REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

GB GLOBAL EXPREZ, INC., *Petitioner,*	**CTA Case No. 10341**
	Members:
-versus-	**DEL ROSARIO,** *P.J., Chairperson,* **MANAHAN,** *and* **REYES-FAJARDO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAR 01 2022 1:39pm

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RESOLUTION

MANAHAN, *J.*:

This resolves the **Motion for Partial Reconsideration (Re: Decision promulgated on 31 August 2021)** filed by respondent Commissioner of Internal Revenue (CIR) on October 27, 2021, praying for the reversal and setting aside of the Court's *Decision* promulgated on 31 August 2021 (Assailed Decision) and to render a new decision dismissing the instant petition for lack of jurisdiction.

Respondent anchored his motion on the following grounds:

I. The Honorable Court erred in applying Revenue Memorandum Order (RMO) No. 3-2009 to the seizure, apprehension and detention of petitioner's illicitly manufactured products;

II. This Honorable Court erred in ruling that the Court of Tax Appeals has jurisdiction on the instant case;

III. Without submitting to this Honorable Court's jurisdiction, respondent did not violate petitioner's right to due process and privacy; and

IV. Again, without submitting to this Honorable Court's jurisdiction, this Honorable Court erred in ordering respondent the return of petitioner's seized and confiscated unregistered articles.

Petitioner GB Global Exprez, Inc. (GB Global) in its **Opposition [Re: Respondent CIR's Motion for Partial Reconsideration dated 27 October 2021]** filed on November 8, 2021, argues that the applicability of RMO No. 3-2009 in the instant case is indubitable, hence, respondent's non-compliance therewith renders his actions void *ab initio*.

Petitioner counters that respondent's arguments that this Court has no jurisdiction in the instant case should all be rejected for being baseless and misplaced and finally, petitioner insists that respondent undoubtedly violated its constitutional rights to due process and against unreasonable searches and seizure, and that this Court correctly ordered the return of petitioner's illegally seized cigarettes.

Before ruling on the merits of this motion, this Court shall determine first whether the instant motion was filed on time. Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides that:

> "SECTION 1. *Who may and when to file motion.*- **Any aggrieved party may seek a reconsideration** or new trial **of any decision**, resolution, or order **of the Court**. He shall file a motion for reconsideration or new trial **within fifteen days from the date he received notice of the decision**, resolution or order of the Court in question." (*Emphasis supplied*)

As borne by the records, respondent received the Assailed Decision on September 8, 2021.[1] In accordance with the abovementioned provision of the RRCTA, petitioner had 15 days from receipt of notice on September 8, 2021 or until September 23, 2021 within which to file the instant motion.

However, due to the surge of Covid-19 pandemic the filing of any pleadings before this Court was suspended starting August 2, 2021 under Supreme Court (SC) Administrative Circular (AC) No. 56-2021 dated July 30, 2021 and it resumed seven (7) days after the physical opening of the

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[1] Docket, *Manifestation and Compliance (Re: Decision promulgated on 31 August 2021)*, unpaginated. *om*

courts. The Court physically opened on October 20, 2021 as mandated under SC AC No. 83-2021 dated October 18, 2021. Thus, the instant motion dated October 27, 2021 was filed on time.

Now on the substantive aspect of respondent's instant motion, We deny the same.

Respondent's arguments raised in the instant motion are substantially the same, constituting a mere rehash of those found in his Memorandum which were already extensively and thoroughly discussed in the Assailed Decision. The Court is not compelled to embark on another extended discussion of the same issue again as held in *H. Harry L. Roque Jr., et al. v. Commission on Elections, et al.*[2]:

> "Petitioners' above contention, as well as the arguments, citations, and premises holding it together, is a rehash of their previous position articulated in their memorandum in support of their petition. They have been considered, squarely addressed, and found to be without merit in the Decision subject hereof. The Court is not inclined to embark on another extended discussion of the same issue again..."

However, not oblivious to the issues of vital importance which embody this case, this Court will re-emphasize the salient disquisitions of the Assailed Decision *vis-à-vis* the same arguments raised by respondent.

Petitioner argues that RMO No. 3-2009 is not applicable in the instant case as it covers only provisions of the 1997 National Internal Revenue Code (NIRC), as amended, pertaining to the following:

1. Invoicing and accountability (Section 113);
2. Return and Payment of Value-Added Tax (Section 114);
3. Registration Requirements (Section 236);
4. Issuance of Receipts and Commercial Invoices (Section 237); and
5. Printing of Receipts or Sales or Commercial Invoices.

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[2] G.R. No. 188456, February 10, 2010. *om*

The Assailed Decision had debunked respondent's notion that RMO No. 3-2009 covers only value-added tax (VAT) and invoice or receipt requirements, to wit:

> "Respondent argues that RMO No. 3-2009 is not applicable in this particular case considering that such order is for value-added tax (VAT) transaction while the issue herein is that of an excise tax.
>
> Among the objectives in Item No. II of RMO No. 3-2009 is the consolidation of the policies, guidelines and procedures to be observed in the conduct of surveillance operations and the enforcement of the administrative sanction of suspension and temporary closure of business as provided in the following related BIR issuances:

RMO No.	Subject
54-2000	Prescribes the guidelines and procedures for the conduct of surveillance on the business operations of any person, in order to establish a prima facie basis for the **assessment of internal revenue tax liabilities**.
57-2000	Prescribes the guidelines in the implementation of the administrative sanction of suspension and temporary closure of business.
20-2002	Amending Pertinent Provisions of Revenue Memorandum Order No. 57-2000 Relative to the Confrontational Requirements, Execution and Enforcement of Closure Orders as well as the Duration and the Lifting Thereof.
31-2002	Implementing Section 7 of Revenue Regulations No. 12-2002, as amended by Revenue Regulations No. 17-2002 and Revenue Regulations No. 18-2002, on the Institution of Closure Proceedings and the Filing of Criminal Action Against Taxpayers Who Have Not Responded to the Letter Notices Sent by BIR under the RELIEF System.
35-2007	Amending Certain Provisions of Revenue Memorandum Order No. 57-2000 as amended by Revenue Memorandum Order No. 20-2002 Relative to the Authorized BIR Official Designated to Approve Reports of the Review Board in Relation to the Conduct of Surveillance and Other Relevant Documents Pertaining Thereto.

(Emphasis ours)

> As shown above, **RMO No. 3-2009 covers all internal revenue taxes and not VAT transaction alone**. Even the BIR Strike Team relied on the said RMO No. 3-2009 as the basis of its enforcement of the assailed MO as admitted during the cross-examination of Mr. Burgos during the Hearing dated October 1, 2020..."

Respondent insists that what they conducted was a seizure of petitioner's alleged illicit cigarettes and machines. However, the factual findings of this Court showed that respondent did not only seize the cigarettes they suspected to be illicit and the machines manufacturing it, but they also locked down or closed the manufacturing facilities. Even the search and seizure of the alleged illicit products had been made *sans* the required Search Warrant.

As to respondent's insistence that this Court has no jurisdiction on the instant case and that they did not violate petitioner's right to due process and privacy, We reiterate the ruling of the Supreme Court in *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*[3], to wit:

> "... **The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules** is a denial of Metro Star's right to due process...
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> xxx xxx xxx
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> 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**. Thus, while "taxes are the lifeblood of the government," the power to tax has its limits, in spite of all its plenitude." (*Emphasis ours*)

Strongly intertwined with the first ground, respondent miserably failed to observe the directive of RMO No. 3-2009.

Finally, as to respondent's allegation that this Court erred in ordering him to return seized and confiscated

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[3] G.R. No. 185371, December 08, 2010.

unregistered articles, the factual findings in the Assailed Decision show that even if said seized articles were unregistered, the seizure was made without the required Search Warrant. Hence, it is unlawful.

As aptly opined by the Presiding Justice Roman G. Del Rosario in his Concurring Opinion, and we quote:

> Otherwise stated, the authority of the BIR to make arrests and seizures for violation of any penal law, rule or regulation it administers is not unbridled. The same remains subservient to the people's right against unreasonable searches and seizures as found in Section 2, Article III of the 1987 Constitution which provides:
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> **"ARTICLE III**
> **BILL OF RIGHTS**
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> xxx xxx xxx
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> **Section 2.** The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and **no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge** after examination under oath or affirmation of the complainant and the witnesses he may produce, and **particularly describing the place to be searched and the persons or things to be seized**." (Boldfacing supplied)
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> The Supremacy of the people's right against unreasonable searches and seizures cannot simply ignored. On this score, the disquisition in *People of the Philippines v. Gerry Sapla y Guerrero* is instructive, VIZ:
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> "As eloquently explained by the Court in *People v. Tudtud* (*Tudtud*), "the Bill of Rights is the bedrock of constitutional government. If people are stripped naked of their rights as human beings, democracy cannot survive and government becomes meaningless. This explains **why the Bill of Rights, contained as it is in Article III of the Constitution, occupies a position of primacy in the fundamental law way above the articles on governmental power.**'
>
> And in the Bill of Rights, the right against unreasonable searches and seizures is "at the top of the hierarchy of rights, next only to, if not on the same plane as, the right to life, liberty and property, x x x for the right to personal security which, along with the right to privacy, is the foundation of the right against unreasonable search and seizure.

xxx xxx xxx

> Hence, as a rule, **a search and seizure operation conducted by the authorities is reasonable only when a court issues a search warrant after it has determined the existence of probable cause through the personal examination under oath or affirmation of the complainant and the witnesses presented before the court, with the place to be searched and the persons or things to be seized particularly described.**
>
> **Because of the sacrosanct position occupied by the right against unreasonable searches and seizures in the hierarchy of rights, any deviation or exemption from the aforementioned rule is not favored and is *strictly construed against the government*.**" (Boldfacing supplied)

Section 3(2), Article III of the 1987 Philippine Constitution provides that any evidence obtained in violation of petitioner's right to unreasonable searches and seizures shall be inadmissible for any purpose in any proceeding. Hence, respondent cannot use such items as evidence against petitioner. It is only proper for the respondent to return the seized articles. However, such return will not prejudice respondent's right to demand petitioner's subsequent registration of said articles and pay the corresponding penalty due thereon, if any.

WHEREFORE, petitioner's *Motion for Partial Reconsideration (Re: Decision promulgated on 31 August 2021)* is hereby **DENIED** for lack of merit.

Respondent is **ORDERED to**: (i) **RETURN** the seized articles consisting of 1,413 Mastercases of A380 Red Cigarettes, 428 Mastercases of A380 Menthol Cigarettes, 633 Mastercases of A380 Blue Cigarettes, and 594 Mastercases of Manchester Yellow Cigarettes; and, (ii) **ISSUE** to petitioner the required Permit to Operate upon compliance with pertinent registration requirements and after payment of the proper regulatory and registration fees, in accordance with Revenue Regulations No. 3-2006 and other pertinent rules and regulations.

SO ORDERED.

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CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(no part)
MARIAN IVY F. REYES-FAJARDO
Associate Justice