REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS

QUEZON CITY

SECOND DIVISION

BASF PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8128

Members:

CASTAÑEDA, JR.,
CASANOVA,
MINDARO-GRULLA, *JJ.*

Promulgated:

NOV 2 2 2011

3:20 p.m.

X- X

DECISION

CASANOVA, *J.:*

The instant Petition for Review seeks the cancellation of the assessment notices issued by the Commissioner of Internal Revenue holding petitioner BASF Philippines, Inc. liable for deficiency Value-Added Tax (VAT) and Income Tax for taxable year 2002 in the aggregate amount of P100,319,246.85.

The facts of the case, as culled from the records, are as follows:

Petitioner is a corporation duly organized and existing under the laws of the Philippines, with principal office at the 11th Floor, Hanjinphil

Corporation Building, 1128 University Parkway, North Bonifacio, Global City, Taguig, Metro Manila[1].

Petitioner is a wholly owned subsidiary of BASF SE, the world's leading chemical company, based in Germany[2].

Respondent is the duly appointed Commissioner of Internal Revenue who holds office at the Bureau of Internal Revenue, National Office, Diliman, Quezon City.[3]

A Preliminary Assessment Notice (PAN) dated October 25, 2005[4] was issued by respondent, through the BIR Assessment Division Revenue Region No. 9 – San Pablo City stating that, in connection with Letter of Notice No. 056-1M-02-00-00783, petitioner is liable for deficiency income tax and VAT for taxable year 2002 in the amounts of P75,410,788.26 and P24,081,747.57, respectively:[5]

I. VALUE ADDED TAX

Discrepancy on Purchases		P386,965,246.70
Divide by Cost Ratio		76.68%
Additional sales based on discrepancy		504,649,513.17
Multiply by Gross Profit Rate		23.32%
Additional gross profit		117,684,266.47
Multiply by tax rate		10%
VAT deficiency		11,768,426.65
Add: 50% Surcharge	P5,884,213.32	
Interest	6,429,107.60	12,313,320.92
Total Amount Due		**P24,081,747.57**

[1] Par. 1, Summary of Admitted Facts, Amended Joint Stipulation of Facts (AJSF), Docket, Vol. II, p. 606
[2] Par. 3, Petition for Review, Docket, Vol. I, p. 4
[3] Par. 2, Ibid
[4] Exhibit "A"
[5] Par. 1, Stipulation of Facts, ASJF, Docket, Vol. II, p. 609

II. INCOME TAX

Taxable income per annual income tax return		P -
Add: Additional gross profit		117,684,266.47
Adjusted Taxable Income		117,684,266.47
Tax due		37,658,965.27
Add: 50% surcharge	P18,829,482.64	
Interest	18,922,340.36	37,751,822.99
Total Amount Due		**P75,410,788.26**

The PAN states that the computerized matching conducted by the BIR disclosed that petitioner has undeclared importation based on a comparison between the records of the Bureau of Customs and the petitioner's VAT Returns.[6]

The Computation Sheet (BIR Form 2112-C)[7] attached to the PAN showed a VAT Amount Payable of only P1,171,525.82 and an Income Tax Amount Payable of only P207,920.55, to wit:[8]

VALUE ADDED TAX

A. BOC data is higher than the declaration per VAT return:

Discrepancy on Importation	P 21,038,415.37
Divide by Cost Ratio	766,824.00
Additional Sales based on discrepancy	P 27,435,781.05
Multiply by Gross Profit Rate	233,176.00
Additional Taxable Sales (Figure 1)	P 6,397,365.68
Multiply by tax rate	10
Deficiency Tax	P 639,736.57

B. BOC data is lower than the declaration per VAT return:

[6] Par. 6, Petition, Docket, Vol. I, p. 6
[7] Exhibit "A-3"
[8] Par. 3, Summary of Admitted Facts, Docket, Vol. II, pp. 606-607

Discrepancy on Importation		P
Multiply by tax rate		%
Deficiency tax		
Deficiency Tax (A or B)		P 639,736.57
Add: Surcharge, if applicable	P159,934.14	
Interest	351,855.11	
Compromise Penalty, if applicable	20,000.00	531,789.25
Amount Payable		P1,171,525.82

INCOME TAX

A. BOC data is higher than the declaration per VAT return:

Gross Income per Return	P 363,060,986.00
Add: Figure 1 in Schedule 1A	6,397,365.68
Adjusted gross income	P 369,458,351.68
Multiply by normal income tax rate/MCIT	2
Income tax rate/MCIT due	P 7,389,167.03
Less: Income tax or MCIT per return	7,261,220.00
Deficiency Income Tax/MCIT	127,947.03

B. BOC data is lower than the declaration per VAT return:

Discrepancy on Importation (Overclaimed deductions)		P
Multiply by normal income tax rate		%
Deficiency income tax		P
Deficiency Income Tax/MCIT (A or B)		P 127,947.03
Add: Surcharge, if applicable	-	
Interest	63,973.52	
Compromise Penalty, if applicable	16,000.00	79,973.52
Amount Payable		P 207,920.55

According to petitioner, the PAN was received by Ms. Villa Tolentino, an accounting staff who is not authorized to sign tax returns nor represent petitioner before the BIR. Since the PAN was not addressed to a particular officer, Ms. Tolentino did not refer the PAN to her superiors.[9]

A Formal Letter of Demand dated November 24, 2005 with attached Assessment Notices[10] for income tax and VAT in the amounts of P76,040,982.68 and P24,278,264.17, respectively, was issued by the BIR Assessment Division Revenue Region No. 9 through Acting Regional Director Merlinda L. Orodoyo.[11]

Ms. Tolentino wrote a letter to Ms. Orodoyo dated December 13, 2005[12], which she filed with Revenue Region No. 9 on 22 December 2005, requesting that it be provided with the "list of undeclared importations you mentioned in your letter for us to verfy (*sic)* them on our end."[13]

In a letter of Corazon C. Pangcog, OIC Regional Director dated February 15, 2006[14] sent to the attention of Ms. Tolentino, the BIR provided the requested list of importations called the Details of Importation with Return Information Matching (DIRIM).[15]

In a letter dated April 21, 2006[16], Ms. Tolentino replied to Ms. Corazon Pangcog, requesting for "revalidation of the deficiencies in payment being raised to our concern" and asserting that "our company outrightly settles

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[9] Par. 7, Petition, Docket, Vol. I, p. 6
[10] Exhibit "B"
[11] Par. 4, Summary of Admitted Facts, Docket, AJSF, Vol. II, pp. 607-608
[12] Exhibit "C"
[13] Par. 6, Stipulation of Facts, AJSF, Docket, Vol. II, p. 610
[14] Exhibit "D"
[15] Par. 6, Stipulation of Facts, AJSF, Docket, Vol. II, p. 608
[16] Exhibit "E"

import taxes and duties." Ms. Tolentino attached a Certification from the Philippine Bonded Warehouse Services, Inc., Memorandum from the Port of Manila dated August 27, 2001, 3rd Indorsement dated August 24, 2001 from the Port of Manila with its attached Annexes.[17]

On July 3, 2006 petitioner received from respondent a letter dated June 26, 2006 addressed to Ms. Villa Tolentino and signed by Oscar A. Aguilar, OIC Chief, Legal Division, Revenue Region No. 9 stating that petitioner should settle the amount of P100,319,246.85.[18]

On June 17, 2010, Ms. Antoinette Molleno received two subpoenas dated April 30, 2010 and May 21, 2010[19] from the Department of Justice (DOJ) in connection with a preliminary investigation based on a complaint dated March 18, 2010[20] filed by the respondent for violation of Section 255 of the National Internal Revenue Code on account of the alleged failure to pay deficiency income tax and VAT for taxable year 2002. The complaint was based on an Affidavit of Oscar Aguilar alleging that tax assessments are final and demandable because no timely protest was filed by petitioner against the deficiency tax assessments arising from the Letter Notice.[21]

Petitioner considered the criminal complaint filed against Ms. Antoinette Molleno dated March 18, 2010, which was signed by Commissioner

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[17] Par. 7, Stipulation of Facts, AJSF, Docket, Vol. II, p. 608
[18] Par. 7, Stipulation of Facts, AJSF, Docket, Vol. II, p. 610
[19] Exhibit "L"
[20] Exhibit "L-1"
[21] Par. 8, Summary of Admitted Facts, AJSF, Docket, Vol. II, p. 608

of Internal Revenue Joel Tan-Torres, as the constructive denial of petitioner's protest dated July 18, 2006 and August 25, 2010.[22]

According to petitioner in an Indorsement dated June 3, 2010, respondent is preparing, and is about to issue a Warrant of Distraint and Levy/Garnishment against it for the amount of P100,319,246.85.[23]

Hence, this instant Petition for Review with Urgent Motion for Suspension of the Collection of Tax filed on July 6, 2010.

In her Answer[24] filed on September 17, 2010, respondent averred the following Special and Affirmative Defenses:

> "4. Respondent hereby repleads the foregoing admissions and denials as part of her special and affirmative defenses.
>
> 5. Petitioner's deficiency Value-Added Tax (VAT) and Income Tax (IT) assessments were determined through computerized matching of records pursuant to existing laws, rules and regulations.
>
> 5.1 The purpose and method by which the deficiency VAT and IT of petitioner has been determined in accordance with Section 6(A) of the National Internal Revenue Code of 1997 (NIRC of 1997). Quoted hereunder is the said provision of law:
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>> *Examination of Returns and Determination of Tax Due.* – After a retunr *(sic)* has been filed as required under the provisions of this Code, the Commissioner or hiu *(sic)* duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: *Provided, however*, That failure to file a return shall not prevent the

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[22] Par. 25, Petition, Docket, Vol. I, p. 11
[23] Par. 26, Petition, Docket, Vol. I, p. 11
[24] Docket, Vol. I, pp. 196-206

> Commissioner from authorizing the examination of any taxpayer.
>
> The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or form *(sic)* his duly authorized representative.
>
> Any return, statement or declaration filed in any office authorized to receive the same shall not be withdrawn: *Provided*, That within three (3) years from the date of such filing, the same may be modified, changed or amended: *Provided, further*, That no notice for audit or investigation of such return, statement or declaration has in the meantime been *(sic)* actually served upon the taxpayer.

5.2 The matching of petitioner's records with the Bureau of Internal Revenue (BIR) and Bureau of Customs (BOC) database was done pursuant to Revenue Memorandum Order (RMO) No. 42-2003[25] in relation to RMO No. 30-2003[26] and Revenue Regulations (RR) No. 12-2002[27]. Under Letter Notice (LN) No. 056-IM-02-00-00783, a computerized matching conducted by respondent's officers on importation data furnished by the BOC against imported purchases declared in petitioner's VAT returns disclosed the following discrepancy for taxable year 2002:

Importation per BOC Data	37,383,261.00
Importation per VAT returns filed	16,344,845.63
Discrepancy in imported purchases	21,038,415.37

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[25] Prescribing Additional Guidelines Governing the Rules on Assessment of National Internal Revenue Taxes Covered by a Letter Notice (LN) issued under the RELIEF System as Defined in Revenue Memorandum Order (RMO) No. 30-2003 and other data matching processes.

[26] Guidelines and Procedures in the Extraction, Analysis, Disclosure/Dissemination, Utilization and Monitoring of RELIEF Data for Audit and Enforcement Purposes.

[27] Regulations Providing for the Policies, Procedures and Guidelines in the Implementation of the Voluntary Assessment and Abatement Program (VAAP) for Taxpayers with Underdeclared Sales/Receipts/Income for the Calendar and Fiscal Years 2000, and 2001, and the First and Second Quarter ending June 30, 2002, Pursuant to the RELIEF Program of the Bureau of Internal Revenue and the Consequences for Non-Availment thereof.

Percentage (%) of Discrepancy	61.04[28]

5.3 Based on the Formal Letter of Demand (FLOD) received by petitioner on 24 November 2005, verification by respondent's officer disclosed that per computerized marching *(sic)*, petitioner has undeclared importation for taxable year 2002. The discrepancy was discovered through comparison per BOC records against petitioner's importation per tax return. The Details of Importation with Return Information Matching (DIRIM) from BOC indicates that petitioner has a total importation of P550,413,703.00 against P163,448,456.30 as reflected in their returns. Hence, the discrepancy of P386,965,246.70.

6. Petitioner was afforded due process and ample opportunity to contest the findings of respondent's officers.

6.1 In LN No. 056-IM-02-00-00783 dated 18 August 2004, respondent invited petitioner to a conference to validate the findings of her officers. The invitation embodied in the LN serves as a Notice of Informal Conference akin to that of the process detailed in RR No. 12-99[29] for assessment pursuant to a Letter of Authority.[30]

6.2 On 08 November 2004, petitioner received a letter dated 06 October 2006 from respondent with subject "Letter Notice No. 056-IM-02-00-00783". The letter indicates in part:

> To date, yo *(sic)* have not taken any positive action to refute the validity of our finding and/or present any documentary evidence to reconcile the variances so indicated therein. We made it clear to you that your failure to

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[28] LN No. 056-IM-02-00-00783 dated August 18, 2004, Page 31 of the BIR Records.

[29] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

[30] Paragraph 5, III. Guidelines of RMO No. 42-03: The LN shall serve as a discrepancy notice to taxpayer similar to a Notice for Informal Conference to the concerned taxpayer, thus, the procedures defined in RR 12-99 should likewise be observed.

respond within fifteen (15) days from receipt thereof will consider you in default and, as a matter of course, the Bureau shall conduct an appropriate review and issuance of Preliminary Assessment Notices (PAN) and Final Assessment Notice (FAN), as the case may be.

Please consider this letter as reminder and final notice to you that there has been a previous finding upon which we will base our forthcoming review/assessment. Henceforth, any further action on your part is deemed as an admission to the validity and accuracy of the discrepancy indicated in the subject LN.

6.3 Petitioner received a Preliminary Assessment Notice (PAN) dated 25 October 2005 as to deficiency VAT and IT for taxable year 2002 broken down as follows:

I. VALUE ADDED TAX

Discrepancy on Purchases		**P**386,965,346.70
Divide by Cost Ratio		76.68%
Additional sales based on discrepancy		504,649,266.47
Multiply by Gross Profit Rate		23.32%
Additional gross profit		117,684,266.47
Multiply by tax rate		10%
VAT deficiency		11,768,426.65
Add: 50% Surcharge	P5,884,213.32	
Interest	6,429,107.60	12,313,320.92
Total Amount Due		**P24,081,747.57**

II. INCOME TAX

Taxable income per annual income tax return	**P** -
Add: Additional gross	117,684,266.47

profit		
Adjusted Taxable Income		117,684,266.47
Tax due		37,658,965.27
Add: 50% surcharge	P18,829,482.64	
Interest	18,922,340.36	37,751,822.99
Total Amount Due		**P75,410,788.26**

6.4 Petitioner received an *(sic)* FLOD with attached assessment notices dated 24 November 2005 which petitioner received on even date as to deficiency VAT and IT for taxable year 2002 broken down as follows:

I. VALUE ADDED TAX

Discrepancy on Purchases		P386,965,346.70
Divide by Cost Ratio		76.68%
Additional sales based on discrepancy		504,649,513.17
Multiply by Gross Profit Rate		23.32%
Additional gross profit		117,684,266.47
Multiply by tax rate		10%
VAT deficiency		11,768,426.65
Add: 50% Surcharge	P5,884,213.32	
Interest	6,625,624.20	12,509,837.52
Total Amount Due		**P24,278,264.17**

III. INCOME TAX

Taxable income per annual income tax return		P -
Add: Additional gross profit		117,684,266.47
Adjusted Taxable Income		117,684,266.47
Tax due		37,658,965.27
Add: 50% surcharge	P18,829,482.64	
Interest	19,552,534.77	38,382,017.41
Total Amount Due		**P76,040,982.68**

6.5 At that point, petitioner had the opportunity to contest the findings of respondent's officers by filing a protest against the FLOD within thirty (30) days from receipt thereof or until 24 December 2005[31]. Petitioner did not file a protest within the reglementary period. Instead, petitioner requested for a copy of the list of undeclared importations as stated in the DIRIM. Even so, respondent's officers provided petitioner with a copy of the DIRIM. Due to petitioner's own actions, it had failed to file a protest within the reglementary period provided by law.

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[31] Section 228 of the NIRC of 1997. 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:

(a) When the finding for any deficiency tax is the result of mathematical error in the computation of tax as appearing on the return; or
(b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
(c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
(d) When the excise tax due on excisable articles has not been paid; or
(e) When the article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

The taxpayer 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.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted: otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

6.6 The assessment being final, executory and demandable, petitioner's case was referred to the Collection Division of Revenue Region No. 9, San Pablo City, Laguna on 11 May 2006. On 31 May 2006, respondent issued a Final Notice Before Seizure (FNBS) against petitioner.

7. The assessment borne of LN No. 056-IM-02-00-00783 had become final, executory and demandable.

7.1 The law under Section 228 of the NIRC of 1997 is unequivocal when it stated that an assessment is final and executory if the taxpayer failed to file a protest thereon within thirty (30) days from receipt thereof.[32]

7.2 In the case of *Protector's Services vs. Court of Appeals, et al.*[33] the Supreme Court observed the effect of failure to file an administrative protest within the reglementary period:

> We note that indeed on December 10, 1987, petitioner received the BIR's assessment notices. On January 12, 1988, petitioner protested the 1983 and 1984 assessments and requested for reinvestigation. From December 10, 1987 to January 12, 1988, thirty three days had lapsed. **Thereafter petitioner may no longer dispute the correctness of the assessments.** (emphasis supplied)

7.3 In this case, petitioner received the FLOD with attached assessment notices on 24 November 2005. Applying the rules of Section 228 of the NIRC of 1997, a protest should have been filed by petitioner not later than 24 December 2005. The days went by nary a peep from petitioner.

7.4 As sound practice of tax administration, respondent's officers sent a Final Demand Letter dated 26 June 2006 to petitioner as a reminder that it should settle its tax liabilities in the aggregate amount of

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[32] Asian Auctioneers, Inc. vs. Commissioner of Internal Revenue, CTA EB No. 276, August 3, 2007.
[33] G.R. No. 118176, April 12, 2000.

P100,319246.85 *(sic)* not later than 12 July 2006. As though disturbed from lethargy, petitioner filed a position paper contesting the assessment. Alas, the time for misgivings had come to pass. Plain as day, the assessment is final, executory and demandable.

7.5 Petitioner points out that the letter it sent to respondent on 22 December 2005 serves as a protest on the assessment and is well-within the 30-day period for filing a protest. This argument holds no water. Quoted hereunder are the contents of the said letter:

> This is in connection with your Formal Letter of Demand which we recevied *(sic)* on 24 November 2005, informing us that we have deficiency Income tax and Value-added tax for the year 2002 amounting to Php76,040,982.68 and Php24,278,264.17 respectively inclusive of surcharge, interest and penalty.
>
> Kindly provide us with the list of undeclared importations you mentioned in your letter for us to verfy *(sic)* them on our end.

A cursory reading of the above-quoted letter readily reveals that by no stretch of the imagination can it be inferred that petitioner is protesting the assessment.

7.6 A protest on assessment should contest the findings of respondent's officers. Furthermore, a valid protest should contain the following:

(a) Name of the taxpayer and address for the immediate past three (3) taxable year.
(b) Nature of request whether reinvestigation or reconsideration specifying newly discovered evidence he intends to present if it is a request for investigation.
(c) The taxable periods covered.
(d) Assessment number.

(e) Date of receipt of assessment notice or letter of demand.

(f) Itemized statement of the findings to which the taxpayer agrees as a basis for computing the tax due, which amount should be paid immediately upon the filing of the protest. For this purpose, the protest shall not be deemed validly filed unless payment of the agreed portion of the tax is paid first.

(g) The itemized schedule of the adjustments with which the taxpayer does not agree.

(h) A statement of facts and/or law in support of the protest.[34]

7.7 Suffice it to say, the said letter doesn't even qualify as a *pro forma* protest.

8. All told, petitioner is liable for deficiency VAT and IT in the respective amounts of P24,278,264.17 and P75,410,788.26 for taxable year 2002."

On August 3, 2010, this Court issued a Resolution[35] restraining respondent from enforcing any Warrant of Distraint and Garnishment and/or Levy against petitioner and immediately suspending the collection of disputed VAT and income tax assessments.

On January 21, 2011, the parties submitted their Amended Joint Stipulation of Facts and Issues, which was approved in a Resolution[36] dated January 25, 2011.

During trial, both parties presented their evidence, testimonial and documentary, to prove their respective case.

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[34] Section 6, Revenue Regulations No. 12-85: Procedure covering administrative protests on assessments of the Bureau of Internal Revenue

[35] Docket,Vol. I, pp. 157-158

[36] Docket, Vol. II, p. 620

On June 28, 2011[37], this Court ordered the parties to file their respective Memorandum within thirty (30) days from receipt of the said Resolution.

In a Resolution dated August 8, 2011, the case was submitted for decision, taking into consideration respondent's Memorandum filed on July 14, 2011[38] and petitioner's Memorandum filed on August 1, 2011[39].

The following are the stipulated issues[40] for our resolution:

1. Whether or not respondent observed due process in the issuance of the deficiency income tax and VAT assessments.

2. Whether or not the deficiency income tax and VAT assessments are valid.

3. Assuming that the deficiency income tax and VAT assessments are valid, whether or not the assessments have factual basis.

4. Whether or not petitioner filed a timely protest.

5. Whether or not deficiency VAT assessment had prescribed.

Petitioner asserts that the PAN and the FAN are void because they do not state the facts on which the assessments were based in violation of Section 228 of the National Internal Revenue Code (NIRC) of 1997.

To illustrate, petitioner argues that the PAN and FAN simply stated that "per computerized matching [that] was conducted by the Bureau, [petitioner has] an undeclared importation for the year, which is a result of comparing

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[37] Docket, Vol. II, pp. 1043-1044
[38] Docket, Vol. II, pp. 1045-1057
[39] Docket, Vol. II, pp. 1059-1099
[40] Amended Joint Stipulation of Facts and Issues, Docket, Vol. II, pp. 608-609

[petitioner's] importation per Bureau of Customs (BOC) records as against [petitioner's] importation per tax return." However, the list of importations from the BOC used by the BIR for its comparison was not provided by the BIR. Moreover, petitioner points out that the figures appearing in the Computation Sheet attached to the PAN have no bearing on the figures appearing in the deficiency income tax and VAT assessment on the face of the PAN. Further, petitioner stressed that the amounts assessed in the PAN and FAN are totally and inexplicably different from the amount assessed in the Computation Sheet.

Based on the foregoing, petitioner submits that the PAN and the FAN are void *ab initio* and without legal effect. Consequently, petitioner contends that it cannot give rise to an enforceable tax liability.

This Court gives credence to petitioner's arguments.

Section 228 of the NIRC of 1997 specifically provides that:

> "SEC. 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:
>
> xxx xxx xxx
>
> **The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void**.
>
> xxx xxx xxx" (boldfacing supplied).

To implement this provision, the BIR issued Revenue Regulations (RR) No. 12-99, Section 3 of which states:

> "Section 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. –
>
> xxx xxx xxx
>
> 3.1.2. Preliminary Assessment Notice (PAN). – If after review and evaluation by the Assessment Division or 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, at least by registered mail, a *Preliminary Assessment Notice* (PAN) for the proposed assessment, **showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based** xxx xxx.
>
> xxx xxx xxx
>
> 3.1.4 Formal Letter of Demand and Assessment Notice. – The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. **The letter of demand 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 formal letter of demand and assessment notice shall be void** xxx xxx xxx."
> (boldfacing supplied)

It is clear from the foregoing that a taxpayer must be informed in writing of the legal and factual bases of the tax assessment made against him. The use of the word "shall" in these legal provisions indicates the mandatory nature of the requirements laid down therein[41].

[41] Commissioner of Internal Revenue vs. Enron Subic Power Corporation, G.R. No. 166387, January 19, 2009.

A review of the records of the case would reveal that respondent did not inform petitioner in writing of the law and facts on which the assessments of the deficiency VAT and Income Tax were made.

In the Preliminary Assessment Notice as well as the Formal Letter of Demand with Details of Discrepancies and Assessment Notice issued against petitioner, respondent merely stated that "per computerized matching conducted by the Bureau, you have an undeclared importation for the year, which is a result of comparing your importation per Bureau of Customs (BOC) records as against your importation per tax return". Further, there is an alarming discrepancy in the amounts specified in the PAN vis-à-vis the amounts appearing in the computation sheet attached to the PAN. For that alone, it would already be difficult for petitioner to determine how the deficiency assessments for VAT and Income Tax were arrived at by respondent.

Moreover, as correctly pointed out by petitioner, respondent failed to provide petitioner with the list of the alleged undeclared importations which has given rise to the deficiency assessments issued against it. In fact, it is undisputed that the list of importations called as Details of Importation with Return Information Matching (DIRIM) had only become available to petitioner after its former employee, Ms. Tolentino, wrote and requested for a copy from Acting Regional Director Merlinda L. Orodoyo, after having received the PAN.

Based on the foregoing, this Court is convinced that the assessment notices issued against petitioner are not valid. The details stated therein are not sufficient to afford petitioner the opportunity to intelligently answer the assessment as well as prepare documentary evidence for its protest. Said notices failed to state the legal and factual bases of the assessment for deficiency VAT and income tax arising from the alleged undeclared importation of petitioner.

As held by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Enron Subic Power Corporation*[42], to wit:

> "**The law requires that the legal and factual bases of the assessment be stated in the formal letter of demand and assessment notice. Thus, such cannot be presumed. Otherwise, the express provisions of Article 228 of the NIRC and RR No. 12-99 would be rendered nugatory**. The alleged 'factual bases' in the advice, preliminary letter and 'audit working papers' did not suffice. There was no going around the mandate of the law that the legal and factual bases of the assessment be stated in writing in the formal letter of demand accompanying the assessment notice." (boldfacing supplied)

Finally, a void assessment cannot give rise to an obligation to pay deficiency taxes, and it divests the taxing authority of the right to collect them.[43]

In view of the foregoing, the resolution of the other issues is no longer necessary.

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[42] *Supra*

[43] FMF Development Corporation vs. Commissioner of Internal Revenue, CA-GR SP No. 73973, February 23, 2004

WHEREFORE, the *Petition for Review* is hereby **GRANTED**. Accordingly, the deficiency Value-Added Tax (VAT) and Income Tax assessments issued against petitioner for taxable year 2002 in the aggregate amount of P100,319,246.85 are cancelled and considered withdrawn for lack of legal and factual basis. Respondent is permanently enjoined from collecting said assessments.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

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

ATTESTATION

I attest 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's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

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's Division.

ERNESTO D. ACOSTA
Presiding Justice