REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

CLARK WATER CORPORATION, Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE, Respondent.

CTA CASE NO. 9519

Members:

CASTAÑEDA, JR., *Chairperson,* *and*
BACORRO-VILLENA, *JJ.*

Promulgated:
OCT 30 2020 8:39 am

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RESOLUTION

CASTAÑEDA, JR., J.:

Submitted before this Court is respondent's **Motion for Reconsideration**, filed through registered mail on July 8, 2020 and received by the Court on July 14, 2020, with petitioner's **Comment (Re: Motion for Reconsideration dated July 8, 2020)**, filed though registered mail on August 24, 2020 and received by the Court on September 2, 2020.

On June 17, 2020, the Court promulgated a Decision, cancelling respondent's deficiency value-added tax (VAT) assessment against petitioner for failing to provide a definite amount of tax liability, the dispositive portion of which reads as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the assailed subject assessment and FDDA holding petitioner liable for deficiency VAT in the amount of ₱4,366,648.49, inclusive of surcharge, interests and compromise penalty for CY 2014 is **CANCELLED** and **SET ASIDE**.

SO ORDERED."

In his Motion, respondent seeks reconsideration of the above Decision by assigning the following grounds as basis for his arguments, *viz.*:

I.

THE HONORABLE COURT ERRED IN GRANTING A RELIEF THAT WAS NOT PRAYED FOR BY PETITIONER. RESPONDENT'S BASIC RIGHT TO FAIR PLAY AND DUE PROCESS WAS VIOLATED.

II.

THE HONORABLE COURT ERRED IN RULING THAT THE ASSESSMENT DID NOT INDICATE A DEFINITE DUE TAX DUE NOR A DEMAND FOR THE PAYMENT OF TAX.

III.

THE ASSESSMENT FOR DEFICIENCY VALUE ADDED TAX (VAT) ISSUED AGAINST PETITIONER HAS BASES BOTH IN FACT AND IN LAW.

IV.

THE IMPOSITION OF SURCHARGE, INTEREST AND COMPROMISE PENALTY AGAINST PETITIONER HAS BASES BOTH IN FACT AND IN LAW.

As to the first ground, respondent claims that the issue on the validity of the subject Formal Letter of Demand (FLD) was never raised in the Petition for Review. As such, respondent claims that he was denied procedural and substantial due process as he was neither heard nor given the opportunity to be heard on that particular issue. Thus, respondent insists that the Court should not have considered the same in deciding the present case.

With regard to the second ground, respondent asserts that the amount to be paid as petitioner's tax liability is definite as indicated in the FLD. He clarifies that it is only the interest that would be adjusted if the same is paid beyond the date specified in the FLD, and not the entire assessment. Clearly, the assessment should not have been invalidated since respondent merely reminded petitioner of the consequences of not paying its taxes on the date specified.

As to the third ground, respondent maintains that the deficiency VAT assessment issued against petitioner has bases both in fact and in law. He claims that petitioner is liable for deficiency VAT on its sales transactions within the customs territory (or outside Ecozone or Freeport) for taxable year 2014, pursuant to the *Letter* dated December 6, 2016 issued by Revenue Region No. 4 – San Fernando Pampanga, and the ruling of the Supreme Court in the case of *Commissioner of Internal Revenue v. Toshiba Information Equipment.*[1] Respondent further avers that the Bureau of Internal Revenue (BIR) Rulings cited by petitioner do not apply to the present case since they are only based on set of facts as represented by the taxpayer therein, and made applicable only to the facts and circumstances thereto. Finally, respondent reiterates that petitioner cannot claim that it is not liable for VAT on its sales of services for being classified as a non-VAT entity.

Laslty, respondent insists that petitioner is liable to pay interest and surcharge due to its failure to timely pay the VAT within the period prescribed by law. He continues that the imposition of compromise penalty is valid pursuant to Revenue Memorandum Order (RMO) No. 19-2007.

On the other hand, in its Comment, petitioner emphasize that as held by the Court, Section 1 of Rule 14 of the Revised Rules of the Court of Tax Appeals (RRCTA), provides that the Court of Tax Appeals (CTA) is not bound by the issues specifically raised by the parties, and that it has the power to rule upon related issues in order to achieve an orderly disposition of the case. Petitioner also argues that respondent's FLD is invalid and void because it does not contain an imperative demand for the payment of the alleged deficiency taxes, as required under existing jurisprudence; and that it lacks the definite amount of tax liability for which petitioner is being held accountable. Finally, petitioner further claims that the Court did not err in ruling that the imposition of surcharge, interest, and compromise penalty against petitioner has no bases both in fact and in law.

Accordingly, respondent's Motion for Reconsideration is bereft of merit.

While it is true that the validity of the FLD was never questioned in the Petition for Review, this Court may still nonetheless

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[1] G.R. No. 150154, August 9, 2005.

rule upon the same in order to secure a just disposition of the present case. This is very clear from the provision of Section 1 of Rule 14 of the RRCTA, which explicitly states that the CTA may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.[2] Evidently, it is well within the authority of the CTA to look into validity of the FLD as the same must not only contain a computation of tax liabilities, but also a fixed and definite period when payment should be made.[3]

With regard to respondent's claim that the amount to be paid in the present case is definite, suffice it to state that the same has already been duly considered and extensively discussed in the Decision assailed as follows:

> "In *Fitness By Design*, the Supreme Court concluded that the disputed Final Assessment Notice was *not* a valid assessment because it did 'not purport to be a *demand for payment* of tax due, which is a final assessment notice should supposedly be.'
>
> To demand means to 'require (a person) to do' and is also defined as 'the assertion of a legal right', 'an imperative xxx by one person to another under a claim of right, requiring the latter to do or yield something or to abstain from some act.' A demand is a 'claim, a legal obligation xxx a thing or amount claimed to be due.'
>
> In this case, an examination of the tenor of the FLD dated September 19, 2016 would reveal that there is *no* demand or requirement for the taxpayer to pay the taxes due. The phrase 'you are *requested* to pay your deficiency value-added' negates the imperative nature of the requirement to pay as it gives the taxpayer the option *not* to pay if it is not amenable to the assessment:

x x x

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[2] "SECTION 1. *Rendition of judgment.* — The Court shall decide the cases brought before it in accordance with Section 15, paragraph (1), Article VIII of the 1987 Constitution. x x x.

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

[3] *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation.* G.R. No. 128315, June 29, 1999.

> Secondly, the FLD lacks the definite amount of tax liability for which petitioner is accountable. Specifically, the FLD states that the interest will still *'the interest and total amount due will have to be adjusted if paid beyond October 31, 2016'.* Similar to the facts in *Fitness By Design,* although the disputed notice provides for a computation of petitioner's VAT liability, the amount thereof remains indefinite, since the said tax assessment is still subject to modification or adjustment, depending on the date of payment by petitioner.
>
> Accordingly, the FLD is deficient according to the standards set in *Fitness By Design.* Such being the case, the subject VAT assessment is void, and thus, bears no valid fruit."

From the foregoing, the Court deems it no longer necessary to resolve the third assigned error on account of the invalidity of the subject FLD. Lastly, in the same vein, there being no valid assessment in this case, the imposed interest, surcharge and compromise penalty cannot therefore be sustained. As such, the fourth assigned error of respondent has no leg to stand on.

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

SO ORDERED.

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

I Concur:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice