CTA Form No. 8 (For DCC)

22-000599-0052

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM. CASE NOS. O-976 & O-977

PEOPLE OF THE PHILIPPINES ,
Plaintiff,

- versus -

EMILU`S SUPERMARKET SYSTEMS, INC. and **REGIDOR R. MATA,**
Accused.

NOTICE OF RESOLUTION

To:

PROSECUTOR GENERAL BENEDICTO A. MALCONTENTO
SR. ASST. STATE PROS. ZENAMAR J. L. MACHACON-CAPARROS
Department of Justice
Padre Faura Street Ermita, Manila 1000

ATTY. CATHERINE P. CANTOS
ATTY. DIANA MICHELLE B. CASINILLO
ATTY. MARK ANTHONY R. ROJO
Bureau of Internal Revenue
Revenue Region 9A-CaBaMiro
Legal Division, 3rd Floor, Liana's Junction Plaza
Brgy. Poblacion IV, City of Sto. Tomas, Batangas

REGIDOR R. MATA
1013 Samala Marquez St.
Binakayan, Kawit, Cavite

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DIRECTOR
National Bureau of Investigation
Taft Avenue, Ermita, Manila

PNP CHIEF
Thru: CIDG
Philippine National Police
National Headquarters
Camp General Rafael Tagle Crame
EDSA, Quezon City

CHIEF, WARRANT & SUBPOENA SECTION
Kawit Police Station
National Road, Poblacion, Kawit
4104 Cavite

GREETINGS:

You are hereby notified by these presents that on **May 29, 2024,** Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **May 29, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

EMILU'S SUPERMARKET SYSTEMS, INC. and **REGIDOR R. MATA**,
Accused.

CTA Crim. Case Nos. **O-976** and **O-977**

For: Violation of Section 255, in relation to Sections 253(d) & 256 of the NIRC of 1997, as amended

Members:

DEL ROSARIO, P.J., *Chairperson*,
BACORRO-VILLENA, *and*
CUI-DAVID, JJ.

Promulgated:
MAY 2 9 2024 8:15AM

x - x

RESOLUTION

For the Court's resolution is accused **EMILU'S SUPERMARKET SYSTEMS, INC.** and **REGIDOR R. MATA**'s (collectively, **accused**'s/**ESSI** and **Mata**'s) "Demurrer to Evidence"[1] (**Demurrer**), filed on 08 February 2024, with plaintiff People of the Philippines' (**plaintiff**'s) "Comment/Opposition [Re: Demurrer to Evidence dated February 8, 2024]"[2] (**Comment/Opposition**) filed *via* LBC on 01 March 2024[3] and accused's "Reply (Re: Respondent's Comment/Opposition dated 01 March 2024)"[4] (**Reply**) thereto filed on 14 March 2024.

Records show that on 05 December 2022, two (2) Informations were filed against accused both for violation of Section 255[5], in relation

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[1] Division Docket, Volume II, pp. 1045-1077.
[2] Id., pp. 1080-1093.
[3] Received by the Court on 04 March 2024.
[4] Division Docket, Volume II, pp. 1122-1135.
[5] **SEC. 255.** *Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* — ...

to Sections 253(d)[6] and 256[7], of the National Internal Revenue Code (**NIRC**) of 1997, as amended, the accusatory portion of which reads:

> <u>CTA Crim Case No. O-976</u>[8]
>
> ...
>
> That on or about 20 February 2012 in Rosario, Cavite, and within the jurisdiction of this Honorable Court, accused Emilu's Supermarket Systems, Inc., a domestic corporation with business address located at Tejeros Convention, General Trias Drive, Rosario, Cavite and a registered taxpayer with Tax Identification No. 202-036-504-000, through its president and deemed responsible corporate officer, accused Regidor R. Mata, required by law to file value-added tax (VAT) return and pay the corresponding VAT, did then and there, willfully, unlawfully, and criminally fail to pay its deficiency VAT in the amount of Fifty Million Three Hundred Fifty-Three Thousand Pesos Eight-Hundred Seventy-Four Pesos and Ninety-Two Pesos (Php50,353,874.92) [excluding interest and surcharge in the total amount of Fifty-Four Million Seven Hundred Twenty-One Thousand and Two-Hundred Sixteen Pesos and Forty-Six Centavos ([Php]54,721,216.46), or in the total amount of One Hundred Four Pesos and Seventy-One Centavos ([Php]104, 616,904.71)], for the tax[able] year 2008, despite receipt of a formal demand with final assessment notice, prior and post collection notices and demands to pay, including the Final Demand Before Suit dated 18 October 2018, to the damage and prejudice of the Philippine government.
>
> **CONTRARY LAW.**
>
> ...
>
> <u>CTA Crim Case No. O-977</u>[9]
>
> ...
>
> That on or about 20 February 2012 in Rosario, Cavite, and within the jurisdiction of this Honorable Court, accused Emilu's Supermarket Systems, Inc., a domestic corporation with business address located at Tejeros Convention, General Trias Drive, Rosario, Cavite, and a registered taxpayer with Tax Identification No. 202-036-504-000, through its president and deemed responsible corporate officer, accused Regidor R. Mata, required by law to file income tax (IT) return and pay the corresponding IT, did then and

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6 **SEC. 253**. *General Provisions.* —

...

(d) In the case of associations, partnerships or corporations, the penalty shall be imposed on the partner, president, general manager, branch manager, treasurer, officer-in-charge, and employees responsible for the violation.

7 **SEC. 256**. *Penal Liability of Corporations.* — ...

8 Division Docket (CTA Crim. Case No. O-976), Volume I, pp. 5-7.

9 Division Docket (CTA Crim. Case No. O-977), pp. 5-7.

> there, willfully, unlawfully, and criminally fail to pay its deficiency IT amounting to Seventy-Five Million Seven Hundred Fifty-Seven Thousand Four Hundred-Eighty Pesos and Fifty-Five Centavos (Php75,757,480.55) [excluding interest and surcharge in the total amount of Seventy-Six Million Six Hundred-Four Thousand Six Hundred Fifty-Six Pesos and Ninety-Two Centavos (Php76,604,656.92) or in the total amount of One-Hundred Forty-Nine Million Three Hundred Sixty-Two Thousand One Hundred Thirty-Seven Pesos and Forty-Seven Centavos (Php149,362,137.47)], for the tax[able] year 2008, despite receipt of the formal demand with the final assessment notice, prior and post notices and demands to pay, including the Final Demand Before Suit dated 18 October 2018, to the damage and prejudice of the Philippine government.
>
> **CONTRARY LAW.**
>
> ...

The above Informations for CTA Crim. Case Nos. O-976 and O-977 were filed before the Court's Second Division[10] and Third Division[11], respectively.

On 02 February 2023, the Third Division ordered plaintiff to submit original or certified true copies of the Joint Complaint Affidavit dated 13 December 2018 and Annex "A"[12] thereof within ten (10) days from notice.[13] Plaintiff eventually submitted its Compliance with the Court's directive on 26 April 2023.[14]

On the other hand, in a Resolution dated 08 February 2023[15], the Second Division ordered the issuance of a warrant of arrest against accused Mata. The warrant of arrest was issued on 09 February 2023.[16] Thereafter, in a Resolution dated 21 February 2023[17], the Second Division noted accused Mata's voluntary surrender and approved the cash bail bond for his provisional liberty in the amount of ₱60,000.00. Accordingly, the warrant of arrest issued against accused Mata was lifted and set aside.

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10 The Second Division is composed of Associate Justice Erlinda P. Uy (Ret.), as Chairperson, Associate Justice Jean Marie A. Bacorro-Villena and Associate Justice Lanee S. Cui-David, as Members.

11 The Third Division is composed of Associate Justice Ma. Belen M. Ringpis-Liban, as Chairperson, Associate Justice Maria Rowena Modesto-San Pedro and Associate Justice Corazon G. Ferrer-Flores, as Members.

12 General Information Sheet (GIS) for the Year 2016.

13 See Resolution dated 02 February 2023, Division Docket (CTA Crim. Case No. O-977), pp. 215-216.

14 Id., pp. 251-270, with annexes.

15 Division Docket (CTA Crim. Case No. O-976), Volume I, pp. 286-288.

16 Id., p. 289.

17 Id., p. 295.

On 03 March 2023, plaintiff filed with the Second Division a "Formal Entry of Appearance with Compliance"[18], with attached copy of the Deputization dated 30 May 2022[19] and its Pre-Trial Brief.[20] Subsequently, on 03 April 2023, plaintiff filed with the Third Division a "Formal Entry of Appearance with Manifestation"[21], with attached copy of the aforesaid Deputization[22] and the Second Division's Resolution dated 08 February 2023[23], which noted plaintiff's Compliance dated 23 January 2023 (re: submission of certified true copies of the Joint Complaint Affidavit dated 13 December 2018, among other supporting documents).

On 20 March 2023, accused filed with the Second Division an Omnibus Motion[24], requesting: (**1**) the consolidation of CTA Crim. Case Nos. O-976 and O-977; (**2**) the deferment of proceedings pending such consolidation; (**3**) the cash bail posted for CTA Crim. Case No. O-976 be considered as the same bail for CTA Crim. Case No. O-977; and, (**4**) the admission of accused's Pre-Trial Brief. On even date, accused filed with the Third Division a "Motion to Transfer and/or Consolidate"[25] (**Motion to Consolidate**), asking that CTA Crim. Case No. O-977 be transferred to the Second Division for consolidation with CTA Crim. Case No. O-976.

In a Resolution dated 04 May 2023[26], the Third Division granted accused's Motion to Consolidate and thereby, CTA Crim. Case No. O-977 was consolidated with CTA Crim. Case No. O-976, the case bearing the lower docket number, subject to the conformity of the Second Division.

Thereafter, in a Resolution dated 30 June 2023[27], the First Division[28] partially granted both accused's Omnibus Motion insofar as the request for consolidation and admission of accused's Pre-Trial Brief are concerned. In the same Resolution, the First Division ordered accused to post a bond in the amount of ₱30,000.00 for CTA Crim.

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18 Id., pp. 306-309.
19 Annex "A" to Plaintiff's Formal Entry of Appearance with Compliance, id., pp. 310-311.
20 Annex "B" to Plaintiff's Formal Entry of Appearance with Compliance, id., pp. 312-318.
21 Division Docket (CTA Crim. Case No. O-977), pp. 236-240.
22 Annex "A" to Plaintiff's Formal Entry of Appearance with Manifestation, id., pp. 241-242.
23 Annex "B" to Plaintiff's Formal Entry of Appearance with Manifestation, id., pp. 243-245.
24 Division Docket (CTA Crim. Case No. O-976), Volume I, pp. 323-327.
25 Division Docket (CTA Crim. Case No. O-977), pp. 226-232, with annex.
26 Id., pp. 249-250.
27 Division Docket (CTA Crim. Case No. O-976), Volume I, pp. 390-396.
28 The First Division is composed of Presiding Justice Roman G. Del Rosario, as Chairperson, Associate Justice Jean Marie A. Bacorro-Villena and Associate Justice Lanee S. Cui-David, as Members.

Case No. O-977 and allowed the proceedings to continue on 27 September 2023.[29]

Meanwhile, on 21 June 2023, accused Mata filed a "Very Urgent Motion to Travel Abroad"[30] (**First Motion to Travel**). Plaintiff filed its "Comment/Opposition [Re: Very Urgent Motion to Travel Abroad dated June 21, 2023]"[31] (**Comment/Opposition to the First Motion to Travel**) on 26 June 2023. Accused, in turn, filed a "Reply (Re: Comment/Opposition dated 26 June 2023)"[32] (**Reply to the Comment/Opposition to the First Motion to Travel**) on 30 June 2023.

In a Resolution dated 19 July 2023[33], the First Division denied accused Mata's First Motion to Travel mainly to mitigate the potential risk that the trial of the case may not proceed *in absentia* should he not return to the Philippines after his proposed trip abroad for his arraignment.

During the arraignment and pre-trial held on 02 August 2023, accused Mata pleaded "Not Guilty" to the crime as charged.[34] The First Division also noted the filing of plaintiff's Amended Pre-Trial Brief[35] on 31 July 2023 and accused's Pre-Trial Brief[36] on 28 July 2023, as well as the submission of the parties' Joint Stipulation of Facts and Issues[37] (**JSFI**).

On 05 September 2023, accused Mata filed another "Very Urgent Motion to Travel Abroad"[38] (**Second Motion to Travel**). Plaintiff failed to file a comment thereto despite due notice.[39] However, during the hearing on 04 October 2023, accused Mata's counsel manifested that accused Mata would travel on a different date. Consequently, the First Division deemed the Second Motion to Travel moot and academic.

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29 Supra at note 26.
30 Division Docket (CTA Crim. Case No. O-976), Volume I, pp. 366-385, with annexes.
31 Id., pp. 417-421.
32 Id., pp. 397-400.
33 Id., pp. 425-430.
34 See Minutes of the Hearing and Order, both dated 02 August 2023, id., Volume II, pp. 786-788 and 790-792, respectively.
35 Id., pp. 774-781.
36 Id., pp. 766-772.
37 Id., pp. 802-808.
38 Id., pp. 908-958, with annexes.
39 *Per* Records Verification dated 05 October 2023, id., p. 994.

On 11 September 2023, the First Division issued a Pre-Trial Order[40], setting forth that trial shall proceed on 04 October 2023 for the plaintiff's presentation of evidence and on 06 December 2023 for the accused's presentation of evidence.

Thereafter, trial ensued, and plaintiff proceeded with the presentation of its evidence. During the 04 October 2023 hearing, it offered the testimonies of the following witnesses: (**1**) Revenue Officer (**RO**) Grace N. Nario-Mangubat[41] (**Nario-Mangubat**); (**2**) RO Bayani A. Atienza, Jr.[42] (**Atienza**); (**3**) RO Ma. Racy G. Angcaya[43] (**Angcaya**); (**4**) RO May C. Gimeno[44] (**Gimeno**); and, (**5**) Revenue Seizure Agent Mary Rose L. Guevarra[45] (**RSA Guevarra**), all of whom testified through their respective judicial affidavits.

RO Nario-Mangubat testified that she conducted the audit and investigation of accused ESSI's books of accounts and other accounting records covering the taxable year (**TY**) 2008. She confirmed that accused ESSI was duly informed about the audit through the Letter of Authority[46] (**LOA**), which included a List of Requirements.[47] She also attested that a 2nd Indorsement dated 06 May 2011[48] was issued to continue the audit based on the best evidence obtainable rule. Thereafter, she proceeded with the examination, where her group's preliminary findings indicated that accused ESSI had deficiency taxes, leading to the issuance of the Notice of Informal Conference (**NIC**) dated 15 June 2011.[49]

Next, RO Atienza testified that he was assigned to continue the audit and investigation of accused ESSI for TY 2008, pursuant to Memorandum of Assignment (**MOA**) No. 11-229 dated 26 August 2011.[50] He also mentioned that, on the day the MOA was issued, a Notice of Case Re-assignment dated 26 August 2011[51] was issued to inform accused ESSI of his authority to continue the examination.

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[40] Id., pp. 966-984.
[41] Judicial Affidavit of Revenue Officer (RO) Grace N. Nario-Mangubat, Exhibit "P-28", id., pp. 816-828, with exhibits.
[42] Judicial Affidavit of RO Bayani A. Atienza, Jr., Exhibit "P-29", id., pp. 829-840, with exhibits.
[43] Judicial Affidavit of RO Ma. Racy G. Ancaya, Exhibit "P-30", id., pp. 861-874, with exhibits.
[44] Judicial Affidavit of RO May C. Gimeno, Exhibit "P-31", id., pp. 841-860, with exhibits.
[45] Judicial Affidavit of Revenue Seizure Agent Mary Rose L. Guevarra, Exhibit "P-32", id., pp. 875-897, with exhibits.
[46] Exhibit "P-3", id., Volume I, p. 190.
[47] Exhibit "P-3-1", id., p. 191.
[48] Exhibit "P-4", id., p. 436.
[49] Exhibit "P-5", id., pp. 437-438.
[50] Exhibit "P-6", id., p. 440.
[51] Exhibit "P-7", id., p. 441.

After completing the examination, RO Atienza attested that he issued an Amended NIC[52], with an attached Computation Sheet[53], to inform accused ESSI about the changes in the tax assessment. Based on his group's recommendation, the Preliminary Assessment Notice[54] (**PAN**) dated 22 December 2011, with Details of Discrepancies[55], was issued against accused ESSI. Lastly, he noted that accused Mata thereafter executed on 29 December 2011 a Waiver of the Defense of Prescription under the Statute of Limitations[56] (**Waiver)**, thus extending the period to assess until 30 June 2012.

Thereafter, RO Gimeno testified that she was assigned to review, prepare and issue the PAN as well as the Formal Letter of Demand[57] and Assessment Notices[58] (**FLD/FANs**) against accused ESSI. She also declared that the PAN was served on accused ESSI through registered mail, as evidenced by the Registry Return Card dated 23 December 2011.[59] Since accused ESSI failed to file a protest against the PAN, the FLD/FANs were subsequently issued and served to accused ESSI through registered mail, as evidenced by the Registry Return Card dated 20 January 2012.[60]

RO Angcaya, on the other hand, testified that she was tasked to enforce the summary administrative remedies for collection of accused ESSI's deficiency tax liabilities for income tax (**IT**) and value-added tax (**VAT**), namely, the Preliminary Collection Letter[61] (**PCL**) dated 13 June 2012, the Final Notice Before Seizure[62] (**FNBS**) dated 11 July 2012 and the Warrant of Distraint and/or Levy[63] (**WDL**) dated 06 March 2015. She also attested that the PCL and FNBS were both served through registered mail, as evidenced by the Registry Return Cards, with handwritten dates 19 June 2012[64] and 27 July 2012[65], respectively. Whereas, the WDL was served to accused ESSI at its registered address and received by a certain Marijane O. Dela Cruz.

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52 Exhibit "P-8", id., p. 442.
53 Exhibit "P-8-1", id., p. 443.
54 Exhibit "P-9", id., pp. 192-193.
55 Exhibit "P-9-1", id., pp. 194-197.
56 Exhibit "P-11", id., p. 199.
57 Exhibits "P-13" and "P-13-1", id., pp. 203-206, with Details of Discrepancies.
58 Exhibits "P-12" to "P-12-2"; id., pp. 278-280.
59 Exhibit "P-10", id., p. 198.
60 Exhibit "P-14", id., p. 207.
61 Exhibit "P-15", id., p. 208.
62 Exhibit "P-17", id., p. 210.
63 Exhibit "P-19", id., p. 212.
64 Exhibit "P-16", id., p. 209.
65 Exhibit "P-18", id., p. 211.

Additionally, RO Angcaya mentioned that she obtained a Certification from the Provincial Assessor's Office in Trece Martirez City, dated 25 March 2014[66], stating that no real property was declared in accused ESSI's name.

Plaintiff's final witness, RSA Guevarra, testified that she is the collection officer tasked to enforce the summary administrative remedies for collection of accused ESSI's deficiency tax liabilities for IT and VAT. She then stated that the Legal Division issued and served though registered mail the Final Demand Before Suit[67] (**FDBS**) dated 15 October 2018 against accused ESSI, as evidenced by the Registry Return Card dated 25 October 2018.[68]

Additionally, RSA Guevarra confirmed that upon verification with the Bureau of Internal Revenue's (**BIR**'s) Collection and Bank Reconciliation System (**CBR**), Integrated Tax System (**ITS**) and Tax Accounting System (**TAS**), there was no record of any payment made by accused ESSI, as evidenced by Certification dated 06 November 2018.[69] She also declared that, as a result of her inquiry with the Office of the Provincial Assessor of Cavite, she confirmed that the accused had no real properties registered in its name for taxation purposes, as evidenced by the Certification dated 07 December 2018.[70] Lastly, she testified to subsequent filing of the Joint Complaint Affidavit[71] (**JCA**) against the accused with the Department of Justice (**DOJ**) on 13 December 2018.

With the presentation of the testimonies of its witnesses, plaintiff proceeded to file a Formal Offer of Evidence[72] (**FOE**) on 13 October 2023, with the accused's Comment/Opposition (Re: Formal Offer of Evidence dated 12 October 2023)"[73] (**Comment/Opposition on the FOE**) filed on 23 October 2023.

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66 Exhibit "P-23", id., p. 445.
67 Exhibit "P-20", id., p. 213.
68 Exhibit "P-21", id., p. 214.
69 Exhibit "P-22", id., p. 215.
70 Exhibit "P-24", id., p. 446.
71 Exhibit "P-27", id., pp. 232-277, with annexes.
72 Id., Volume II, pp. 995-1010, with annex.
73 Id., pp. 1012-1026.

In a Resolution dated 17 January 2024[74], the First Division admitted all of plaintiff's exhibits save for Exhibits **"P-1"** and **"P-2"**[75], which were denied for failure to identify the same during trial. In the same Resolution, the First Division noted that the initial presentation of accused's evidence will proceed on 24 January 2024, as previously scheduled *per* Order[76] dated 04 October 2023.

On 22 January 2024, accused filed a "Manifestation with Motion to Postpone Scheduled Hearing Due to Period Given to Accused for the Filing of Demurrer to Evidence"[77], which the First Division granted in a Minute Resolution dated 23 January 2024.[78]

On 08 February 2024, accused filed their Demurrer[79], wherein they argued that: (**1**) the right to collect the alleged tax liabilities had long prescribed because the WDL[80] was issued on 06 March 2015 and the JCA[81] was filed on 13 December 2018, both of which occurred after the three (3)-year prescriptive period expired on 19 February 2015, which was reckoned from the finality of the assessment, the day after the deadline for filing a protest against the FLD/FANs[82], *i.e.*, on 20 February 2012; (**2**) the prosecution failed to prove the first element of the offense charged—that the accused is required to pay the tax; (**3**) the prosecution failed to prove the second element of the offense charged—that the accused failed to pay the tax, necessitating from a valid standing assessment; (**4**) the prosecution failed to prove the second element of the offense charged—that the accused willfully failed to pay the tax for failure to prove proper service of the notices and assessments; and, (**5**) the prosecution failed to prove the guilt of the accused beyond reasonable doubt.

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74 Id., pp. 1033-1035.

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Exhibit No.	Description
"P-1"	General Information Sheet (GIS) with period covered 15 March 2016.
"P-2"	BIR Integrated Tax System (BIR-ITS) printout showing the registration details of accused ESSI consisting of three (3) pages.

76 Division Docket, Volume II, pp. 988-991.
77 Id., pp. 1036-1040.
78 Id., p. 1043.
79 Supra at note 1.
80 Exhibit "P-19", supra at note 63.
81 Exhibit "P-27", supra at note 70.
82 Supra at notes 57 and 58.

In its Comment/Opposition, plaintiff counter-argues that: (**1**) the period to collect the subject tax liabilities has not prescribed as pursuant to Section 223[83] of the NIRC of 1997, as amended, the running of the status of limitations shall be suspended when a WDL is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion and no property could be located and the applicable prescriptive period to collect is the extraordinary period of five (5) years since accused Mata, in his capacity as President of accused ESSI, executed a Waiver[84]; and, (**2**) a *prima facie* case exists against accused ESSI and Mata for violation of Section 255, in relation to Sections 253(d) and 256 of the NIRC of 1997, as amended.

Furthermore, in their Reply to plaintiff's Comment/Opposition, both accused insist that the right to collect the alleged tax liabilities had long prescribed. They emphasize that even if the extraordinary five (5)-year prescriptive period applies, the case would still be filed out of time since the JCA[85] was filed on 13 December 2018, and the five (5)-year prescriptive period expired on 09 February 2017.

Both accused reiterate their position that the prosecution failed to show that accused Mata is the responsible officer liable for the offense charged. According to them, the Waiver, in itself, could not be considered sufficient proof to show that accused Mata is the President of accused ESSI.

As regards plaintiff's allegation that it has sufficiently shown that the assessment conducted by RO Atienza is valid, accused contends that the MOA is not and should not be considered as an equivalent or a substitute of a duly issued LOA.

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[83] SEC. 223. *Suspension of Running of Statute of Limitations.* — **The running of the Statute of Limitations provided in Sections 203 and 222 on the making of assessment and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, shall be suspended** for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty (60) days thereafter; when the taxpayer requests for a reinvestigation which is granted by the Commissioner; when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: Provided, That, if the taxpayer informs the Commissioner of any change in address, the running of the Statute of Limitations will not be suspended; **when the warrant of distraint or levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located**; and when the taxpayer is out of the Philippines. (Emphasis supplied)

[84] Exhibit "P-11", supra at note 56.

[85] Exhibit "P-27", supra at note70.

Lastly, regarding plaintiff's allegation that it has properly served the assessments and notices through registered mail, accused maintains that while registered mail is a valid mode of service, plaintiff failed to demonstrate an inability to serve personally. Furthermore, assuming that service by registered mail was validly resorted to, plaintiff has still not proven that accused actually received the assessments and notices. This lack of proof undermines the allegation of willful nonpayment of accused's purported tax liabilities.

In a Minute Resolution dated 12 March 2024[86], the First Division submitted the instant Demurrer for resolution.

<u>RULING OF THE COURT</u>

Before the Court proceeds to resolve the merits of the instant Demurrer, the Court finds it propitious to first determine the timeliness of the Informations filed, that is, whether the criminal actions were filed within the five (5)-year prescriptive period under Section 281[87] of the NIRC of 1997, as amended, as this is determinative of the Court's jurisdiction.

In *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines*[88] (**Lim, Sr.**), the Supreme Court ruled that the crime of failure to pay tax is committed only after receipt of the final notice and demand for payment, coupled with willful refusal to pay the taxes due within the allotted period, *viz*:

> . . .
>
> Inasmuch as the final notice and demand for payment of the deficiency taxes was served on petitioners on July 3, 1968, it was only then that the cause of action on the part of the BIR accrued. **This is so because prior to the receipt of the letter-assessment, no violation has yet been committed by the taxpayers. The offense was committed only after receipt was coupled with the willful refusal to pay the taxes due within the allot[t]ed period. The two <u>criminal informations</u>, having been filed on June 23, 1970, are well-within the five-year prescriptive period and are not time-barred.**
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> . . .

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86 Division Docket, Volume II, p. 1120.
87 **SEC. 281**. *Prescription for Violations of any Provision of this Code.* — ...
88 G.R. Nos. L-48134-37, 18 October 1990; Emphasis and underscoring supplied.

This interpretation was further applied by the Supreme Court in *Petronila C. Tupaz v. Honorable Benedicto B. Ulep Presiding Judge of RTC Quezon City, Branch 105, and People of the Philippines*[89] (**Tupaz**), where it was held that the offense of failure to pay deficiency income tax can only be deemed committed after the taxpayer has been served a notice and demand for payment of the deficiency taxes, *viz*:

> . . .
>
> We agree with the Solicitor General that the offense has not prescribed. Petitioner was charged with **failure to pay deficiency income tax** after repeated demands by the taxing authority. In *Lim, Sr. v. Court of Appeals*, we stated that[,] **by its nature[,] the violation could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayer**. Hence, it cannot be said that the offense has been committed as early as 1980, upon filing of the income tax return. This is so because **prior to the finality of the assessment, the taxpayer has not committed any violation for nonpayment of the tax. The offense was committed only after the finality of the assessment coupled with taxpayer's willful refusal to pay the taxes within the allotted period.** ...
>
> . . .

As alleged in the JCA[90] filed by RO Nario-Mangubat, RO Atienza and Seizure Agent Mary Rose M. Li (**SA Li**), the FLD/FANs were issued and served *via* registered mail upon accused on **20 January 2012**.

Per DOJ Resolution dated 10 February 2022[91], accused allegedly failed to file a protest against the FLD/FANs within the thirty (30)-day period from receipt thereof, as provided under Section 228[92] of the NIRC of 1997, as amended, and Revenue Regulations (**RR**) No. 12-99[93], as amended. As such, the assessments for deficiency IT and VAT became final, executory and demandable on **20 February 2012** (the day after the deadline for filing a protest against the FLD/FANs) and on such date the offense is "committed" for purposes of the five (5)-year prescriptive period.

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89 G.R. No. 127777, 01 October 1999; Citation omitted, italics in the original text and emphasis supplied.

90 Exhibit "P-27", supra at note 70.

91 Division Docket (CTA Crim. Case No. O-976), Volume I, pp. 8-18; Division Docket (CTA Crim. Case No. O-977), pp. 8-18.

92 **SEC. 228**. *Protesting of Assessment*. — ...

93 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 the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

Section 281 of the NIRC of 1997, as amended, which governs the prescriptive period for criminal tax actions, reads as follows:

> . . .
> **SEC. 281**. *Prescription for Violations of any Provision of this Code.* **— All violations of any provision of this Code shall prescribe after five (5) years.**
>
> **Prescription shall begin to run from the day of the commission of the violation of the law**, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.
>
> **The prescription shall be interrupted when proceedings are instituted against the guilty persons** and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.
>
> The term of prescription shall not run when the offender is absent from the Philippines.[94]
> . . .

The above provision is clear that the period of prescription for the offense charged is five (5) years. As to the time the period of prescription starts to run, the above provision states that prescription shall begin to run from the day of the commission of the violation of the law, or if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment. It shall be interrupted when proceedings are instituted against the offender and shall run again if the proceedings are dismissed for reasons not constituting jeopardy. The prescriptive period shall not run when the offender is not in the country.

In construing when the prescriptive period for crimes punishable under the NIRC of 1997, as amended, is suspended, it is proper to interpret the provision with reference to its context, *i.e.*, that every part of the statute must be considered together with the other parts and kept subservient to the general intent of the whole enactment.[95] The <u>second paragraph</u> of Section 281 speaks of "judicial proceedings", which means that the "proceedings" referred to in the <u>third paragraph</u> likewise pertains to proceedings which are judicial in nature, *i.e.*, the filing of criminal information with the court.

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94 Italics in the original text and emphasis supplied.

95 *Philippine International Trading Corporation v. Commission on Audit*, G.R. No. 183517, 22 June 2010.

In *Lim, Sr.*, the Supreme Court interpreted Section 354 of the NIRC of 1939, as amended, (which contains the exact provision as the present Section 281 of the NIRC of 1997, as amended) to mean that the five (5)-year prescriptive period for violations of any provision of the NIRC is tolled only upon the filing of the filing of the information in court, *viz*:

> ...
>
> The Court is inclined to adopt the view of the Solicitor General. For while that particular point might have been raised in the Ching Lak case, the Court, at that time, did not give a definitive ruling which would have settled the question once and for all. **As Section 354 [now, Section 281] stands in the statute book (and to this day it has remained unchanged) it would indeed seem that <u>tax cases</u>, such as the present ones, <u>are practically imprescriptible for as long as the period</u> from the discovery *and* institution of judicial proceedings for its investigation and punishment, <u>*up to* the filing of the information in court does not exceed five (5) years</u>.**
>
> ...
>
> **Unless amended by the legislature, Section 354 [now, Section 281] stays in the Tax Code as it was written during the days of the Commonwealth. And as it is, must be applied regardless of its apparent one-sidedness in favor of the Government.** In criminal cases, statutes of limitations are acts of grace, a surrendering by the sovereign of its right to prosecute. They receive a strict construction in favor of the Government and limitations in such cases will not be presumed in the absence of clear legislation.[96]
>
> ...

Plaintiff had five (5) years from 20 February 2012 (*i.e.*, the day after the deadline for filing a protest against the FLDs and ANs), or until **19 February 2017**, within which to file the separate Informations in court. Since the subject Informations were filed only on **05 December 2022**, *ten (10) years, nine (9) months and twenty-one (21) days have elapsed* since the commission of the violation on **20 February 2012** and the criminal action had already *prescribed for five (5) years, nine (9) months and twenty (20) days* reckoned from **19 February 2017** (*i.e.*, the last day of the five [5]-year prescriptive period). Evidently, plaintiff's right to file the subject criminal action has already prescribed.

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[96] Supra at note 88; Citation omitted, italics in the original text, and emphasis and underscoring supplied.

Relevantly, Section 2, Rule 9 of the Revised Rules of the Court of Tax Appeals (**RRCTA**), as amended, provides:

> ...
>
> SEC. 2. *Institution of Criminal Actions.* — **All criminal actions before the Court in Division in the exercise of its original jurisdiction shall be instituted by the filing of an information in the name of the People of the Philippines.** In criminal actions involving violations of the National Internal Revenue Code and other laws enforced by the Bureau of Internal Revenue, the Commissioner of Internal Revenue must approve their filing. In criminal actions involving violations of the Tariff and Customs Code and other laws enforced by the Bureau of Customs, the Commissioner of Customs must approve their filing.
>
> **The institution of the criminal action shall interrupt the running of the period of prescription.**[97]
>
> ...

Verily, pursuant to the Supreme Court's pronouncement in *Lim, Sr.* and the above-quoted provision of the RRCTA, the prescriptive period to file a criminal case is tolled only when the Information is filed before the Court. In this case, the Information was filed beyond the five (5)-year prescriptive period, thus there is no interruption of said period.

To be sure, criminal offenses for violations of the NIRC of 1997, as amended, including known offenses, are not intended to be imprescriptible. However, if the prescriptive period is interrupted once preliminary investigation proceedings are instituted before the DOJ, it suggests that there is no fixed deadline for filing an Information in court. As a result, the offense could indefinitely remain actionable once a complaint reaches the DOJ. This grants the DOJ discretionary power over when to act, potentially allowing the misuse of the rule on prescription as a means to intimidate, harass, and disrupt taxpayers suspected of tax violations.[98]

Stated otherwise, prescription protects taxpayers who are at the mercy of the taxing and prosecuting authorities from unreasonable, long drawn out or abusive investigations. It serves as a safeguard against the abuse of power by unscrupulous public officials, including the possibility of initiating vexatious, arbitrary, and oppressive investigations.[99]

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[97] Italics in the original text and emphasis supplied.
[98] See *People of the Philippines v. Diego G. Martinez*, CTA Crim. Case No. O-672, 25 January 2024.
[99] Id.

Again, given that the subject Informations[100] were filed on **05 December 2022**, beyond the five (5)-year prescriptive period under Section 281 of the NIRC of 1997, as amended, that ended on **19 February 2017**, plaintiff's right to initiate this case against the accused had already expired by the time of filing. Consequently, this justifies the dismissal of the case on the ground of prescription.

Jurisprudence has it that the waiver or loss of the right to prosecute the offender is automatic and by operation of law.[101] Evidently, in this case, prescription has automatically set in when plaintiff failed to file the Information within the five (5)-year prescriptive period provided under Section 281 of the NIRC of 1997, as amended.

It is also the rule that in the interpretation of the law on prescription of crimes, that which is more favorable to the accused is to be adopted.[102] Here, the circumstances show that the crime has prescribed resulting in the extinguishment of accused's criminal liability, if any.

Considering the apparent prescription of the offense charged against the accused, this Court finds no relevant need to further belabor itself in resolving the issues raised in and/or ruling on the merits of the instant Demurrer as the same would have no more bearing on the outcome of the case.

It is a well-established doctrine that "the [p]rosecution must rely on the strength of its evidence, not on the weakness of his defense".[103] Since plaintiff has fallen short of proving that the instant criminal actions were filed within the limits provided by law, the charges against the accused must necessarily fail.

WHEREFORE, in light of the foregoing considerations, CTA Crim. Case Nos. O-976 and O-977 are hereby **DISMISSED** due to prescription. Accordingly, the "Demurrer to Evidence" filed by accused Emilu's Supermarket Systems, Inc. and Regidor R. Mata is rendered **MOOT** and **ACADEMIC**.

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100 Supra at notes 8 and 9.

101 *Rafael Yapdiangco v. The Hon. Concepcion B. Buencamino and Hon. Justiniano Cortez*, G.R. No. L-28841, 24 June 1983.

102 *People of the Philippines v. Arturo F. Pacificador*, G.R. No. 139405, 13 March 2001.

103 *People of the Philippines v. Pacifico Sangcajo, Jr.*, G.R. No. 229204, 05 September 2018.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice