REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PAYMENTWALL INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE and THE REGIONAL DIRECTOR OF REVENUE REGION NO. 8, MAKATI CITY GLEN A. GERALDINO,
Respondents.

CTA CASE NO. 9727

Members:

UY, *Chairperson,*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

MAR 1 8 2021
10:56 a.m.

x -- x

RESOLUTION

RINGPIS-LIBAN, J.:

Submitted before this Court is respondents' **Motion for Reconsideration** filed by registered mail on November 9, 2020 and received by this Court on November 19, 2020, with petitioner's **Opposition (To: Motion for Reconsideration dated 9 November 2020)** filed *via* electronic mail on November 23, 2020.

On July 28, 2020, the Court promulgated a Decision declaring respondent's deficiency value-added tax (VAT) assessment notices against petitioner null and void for violating the latter's right to due process of law, the dispositive portion of which reads as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**.
>
> Accordingly, respondent Geraldino's *48-Hour Notice* dated September 14, 2017 and *5-day VAT Compliance Notice* dated October 4, 2017, demanding the payment of deficiency VAT in the total amount of ₱16,030,957.76, inclusive of increments, as well as respondent Commissioner's *Closure Order* SN: RR8-047-

008CO dated December 5, 2017, all issued against petitioner, are hereby **DECLARED NULL** and **VOID**.

SO ORDERED."

In their Motion, respondents pray that the above Decision be reconsidered and set aside, raising the following grounds in support thereof, *viz.*:

A. BIR'S ISSUANCE OF CLOSURE ORDER WAS AUTHORIZED AND VALID BECAUSE BIR WAS AUTHORIZED BY LETTER OF AUTHORITY TO CONDUCT INVESTIGATION, AND DURING INVESTIGATION BIR FOUND OUT PETITIONER DOES NOT ISSUE OFFICIAL RECEIPTS AND BIR COMPLIED WITH RMO NO. 3-2009.

B. UNDER SECTION 115 (B) OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, THE PETITIONER MUST COMPLY WITH THE CLOSURE ORDER'S REQUIREMENTS, BEFORE THE CLOSURE ORDER CAN BE LIFTED.

C. THERE WAS NO VIOLATION OF DUE PROCESS IN THE ISSUANCE OF CLOSURE ORDER.

With regard to the first ground, respondents argue that the *Closure Order* SN: RR8-047-008CO dated December 5, 2017 was valid because it was issued pursuant to a Letter of Authority (LOA) and, during the course of the investigation, the revenue officer found that petitioner does not issue official receipts in its transactions. As such, the Bureau of Internal Revenue (BIR) recommended the issuance of a *Closure Order* against petitioner pursuant to Revenue Memorandum Order (RMO) No. 3-2009.[1] More so, respondents further claim that the additional requirements in the said RMO regarding the issuance of a mission order and the conduct of another surveillance are just a waste of the BIR's resources, being surplusage and redundant. They insist that the said requirements are optional in character under Section 2.2.2,[2] Part V(B)

[1] "SUBJECT: Amendment and Consolidation of the Guidelines in the Conduct of Surveillance and Stock-Taking Activities, and the Implementation of the Administrative Sanction of Suspension and Temporary Closure of Business," January 15, 2009.

[2] "V. GUIDELINES AND PROCEDURES

x x x

B. *Suspension or Temporary Closure of Business*

x x x

2. *Procedures for Recommending the Suspension or Temporary Closure of Business*

of the said RMO because the same only provides that the submission of mission order is *"if any;"* hence, the taxpayer's non-compliance can be proven by other documents and evidence, aside from conducting surveillance pursuant to a mission order. Accordingly, respondents point out that aside from the issuance of a mission order and conducting surveillance, the procedural requirements in the issuance of the *Forty-Eight (48)-Hour Notice, Five (5)-day VAT Compliance Notice*, and *Closure Order* are all complied with as provided under the said RMO No. 3-2009.

As to the second ground, respondents insist that petitioner must first comply with the requirements of the *Closure Order* before the same can be lifted pursuant to Section 115(b)[3] of the National Internal Revenue Code (NIRC) of 1997, as amended. However, respondents assert that petitioner failed to submit any evidence that it had already complied with the *Closure Order* requirements.

Finally, as to the last ground, respondents maintain that there was no violation of due process in the present case since there was an LOA issued and petitioner was duly notified of all required notices. They continue that petitioner was in fact able to intelligently argue its case and elucidate the reasons for the pending issuance of a *Closure Order.*

On the other hand, in its Opposition, petitioner assails respondents' argument that the requirements of a mission order and surveillance are not mandatory prior to the issuance of a *Closure Order* because the mission is qualified by the phrase "if any." Petitioner points out that the said argument is misleading since the preceding Section 2.2,[4] Part V(A) of RMO No. 3-2009

2.1. *Documentary Requirements*
The recommendation of the concerned head of the investigating office/division to the Regional Director or ACIR Enforcement Service (ES) or ACIR, Large Taxpayers Service (LTS), as the case may be, to suspend or temporarily close business shall invariably be accompanied by documentary proof in support of the particular violation, as follows:

2.2. *Failure to Issue Value-Added Tax Invoice/Receipts*
2.2.1. A certification by the record custodian concerned to the effect that the Taxpayer Identification Number of the taxpayer has been verified as correct;
2.2.2. The Mission Order issued to the apprehending officer, if any;
2.2.3. Apprehension slip detailing the items seized;
2.2.4. The Items seized such as the pad of invoices where duplicate and triplicates are left blank or not filled up;
2.2.5. Sworn statement under oath of the apprehending revenue officer stating the circumstances leading to the apprehension; or,
2.2.6. Other evidence, if available."

[3] **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.
(b) *Failure of any Person to Register as Required under Section 236.* – The temporary closure of the establishment shall be for the duration of not less than five (5) days and shall be lifted only upon compliance with whatever requirements prescribed by the Commissioner in the closure order.

[4] "V. GUIDELINES AND PROCEDURES
A. *Surveillance Activities*

x x x

2. Conduct of Surveillance

clearly requires both mission order and surveillance activities are needed. Thus, petitioner reiterates that by admitting there was no mission order and surveillance made in the present case, respondents issuance of the *48-Hour Notice*, *5-day VAT Compliance Notice*, and *Closure Order Closure Order* are considered void.

Furthermore, petitioner also asserts that respondents' argument that it must first comply with the requirements of the *Closure Order* before the same could be lifted is inconsequential considering the fact that the *48-Hour Notice* and the *5-day VAT Compliance Notice* were declared null and void. Petitioner explains that, needless to say, the *Closure Order* is equally null and void.

Lastly, petitioner maintains that its constitutional right to due process was grossly violated because not only did respondents failed to properly observe the procedural requirements established under RMO No. 3-2009, but also in the same manner, failed to timely issue the assessment notices after issuance of the LOA.

This Court finds respondent's Motion for Reconsideration bereft of merit.

At the onset, respondents claim that the *Closure Order* was valid because there was an LOA issued in this case was already settled by this Court in the Decision assailed. Again, this Court reiterates that a surveillance is necessary before the BIR can issue the *48-Hour Notice*, *5-day VAT Compliance Notice,* and *Closure Order* to a "*non-compliant taxpayer*", and that also the surveillance must be covered by, or authorized through, a mission order duly issued in compliance with RMO No. 3-2009.

In the present case, respondents do not deny that no surveillance was ever conducted against petitioner before the issuance of the *48-Hour Notice*, *5-day VAT Compliance Notice,* and *Closure Order.* It was even admitted that no mission order was issued against petitioner. By failing to do so, respondents violated petitioner's right to due process when they failed to act in accordance with the prescribed procedure before issuing the subject notices. As aptly held in the case of *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.,*[5] "[w]hile indeed the government has an interest in the swift collection of taxes, its assessment and collection should be exercised justly and fairly, and always in strict adherence to the requirements of the law and of the Bureau of Internal Revenue's own rules." Evidently, respondents' *Closure Order* is void due their

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x x x

2.2. *Mandatory Requirement for the Conduct of Surveillance and Apprehension of Business Establishments for Non-Compliance with the Provisions of Section 113, 114, 236, 237 and 238 of the NIRC, as amended.—* No surveillance activities shall be conducted nor apprehension effected unless the same has been authorized by a mission order issued in accordance with the provisions of this Order."

[5] G.R. Nos. 201398-99 & 201418-19, October 3, 2018.

failure to strictly adhere to the prescribed procedure under RMO No. 3-2009 before issuing the subject notices.

This Court also agrees with petitioner that initial compliance with the requirements of the *Closure Order* before the same can be lifted pursuant to Section 115(b) of the NIRC of 1997, as amended, is unnecessary since the *48-Hour Notice* and the *5-day VAT Compliance Notice* are considered null and void. As a result thereby, the *Closure Order* is likewise null and void.

With regard to respondent's claim that there was no violation of due process considering there was an LOA issued in this case, the Court reiterates its ruling in the assailed Decision, to wit:

> "Based on the foregoing doctrinal pronouncements, a significant part of the due process requirement in the issuance of tax assessments is that the concerned taxpayer must be informed in writing of the law and of the facts on which the assessment is made. Such requirement must be embodied not only in the PAN, but also in the FLD and FAN. Thus, the issuance of these Notices is indispensable, except in the case of the PAN in certain instances.
>
> In case respondent or the BIR fails or effectively fails to observe, *inter alia*, the said requirement, it shall have the effect of rendering the collection of deficiency tax void.
>
> No PAN or FAN was issued in this case. In fact, during the pendency of the instant case, the tax audit of petitioner for other taxes pursuant to LOA No. 201200033231 dated October 28, 2016 was still on-going.
>
> Parenthetically, the issuance of the PAN in this case is indispensable, since there is no indication that petitioner's case falls under any of the exceptions in the issuance thereof as enumerated under Section 228 of the NIRC, and Section 3.1.2 of RR No. 12-99, as amended by RR No. 18-2013.
>
> It must be emphasized that the issuance of a valid formal assessment is a substantive prerequisite for collection of taxes. Correspondingly, since the collection of the subject deficiency VAT in the amount of ₱16,187,281.09, inclusive of increments, was not preceded by a PAN, FAN and FLD, the same must perforce fail."[6]

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[6] Decision, pp. 33 to 34.

Accordingly, this Court finds that no new or substantial argument was raised to merit reconsideration or modification of the Decision assailed by respondents.

WHEREFORE, in view of the foregoing, respondents' Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

We Concur:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice