what the statute allows.

Finally, respondent disputes the imposition of administrative penalties, arguing that since the assessments are void, there is no legal basis for penalties under Section 255 of the Tax Code. It adds that a compromise is consensual and cannot be imposed without agreement between the parties.

RULING OF THE COURT *EN BANC*

The instant *Petition* is bereft of merit.

At the outset, the Court notes that the instant *Petition* merely reiterates the arguments already raised in petitioner's *Motion for Reconsideration*[30] filed before the Court in Division. Nonetheless, to lay the matter to rest, the Court shall address the same.

Timeliness of the appeal

Before We rule on the merits of the case, We shall first determine whether the instant *Petition* was timely filed.

On February 28, 2024, petitioner received a copy of the Assailed Resolution.[31] Petitioner had fifteen (15) days from such

[27] G.R. Nos. 201398-99 & 201418-19, October 3, 2018.
[28] CTA Case No. 9988, October 26, 2021.
[29] G.R. No. 132527, July 29, 2005.
[30] Division Docket, pp. 1472 to 1490.
[31] Division Docket, Vol. III, unpaginated.

receipt or until March 14, 2024 to file a Petition for Review with the Court *En Banc*, pursuant to Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA),[32] which provides:

> SEC. 3. *Who may appeal; period to file petition.* — xxx
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> (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review **within fifteen days from receipt of a copy of the questioned decision or resolution**. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. *(Emphasis supplied)*

On March 11, 2024, petitioner filed a *Motion for Extension of Time to File Petition for Review,*[33] praying for an additional fifteen (15) days from March 12, 2024, or until March 27, 2024, to file his Petition for Review. The Court granted the said *Motion*.[34]

On March 26, 2024, petitioner personally filed the instant *Petition for Review*. Hence, the same was filed on time.

The Court in Division correctly ruled on the validity of the PAN and FLD

Petitioner contends that the issue on the validity of the PAN and FLD, due to non-receipt by respondent of copies of Annex "A-7" of the PAN and Annex "B-1" of the FLD, may not be raised for the first time on appeal. He insists that per the case of *CIR vs. South Entertainment Gallery, Inc.*,[35] the principle of estoppel should be applied since the issue of non-receipt was belatedly raised by respondent.

Petitioner's contention is untenable.

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[32] Rules of the Court of Tax Appeals – approved by the Supreme Court on November 22, 2005 (A.M. No. 05-11-07-CTA); Amendments to the 2005 Rules of Court of the Court of Tax Appeals – approved by the Supreme Court on September 16, 2008 (A.M. No. 05-11-07-CTA); and Additional Amendments to the 2005 Revised Rules of the Court of Tax Appeals – approved by the Supreme Court on February 10, 2009 (A.M. No. 05-11-07-CTA).
[33] EB Docket, pp. 1 to 5.
[34] EB Docket, p. 6.
[35] G.R. No. 225809, March 17, 2021.

Section 1, Rule 14 of the RRCTA expressly grants the CTA the power to rule on issues which, although not stipulated by the parties, are related and necessary to fully dispose of the case, viz.:

RULE 14
JUDGMENT, ITS ENTRY AND EXECUTION

SECTION. 1. *Rendition of judgment.* – xxx xxx xxx

In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.

As found by the Court in Division, the absence of the annexes deprived respondent of the means to properly contest the deficiency VAT assessment, as it was not fully informed of the breakdown of sales that formed the basis of the alleged deficiency. The pertinent portion of the PAN[36] is reproduced below for reference:

II. VALUE-ADDED TAX (VT)

Taxable Sales/Receipts per Return (A-4)	₱2,108,093,486.51	
Add: Adjustments per Audit		
Sales to locators subjected to 0% VAT **(Annex A-7)**	111,915,793.66	
Taxable Sales/Receipts per Audit	₱2,220,009,280.17	
Output Tax Due	₱ 266,401,113.62	
Less: Creditable Input Tax		
Input tax on local purchases claimed per return (Annex A-4)	₱ 263,678,506.42	
Input tax carried from previous quarter (Annex A-4)	45,281,827.00	
Input tax deferred on Capital Goods exceeding ₱1M (Annex A-4)	2,463,682.40	
Total	₱ 311,424,015.82	
Less: Input tax on purchase of Capital Goods for succeeding period (Annex A-4) *(sic)*	2,348,113.70	
Input tax closed to expense	229,481.02	
Input tax carried to subsequent quarter	56,265,523.20	
Net	₱ 252,580,897.90	
Less: Disallowed/unsupported input tax (Annex A-2)	960,003.61	
Disallowed input tax per TIN validation (Annex A-5)	343,387.34	251,277,506.95
VAT payable		₱15,123,606.67
Less: Tax credits/ payments (Annex A-4)		390,320.48
Deficiency tax		₱14,733,286.19
Add: Penalties		
Interest (7/26/14 to 10/31/17 (65.28%))		9,617,561.82
Total Amount Payable		**₱24,350,848.01**

[36] Exhibit "P-10," Division Docket, Vol. II, pp. 775 to 777.

Likewise, the Court in Division noted that a perusal of the FLD[37] reveals the same deficiency, as it also lacked the annexes therein referred to, which purportedly contained the details of the assessment.

In *Commissioner of Internal Revenue v. Yumex Philippines Corporation*,[38] the Supreme Court ruled that the question of the validity of a tax assessment necessarily involves determining whether it was issued in compliance with the requirements of due process. The CTA is not limited to the arguments raised at the administrative level and may resolve questions essential to the complete and final determination of the taxpayer's liability.

The Court's ruling in *Yumex* is instructive in this case. There, the taxpayer raised for the first time on appeal the issue that the PAN and FLD were served simultaneously, depriving it of the opportunity to contest the proposed assessment.[39] The Supreme Court upheld the CTA's authority to consider and resolve the issue, explaining that the validity of the assessment cannot be determined without examining compliance with due process.[40] The same rationale applies here. The absence of Annex "A-7" of the PAN and Annex "B-1" of the FLD goes into the very legality of the assessment and the taxpayer's right to be informed of its factual bases. As in *Yumex*, respondent in this case was deprived of the opportunity to properly contest the assessment when petitioner failed to furnish the annexes that supposedly contained the factual bases of the deficiency VAT assessment. The omission effectively denied respondent its right to due process, as it could not fully understand or dispute the findings that gave rise to the assessment. Thus, even if the issue was not raised at the administrative level, it may properly be considered by the Court as it bears directly on the validity of the assessment itself.

Likewise, in *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*,[41] the Court affirmed that the CTA is not confined to the specific issues raised by the parties and may rule on related matters necessary for the orderly disposition of the case. In the same vein, *Commissioner of Internal Revenue v. Eastern Telecommunications Philippines, Inc.*[42] recognized that, in the interest of justice, an appellate court may take into account matters of record that bear on the issues for resolution, even if these were not

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[37] Exhibits "R-7" and "R-7-A," BIR Records, pp. 380 to 382.
[38] G.R. No. 222476, May 5, 2021.
[39] *Id.*
[40] *Id.*
[41] G.R. No. 183408, July 12, 2017.
[42] G.R. No. 163835, July 7, 2010.

specifically raised by the parties or were overlooked by the lower court.

In this case, the validity of the PAN and FLD lies at the very core of the controversy. The question of whether respondent was duly served with the required annexes goes into the heart of the assessment's legality and, consequently, the existence of petitioner's cause of action. To disregard such a jurisdictional issue would be to sustain an assessment tainted with procedural infirmity. The Court cannot close its eyes to defects that undermine the taxpayer's right to due process under Section 228 of the Tax Code.

The CTA, as a specialized court exercising exclusive jurisdiction over tax disputes,[43] is duty-bound to ensure that assessments are issued in strict observance of law and procedural due process. Its proceedings are not mere extensions of the administrative process but are judicial in nature, intended to determine whether the actions of the tax authorities conform to law and established procedure.[44] The Court is therefore not constrained by omissions or oversights of the parties at the administrative level when such matters are indispensable to the lawful resolution of the case.

Accordingly, the Court in Division was correct in ruling on the validity of the PAN and FLD. To have done otherwise would have left unresolved a jurisdictional defect that strikes at the very foundation of the assessment. The Court thus affirms that addressing the issue was indispensable to the proper and orderly disposition of the case.

The Court in Division correctly found that petitioner violated respondent's right to due process

The Court in Division found that the assessment issued against respondent is void. It held that petitioner failed to furnish respondent with complete copies of the PAN and FLD, particularly Annex "A-7" of the PAN and Annex "B-1" of the FLD, which respectively contain the details on the alleged sales to locators subject to zero percent (0%) VAT, leading to the audit adjustment in the amount of

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[43] Republic Act No. 1125, An Act Creating the Court of Tax Appeals, June 16, 1954, as amended by Republic Act No. 9282, An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank To the Level of A Collegiate Court With Special Jurisdiction And Enlarging Its Membership, Amending For the Purpose Certain Sections or Republic Act No. 1125, As Amended, Otherwise Known As the Law Creating the Court of Tax Appeals, And For Other Purposes, March 30 2004.
[44] *Id.*

₱111,915,793.66. Without these annexes, respondent could not determine the factual bases of the deficiency VAT assessment.

In the instant *Petition*, petitioner argues that respondent was not deprived of due process since the PAN and FLD already contained the Details of Discrepancies stating the bases of the assessment. He claims that respondent was able to file a protest, thereby showing that it understood the nature of the deficiency and was given the opportunity to contest the same.

The Court is not persuaded.

Pursuant to Section 228 of the Tax Code, as implemented by Section 3 of Revenue Regulations No. 18-13,[45] due process in tax assessments demands that the taxpayer be apprised in writing of the law and facts forming the basis of the assessment. Absent such notice, the assessment is void. The pertinent provisions provide:

> **SECTION 228.** ***Protesting of Assessment.*** — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a pre-assessment notice shall not be required in the following cases:
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> xxx xxx xxx
>
> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings. xxx *(Emphasis supplied)*

> **SECTION 3.** ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*** —
> *3.1 Mode of procedures in the issuance of a deficiency tax assessment:*
> 3.1.1 *Preliminary Assessment Notice (PAN).*— If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. **It shall show in detail the facts and the law,**

[45] Amending Certain Sections of Revenue Regulations No. 12-99, Revenue Regulations No. 18-13, November 28, 2013.

> **rules and regulations, or jurisprudence on which the proposed assessment is based** x x x.
>
> xxx xxx xxx
>
> 3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* — The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. **The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; otherwise, the assessment shall be void** x x x. *(Emphasis supplied)*

These requirements are mandatory and go into the very validity of the assessment itself. In *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*,[46] the Court held that the use of the word **"shall"** in the requirement to inform the taxpayer of the legal and factual bases of the assessment and the decision rendered against it denotes a mandatory obligation on the part of the tax authorities. This safeguard, first laid down in Revenue Regulations No. 12-99 and reiterated in Revenue Regulations No. 18-2013, is an essential component of due process and applies to the PAN, the FLD/FAN, and the FDDA.[47]

That respondent was able to file a reply and a protest before the BIR is of no moment. In *Commissioner of Internal Revenue v. Yumex Philippines Corporation*,[48] the Supreme Court, citing *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*,[49] ruled that the taxpayer's ability to file a protest does not cure the absence of due process when the BIR fails to comply with the procedural requirements under RR No. 12-99. The Court stressed that the right to be informed of the factual and legal bases of an assessment prior to its issuance is a substantive and mandatory requirement.[50] It likewise reminded the BIR that while taxation is essential to government, it must be exercised with caution and fairness to avoid encroaching upon the proprietary rights of taxpayers.[51]

In this case, the absence of Annex "A-7" of the PAN and Annex "B-1" of the FLD prevented respondent from determining how petitioner arrived at its assessment for deficiency VAT. The omission violated respondent's right to be informed of the factual and legal bases of the assessment. The fact that respondent was able to file a

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[46] G.R. Nos. 201398-99, October 3, 2018.
[47] *Id.*
[48] *Supra* note 38.
[49] G.R. No. 172598, December 21, 2007.
[50] *Id.*
[51] *Id.*

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protest does not bar it from invoking a violation of due process, nor does it cure the defect in the issuance of the assessment. As held in *Commissioner of Internal Revenue v. Fort 1 Global City Center, Inc.*,[52] the taxpayer's ability to file a protest does not validate an assessment tainted by procedural infirmity, nor does it estop the taxpayer from questioning the BIR's failure to comply with the due process requirements under Section 228 of the Tax Code.[53] Procedural due process in tax assessment proceedings demands both notice and the opportunity to respond to complete and intelligible information.

The missing annexes in this case were not inconsequential. They contained the very details of respondent's sales to locators subjected to zero percent (0%) VAT, which formed the basis of the audit adjustment amounting to ₱111,915,793.66. These annexes were necessary for respondent to verify the correctness of the findings and to prepare an intelligent response to the assessment. Their absence deprived respondent of the means to identify the specific transactions being questioned and to contest them point by point, resulting in a denial of the fair opportunity to be heard guaranteed under the law.

It bears stressing that compliance with the requirements under Section 228 of the Tax Code is not a mere formality, but a substantial requirement intended to uphold the integrity and fairness of the tax assessment process.[54] An assessment issued in violation of due process is void and produces no legal effect. As the Supreme Court has repeatedly emphasized, a void assessment bears no valid fruit.[55] The BIR's failure to comply with the clear mandates of Section 228 of the Tax Code and Revenue Regulations No. 18-2013 thus renders the entire assessment a nullity. These procedural safeguards are the taxpayer's first line of defense against arbitrary or capricious exercise of the government's power to tax. They are equally vital to the BIR itself, as compliance therewith preserves the validity and enforceability of its assessments and upholds public confidence in the fairness of tax administration.

Accordingly, the Court in Division was correct in ruling that the assessment is void for failure to comply with the due process

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[52] G.R. No. 263811, November 26, 2024; citing *Mannasoft Technology Corporation v. Commissioner of Internal Revenue*, G.R. No. 244202, July 10, 2023.
[53] *Id.*
[54] *Commissioner of Internal Revenue v. Fitness By Design, Inc.*, G.R. No. 215957, November 09, 2016, citing *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.*, G.R. No. 198677, November 26, 2014.
[55] *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation*, G.R. No. 215534, April 18, 2016.

requirements of law. On this ground alone, the denial of the Petition for Review by the Court in Division stands warranted.

The Court in Division did not err in holding that respondent's sales to WAC, a freeport zone-registered enterprise, are properly subject to VAT zero-rating

Even if the merits of the case were to be considered, a review of the applicable laws and records supports the conclusion that respondent's sales to WAC are properly subject to VAT zero-rating.

The determination of whether respondent's sales to WAC are subject to VAT hinges on the application of the laws governing transactions between entities in the customs territory and those registered within special economic and freeport zones.

Section 106(A)(2)(b) of the Tax Code provides that certain sales of goods or properties shall be subject to a zero percent (0%) rate of VAT, including:

> SEC. 106. Value-Added Tax on Sale of Goods or Properties.
>
> (A) Rate and Base of Tax. -xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) Export Sales. - The term "export sales" means:
>
> xxx
>
> (b) Sales to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects such sales to zero rate. *(Emphasis supplied)*

The relevant special law in this case is Republic Act No. 7227, or the Bases Conversion and Development Act of 1992,[56] as amended by Republic Act No. 9400,[57] which established and expanded the Subic Bay Freeport Zone (SBFZ). Section 12 thereof provides:

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[56] Bases Conversion and Development Act of 1992, Republic Act No. 7227, March 13, 1992.
[57] Amendment to R.A. No. 7227 (Bases Conversion and Development Act of 1992), Republic Act No. 9400, March 20, 2007.

> SECTION 12. Subic Special Economic Zone. — xxx
>
> The abovementioned zone shall be subject to the following policies:
>
> (b) The Subic Special Economic Zone shall be operated and managed as a separate customs territory ensuring free flow or movement of goods and capital within, into and exported out of the Subic Special Economic Zone, as well as provide incentives such as <u>tax and duty-free importations of raw materials, capital and equipment</u>. However, exportation or removal of goods from the territory of the Subic Special Economic Zone to the other parts of the Philippine territory shall be subject to customs duties and taxes under the Tariff and Customs Code of the Philippines, as amended, the National Internal Revenue Code of 1997, as amended, and other relevant tax laws of the Philippines; xxx *(Emphasis supplied)*

In this regard, the Supreme Court in *Coconut Oil Refiners Association, Inc. v. Torres*[58] clarified that Section 12 of R.A. No. 7227 does not limit tax privileges only to raw materials or equipment. The Court held that although the provision expressly refers to raw materials, capital, and equipment, it cannot be construed as limiting the tax and duty-free privileges solely to such items, to the exclusion of consumer goods. The ruling affirms that Freeport and Ecozone privileges must be construed liberally to promote trade and investment, consistent with legislative intent.

From the foregoing legal provisions, it is clear that the VAT system is designed to burden consumption within the Philippine customs territory. Pursuant to the cross-border doctrine, the flow of goods and services destined for consumption outside the customs territory is not subject to VAT, since the place of consumption determines the jurisdiction to tax.[59] Freeport and Ecozones are treated as foreign territories for VAT purposes, and thus, transactions from the customs territory into these zones are considered export sales subject to zero percent (0%) VAT.

Applying this principle, sales of goods and services by VAT-registered suppliers in the customs territory to Freeport-registered enterprises constitute transactions consummated for consumption outside the domestic market. The zero-rating recognizes that these goods and services are effectively exported to a separate customs jurisdiction.

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[58] *Supra* note 29.
[59] *Commissioner of Internal Revenue v. Filminera Resources Corp.*, G.R. No. 236325, September 16, 2020; *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, G.R. No. 153866, February 11, 2005.

However, the interpretation of administrative issuances such as Revenue Memorandum Circular (RMC) No. 50-2007 presents an issue, as it allegedly qualifies the application of the abovementioned principle before sales may be subjected to VAT zero-rating. The RMC provides:

> Q5: What is the coverage of VAT zero-rating?
>
> A5: The zero-rating will cover sale, barter, exchange or lease of all goods, properties and/or services by a VAT-registered seller/contractor from the Customs Territory to a Freeport Zone-registered enterprise and shall include, among others, the following:
>
> a. The sale/supply of ordinary cars, vehicles, automobiles, specialized vehicles or other transportation equipment, <u>provided that these are used exclusively within the subject special Freeport Zones</u>; xxx *(Emphasis supplied)*

Petitioner relies on this issuance to argue that only vehicles **used exclusively** within the Freeport Zone may qualify for zero-rating, while those sold for resale or use outside the zone are subject to the regular VAT rate of twelve percent (12%).

This restrictive interpretation, however, finds no basis in law. Neither Section 106(A)(2)(b) of the NIRC nor Section 12 of Republic Act No. 7227 imposes such limitation. The requirement of "exclusive use" appears solely in RMC No. 50-2007, an administrative issuance that cannot amend or narrow the scope of statutory exemptions granted by law. As held in *Alcala v. Carpio*,[60] "a spring cannot rise higher than its source." Administrative issuances must operate within the bounds of the authority conferred by law and may not restrict rights or exemptions granted by statute.

To adopt petitioner's view would unduly constrict the intended coverage of VAT zero-rating under the cross-border doctrine and defeat the legislative purpose of encouraging the free flow of goods and investment in Freeport Zones.[61] The law is clear that transactions from the customs territory to Freeport-registered enterprises are export sales, regardless of whether the goods are later resold or used beyond the zone.

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[60] G.R. Nos. 211146 & 211375, April 11, 2023.
[61] *Supra* note 56.

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In the present *Petition*, the CIR argues that the sales of automobiles to WAC are not covered by VAT zero-rating. Citing Section 2(ii) of the Implementing Rules and Regulations (IRR) of RA No. 7916, otherwise known as the *Special Economic Zone Act of 1995*,[62] he asserts that the term "merchandise or goods" refers only to raw materials, supplies, equipment, machineries, spare parts, packaging materials, or wares of every description to be used in connection with the registered activity of an ecozone enterprise.

The Court in Division rejected these contentions. It held that respondent's sales to WAC qualify as zero-rated transactions because WAC is a Subic Bay Freeport Enterprise duly registered with the SBMA. The Court explained that under Republic Act No. 7227, as amended by Republic Act No. 9400, Freeport Zones are treated as separate customs territories. Thus, sales of goods and services from the customs territory to enterprises located therein are considered export sales subject to zero percent (0%) VAT in accordance with the cross-border doctrine.

The Court in Division likewise found that the vehicles sold by respondent formed part of WAC's registered business activity as an authorized distributor and lessor of motor vehicles within the Subic Bay Freeport Zone. This finding was supported by the Certificate of Tax Exemption[63] issued by the SBMA which was admitted as part of respondent's evidence in the *Resolution* dated December 4, 2021.[64] The certificate states:

> "ARTICLE I. — The Company shall be classified as a Subic Bay Freeport Enterprise, as such term is defined under Section 3, Paragraph G of the Implementing Rules, for the following purpose: **To engage in the business of sale and distribution of motor vehicles**, spare parts, accessories, tires, batteries, and other related products, and in the rendition of services including, but not limited to, repair, maintenance, and casing or renting out of motor vehicles at Lot C-2, Subic Bay Gateway Park, Phase I, Commercial Area, Subic Bay Freeport Zone." *(Emphasis supplied)*

Hence, the sale between respondent and WAC is properly treated as a zero-rated transaction under Section 106(A)(2)(b) of the Tax Code and Section 12 of the BCDA, as amended.

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[62] Rules and Regulations to Implement Republic Act No. 7916, IRR of RA 7916, May 17, 1995.
[63] Exhibits "P-17" and "P-18," Division Docket, pp. 883 to 884.
[64] Division Docket, pp. 1380 to 1381.

It must also be emphasized that the VAT treatment of respondent's sale to WAC is distinct from the transactions subsequently entered into by WAC with its own customers. The tax exemption granted to Freeport enterprises attaches to their acquisition of goods from suppliers in the customs territory, not to the disposition of those goods thereafter. As correctly held by the Court *a quo*, the subsequent sale of the vehicles by WAC to its clients, whether within or outside the Freeport Zone, does not affect the nature of respondent's transaction with WAC, which was consummated under a validly issued Certificate of Tax Exemption.

Similarly, as respondent aptly cited, the CTA held in *Carworld, Inc. v. Commissioner of Internal Revenue*,[65] that no legal basis exists for imposing the "exclusive use" condition on VAT zero-rated sales to Freeport entities. The VAT exemption of such enterprises arises from their status under the BCDA, as amended, which is a special law.[66]

As reiterated in *Executive Secretary v. Southwing Heavy Industries, Inc.*, an administrative issuance must not be *ultra vires* or beyond the authority conferred, nor may it supplant or modify the Constitution, its enabling statute, or existing laws.[67] Consequently, the restrictive interpretation advanced by petitioner under RMC No. 50-2007 cannot prevail over the clear provisions of law. Following the rule *ubi lex non distinguit nec nos distinguere debemus*, where the law makes no distinction, neither should the courts create one.[68]

Thus, even on the merits, the *Petition for Review* fails. The Court in Division correctly held that respondent's sales to WAC, being a duly registered Freeport Enterprise, are properly subject to VAT zero-rating. Consequently, respondent is not liable for the assessed VAT deficiency. The transactions were consistent with law, supported by the evidence on record, and in furtherance of the legislative policy to encourage the "free flow of goods or capital within, into, and out" of the Freeport Zones.[69]

The Court shall no longer belabor the other issues raised by the parties in view of the nullity of the subject assessment. It is a settled doctrine that a void assessment bears no valid fruit. In *Samar-I*

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[65] *Supra* note 28.
[66] *Id.*
[67] G.R. Nos. 164171, 164172 & 168741, February 20, 2006.
[68] *La Suerte Cigar and Cigarette Factory v. Court of Tax Appeals*, G.R. No. L-36130, L-36131, January 17, 1985.
[69] *Supra* note 29.

Electric Cooperative v. Commissioner of Internal Revenue,[70] the Supreme Court reiterated that an assessment issued in violation of due process is null and void, stating:

> **A void assessment bears no valid fruit.**
>
> The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence. In the instant case, respondent has not been informed of the basis of the estate tax liability. **Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of property, because no effective protest can be made.** The haphazard shot at slapping an assessment, supposedly based on estate taxation's general provisions that are expected to be known by the taxpayer, is utter chicanery.
>
> Even a cursory review of the preliminary assessment notice, as well as the demand letter sent, reveals the lack of basis for — not to mention the insufficiency of — the gross figures and details of the itemized deductions indicated in the notice and the letter. **This Court cannot countenance an assessment based on estimates that appear to have been arbitrarily or capriciously arrived at.** Although taxes are the lifeblood of the government, their assessment and collection "should be made in accordance with law as any arbitrariness will negate the very reason for government itself." *(Emphasis supplied; citations omitted)*

Accordingly, the Court finds no error in the ruling of the Court in Division that respondent's sales to WAC are properly subject to VAT zero-rating and that the questioned assessments must be cancelled and withdrawn.

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* filed by the Commissioner of Internal Revenue is **DENIED** for lack of merit.

Consequently, the *Assailed Decision* and *Resolution* dated September 7, 2023 and February 15, 2024, respectively, are hereby **AFFIRMED.**

SO ORDERED.

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[70] G.R. No. 193100, December 10, 2014, citing *Commissioner of Internal Revenue v. Reyes*, G.R. Nos. 159694 & 163581, January 27, 2006.

HENRY S. ANGELES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ON LEAVE
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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

LANEE S. CUI-DAVID
Associate Justice

ON LEAVE
CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice