REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

SOFGEN HOLDINGS LIMITED - PHILIPPINE BRANCH, *Petitioner,*	**CTA Case No. 9691**
-versus-	Members:
COMMISSIONER OF INTERNAL REVENUE, AND GLEN A. GERALDINO, REGIONAL DIRECTOR OF REVENUE REGION NO. 8, MAKATI CITY, *Respondents.*	**DEL ROSARIO**, *PJ, Chairperson,* **MANAHAN**, *and* **REYES-FAJARDO**, *JJ.* Promulgated: SEP 07 2022 1:35 pm

x- -x

RESOLUTION

MANAHAN, *J.:*

This resolves the *Motion for Reconsideration*[1] posted on May 11, 2022 by respondent Commissioner of Internal Revenue (CIR), which was received by the Court on May 24, 2022. Upon notice,[2] petitioner Sofgen Holdings Limited-Philippine Branch filed its *Comment/Opposition (Re: Motion for Reconsideration dated May 11, 2022)*[3] on June 27, 2022.

Respondent assails the Decision[4] dated April 21, 2022, which ruled, as follows:

> **WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**. Accordingly, LOA No. eLA201200033171 dated October 26, 2016, the *48-Hour Notice* dated June 20, 2017, the VCN dated July 20, 2017, and the *Closure Order* dated August 30, 2017, all issued against petitioner, are **CANCELLED** and **SET ASIDE**.

---
[1] Docket, Vol. II, pp. 1052-1068.
[2] Docket, Resolution dated June 1, 2022, p. 1071.
[3] Docket, pp. 1072-1087.
[4] Docket, pp. 1023-1051.

Furthermore, respondents are **ORDERED TO REFUND** the total amount of P19,632,677.12 in favor of petitioner.

SO ORDERED.[5]

In the *Motion*, respondent argues that the audit of a taxpayer for more than one taxable period is allowed, provided that the other periods or years shall be specifically indicated in the Letter of Authority (LOA). In the instant case, the LOA specifically covers the period from "April 01, 2015 to March 31, 2016". Respondent also states that petitioner actively participated in the audit investigation and thus estoppped from questioning the validity of the LOA.

Respondent also states that the issuance of the *48-Hour Notice* and the 5-day Value-Added Tax (VAT) Compliance Notice (VCN) is anchored on the CIR's power to suspend the business operation of a taxpayer as provided under Section 115 of the 1997 National Internal Revenue Code (NIRC), as amended. As such, the issuance of a preliminary assessment notice (PAN) and thereafter a formal letter of demand with assessment notices (FLD/FAN) is not required.

Furthermore, respondent argues that petitioner must prove that the alleged transactions are VAT zero-rated in order to be entitled to refund.

On the other hand, petitioner states that the arguments raised by the CIR have already been ruled upon by the Court and fails to provide any basis that the assailed Decision was not justified by sufficient evidence or is contrary to law.

Petitioner also states that the assailed Decision correctly ruled that the LOA is null and void for covering fractions of two taxable years; that the CTA may rule upon related issues necessary to achieve an orderly disposition of the case; that the CTA may resolve the issue on the validity of the LOA despite the fact that petitioner actively participated in the audit investigation; and, that there was a violation of petitioner's right to due process in the issuance of the VAT assessment.

---

[5] Docket, p. 1050. *[initials]*

We deny the motion.

The Court finds no sufficient or compelling ground to reverse or modify the conclusions in the assailed Decision.

To recall, LOA No. eLA201200033171 was issued on October 26, 2016 authorizing the revenue officers (ROs) named therein to examine the books of accounts and other accounting records of petitioner for the period April 1, 2015 to March 31, 2016.[6]

On July 4, 2017, petitioner received the *48-Hour Notice*, which stated, among others, that petitioner was being assessed for deficiency value-added tax (VAT) amounting to Php47,754,294.19, inclusive of interest.[7]

A *Five (5)-Day VAT Compliance Notice (VCN)* was received by petitioner on July 24, 2017, which shows the computation of deficiency VAT relating to alleged intercompany revenues not subjected to VAT for failure to issue VAT official receipts or invoices, in the amount of Php19,632,677.12.[8]

On August 30, 2017, a *Closure Order* was issued against petitioner.[9] On the same date, petitioner paid under protest the VAT assessment of Php19,632,677.12 to prevent the *Closure Order.*[10]

On September 24, 2017, the BIR served to petitioner LOA No. SN: eLA2015000551606 dated September 26, 2017,[11] authorizing the examination of petitioner's books of accounts and other accounting records for the period January 1, 2015 to December 31, 2015.

We reiterate that LOA No. eLA201200033171 issued for the examination of petitioner's books of accounts and other accounting records for the period from **April 1, 2015 to March 31, 2016**, is void for being contrary to the BIR's policy of issuing one LOA for each taxable year or period. In this

[6] Docket, Vol. II, Decision, p. 1024.
[7] Docket, Vol. II, Decision, pp. 1025-1026.
[8] Docket, Vol. II, Decision, p. 1026.
[9] Docket, Vol. II, Decision, p. 1027.
[10] Docket, Vol. II, Decision, p. 1028.
[11] Docket, Vol. II, Decision, p. 1028.

case, LOA No. eLA201200033171 covers fractions of two taxable years, since petitioner follows the calendar year.

Even assuming *arguendo*, that LOA No. eLA201200033171 is valid, RO Romel Isturis exceeded his authority when he initially requested petitioner to present its records for the period from **January 1, 2015 to December 31, 2015**, when the LOA authorizes RO Isturis to examine petitioner for the period from **April 1, 2015 to March 31, 2016**. The subsequent issuance of LOA No. SN: eLA2015000551606 dated September 26, 2017, covering the period January 1, 2015 to December 31, 2015, does not correct RO Isturis' previous act in excess of authority granted under the first LOA.

We also reiterate that it was improper to assess petitioner for deficiency VAT pursuant to findings made under the 48-Hour Notice, the VCN, and the *Closure Order*, all of which did not comply with the due process requirements for an assessment under Section 228 of the 1997 NIRC, as amended.

It is true that respondent CIR has the power to suspend the business operations, and to temporarily close the business establishment, of a taxpayer pursuant to Section 115 of the 1997 NIRC, as amended. However, Section 115 also provides for the following specific grounds for the exercise of such power, as follows:

> SEC. 115. *Power of the Commissioner to Suspend the Business Operations of a Taxpayer.* – The Commissioner or his authorized representative is hereby empowered to suspend the business operations and temporarily close the business establishment of any person for any of the following violations:
>
> (a) *In the case of a VAT-registered Person* –
>
> (1) Failure to issue receipts or invoices;
>
> (2) Failure to file a value-added tax return as required under Section 114; or
>
> (3) Understatement of taxable sales or receipts by thirty percent (30%) or more of his correct taxable sales or receipts for the taxable quarter.

On the other hand, the VCN stated the following grounds for its basis:

> (1) To issue sales invoices or receipts in petitioner's intercompany sales transactions, in violation of Sections 113 and 237 of the NIRC of 1997, as amended;
>
> (2) To reflect petitioner's correct taxable sales/receipts for taxable year 2015; and
>
> (3) To pay the correct VAT deficiency, including increments.

Thus, as we have previously found, only the first ground of the VCN conforms with Section 115 of the 1997 NIRC, as amended. We have also found that petitioner had already complied with the said requirement by issuing the pertinent official receipts, even before the issuance of the subject *Closure Order.*[12] Correspondingly, the *Closure Order* dated August 30, 2017 must also be struck down.

As to the assessment for deficiency VAT which was included as a ground for the VCN and *Closure Order*, sans the issuance of a PAN or FAN prior to the demand for payment, we reiterate the following discussion:

> To be sure, the due process requirement before the issuance of a *Closure Order* against a taxpayer, pursuant to Section 115 of the NIRC of 1997 and implemented by RMO No. 3-2009, is different from the due process requirement as mandated under Section 228 of the same law, and Section 3 of RR No. 12-99, as amended by RR No. 18-2013. In the former, the apparent objective is before respondent CIR may suspend the business operations and temporarily close the business establishment of any person, the latter must be given an opportunity to be heard on whether there are valid grounds for such suspension and temporary closure. In the latter, the clear objective is before the assessment is enforced, and the subsequent collection is made by the BIR, the taxpayer is given every chance to contest the said assessment, in accordance with the said Section 228 of the NIRC, as amended, and Section 3 of RR No. 12-99, as amended.[13]

---

[12] Refer to Exhibits "P-37" to "P-60".

[13] Docket, Vol. II, Decision dated April 21, 2022, p. 1049.

Given the foregoing, petitioner's payment under protest, was a forced payment in order to prevent the implementation of the *Closure Order*. There was no compliance with the due process under Section 228 and Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013, prior to enforcement and collection of the said deficiency VAT assessment. As such, the VAT assessment is void for violation of petitioner's right to due process, and petitioner is entitled to the refund of the payment made under protest.

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

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(On Leave)
MARIAN IVY F. REYES-FAJARDO
Associate Justice