REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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SCANDINAVIAN MOTORS CORPORATION, Petitioner,	**C.T.A. CASE NO. 7269**
	Members:
- versus -	**ACOSTA,** *Chairperson* **BAUTISTA,** and **CASANOVA,** *JJ.*
THE COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** MAR 26 2008 , 10:00 Am

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DECISION

BAUTISTA, *J.*:

This is a Petition for Review praying for the withdrawal and cancellation of the deficiency income, value-added, expanded withholding, and excise tax assessments issued by respondent against petitioner for the taxable year 1999 in the total amount of **TWO HUNDRED EIGHTY MILLION EIGHT HUNDRED FORTY-TWO THOUSAND SIX HUNDRED SEVENTY-EIGHT PESOS AND 60/100 PESOS (P280,842,678.60)**; and an order for respondent to pay attorney's fees, filing fees, litigation expenses, and cost of suit.

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Scandinavian Motors Corporation (petitioner) is a domestic corporation organized and existing under the laws of the Republic of the Philippines, with principal office address at 2272 Don Chino Roces Ave., Makati City 1200, Philippines. It is engaged in the business of importation, assembly and sale of motor vehicles, as well as, the importation and sale of vehicle accessories and spare parts.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue with office address at the Bureau of Internal Revenue (BIR) National Office Building, Diliman, Quezon City.

The antecedent facts of the case are as follows:

Petitioner filed its Corporate Income Tax Return for the taxable year 1999 on April 17, 2000.

On August 11, 2000, the Letter of Authority No. 000 00003032[1] dated August 8, 2000 was issued by respondent authorizing an audit/investigation of petitioner's income, value-added, expanded withholding, and excise tax liabilities for the taxable year 1999.

Subsequently, petitioner filed its Final Corporate Annual Income Tax Return[2] on September 20, 2000.

On August 27, 2003, respondent issued a Preliminary Assessment Notice[3] against petitioner for deficiency income, value-added, withholding, expanded withholding, and excise taxes for the taxable year 1999 in the total amount of P249,650,360.22. Petitioner was then given a period of fifteen (15) days from receipt of the notice to present in writing its side of the case.

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[1] Exhibit "G"
[2] Exhibit "I"
[3] Exhibit "B"

On March 26, 2004, petitioner received the Formal Letter of Demand[4] dated March 17, 2004, demanding payment of the amount of P280,842,678.60 as petitioner's alleged deficiency income, value-added, expanded withholding, and excise taxes for the taxable year 1999.

Petitioner then filed its letter protest[5] on April 26, 2004, arguing, among others, that the assessment was made beyond the prescriptive period since the waivers to relinquish the benefit of such period were not valid.

On September 13, 2004, respondent issued his Final Decision[6] affirming the validity of the waivers and in effect holding that petitioner is still liable for the deficiency taxes. Moreover, the said Decision resolved that petitioner's letter protest was filed beyond the prescriptive period of thirty (30) days; thus, the Decision had become final, demandable, and executory.

Petitioner filed its request for reconsideration[7] on November 19, 2004 with the office of respondent.

Hence, this instant Petition for Review filed on June 16, 2005.

Respondent filed his Answer on August 18, 2005, raising the following as his Special and Affirmative Defenses:

> "6. The assessments were issued within the reglementary period because Petitioner and Respondent executed documents dated March 8, 2002, November 6, 2002 and October 2, 2003 extending the right of respondent to assess up to December 31, 2003, December 31, 2003 and March 31, 2004, respectively;

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[4] Exhibit "A"
[5] Exhibit "C"
[6] Exhibit "D"
[7] Exhibit "E"

7. The agreements to extend the period to assess are valid because the waivers have all the elements of a valid contract, namely: object, consent and consideration;

8. Respondent (should be "Petitioner") cannot impugn the validity of the documents extending the period to assess by the simple expedience of denying knowledge of the acceptance thereof by the respondent as the documents were duly notarized. The notarization proves that Petitioner, together with the Respondent, appeared before the notary public and acknowledged before him that the agreement to extend the period to assess was their free and voluntary act. Indubitably, Petitioner was aware of the acceptance of the agreement to extend the period to assess. Petitioner cannot feign ignorance of the acceptance of the agreement by the lame excuse that it does not have a copy thereof because, in truth and in fact, Petitioner knew of the acceptance thereof by the Respondent.

9. All presumptions are in favor of the correctness of the tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called (*CIR vs. Construction Resources of Asia, Inc. 145 SCRA 671*). It is incumbent upon the taxpayer to prove the contrary *(Mindanao Bus Company vs. CIR 1 SCRA 538; CIR vs. Tuazon, Inc., 173 SCRA 397*) and failure to do so shall vest legality to respondent's actions and assessments."

During the course of the trial, respondent was deemed to have waived his right to present evidence for his failure to file his Formal Offer of Evidence within the period ordered by this Court. Upon receipt of petitioner's Memorandum, this case was submitted for decision on December 12, 2007, sans respondent's Memorandum.

The issues[8] as stipulated by the parties are as follows:

"1. Whether or not the Letter of Protest dated April 26, 2004 was filed beyond the reglementary period, and depending on the resolution thereof, whether or not the disputed assessments became final and executory;

[8] Joint Stipulation of Facts and Issues, Docket, p. 239

2. Whether or not the Waivers of the Statute of Limitations involving the disputed assessments for fiscal year 1999 were INVALID, INOPERATIVE and INEFFECTIVE for being contrary to RMO 20-90 and RDAO 05-01;

3. Whether or not the right of the BIR to assess the petitioner for the subject taxes have already prescribed pursuant to Section 203 of the NIRC of 1997; and

4. Whether or not respondent is liable to pay attorney's fees, filing fees, expense of litigation and costs of suit as prayed for in the petition."

Before tackling the question of finality of the subject assessments, this Court deems it proper to discuss first their validity, in relation to the validity of the waivers executed by the parties.

The period for respondent to assess and collect an internal revenue tax is limited to three (3) years by Section 203 of the National Internal Revenue Code (NIRC) of 1997, as amended, which provides that:

> "**SEC. 203. Period of Limitation Upon Assessment and Collection**. — Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For the purposes of this section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."

From the foregoing provision of law, respondent has three (3) years, counted from the date of actual filing of the return or from the last date prescribed by law for the filing of such return, whichever comes later, within which to assess national internal revenue taxes. When respondent validly issues an assessment against a taxpayer for deficiency taxes, within either the three (3)-year or ten (10)-year period, then respondent has another five (5) years after the assessment within which to collect the national internal revenue tax due thereon by distraint, levy, and/or court proceeding.

However, the three-year period of limitations on the assessment of national internal revenue taxes as set by Section 203 of the NIRC of 1997, as amended, can be affected, adjusted, or suspended, in accordance with the following provisions of the same Code:

> "**SEC. 222. — Exceptions as to Period of Limitation of Assessment and Collection of Taxes.** —
>
> (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten years after the discovery of the falsity, fraud, or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
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> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, **both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon.** The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.
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> (c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax.
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> (d) Any internal revenue tax, which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove, may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the five-year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.

> (e) Provided, however, That nothing in the immediately preceding section and paragraph (a) hereof shall be construed to authorize the examination and investigation or inquiry into any tax returns filed in accordance with the provisions of any tax amnesty law or decree." (*Emphasis supplied*)
>
> "**SEC. 223. Suspension of Running of Statute of Limitations**. — The running of the Statute of Limitation 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*)

Accordingly, under paragraph (b) of Section 222 of the NIRC of 1997, as amended, the prescriptive period for the assessment of national internal revenue taxes could be waived by agreement, to wit:

> "(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, **both the Commissioner and the taxpayer have agreed in writing to its assessment after such time the tax may be assessed within the period agreed upon**. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon." (*Emphasis supplied*)

Thus, a Waiver of the Statute of Limitations under the aforementioned paragraph, to be valid, must be: (1) in writing; (2) agreed to by both the Commissioner and the taxpayer; (3) before the expiration of the ordinary prescriptive periods for assessment and collection; and (4) for a definite period beyond the ordinary prescriptive periods for assessment.

In relation thereto, the BIR issued Revenue Memorandum Order (RMO) No. 20-90 on April 4, 1990 to lay down an even more detailed procedure for the proper execution of such waiver. RMO No. 20-90 is a directive for the strict execution of the procedures for a valid waiver, and any revenue official who fails to comply therewith resulting in the prescription of the right to assess and collect shall be dealt with administratively.

Revenue Memorandum Order (RMO) No. 20-90 provides thus:

> "1. **The waiver must be in the form identified hereof**. This form may be reproduced by the Office concerned but **there should be no deviation from such form**. The phrase **'but not after ______________19___' should be filled up**. This indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription. The period agreed upon shall constitute the time within which to effect the assessment/collection of the tax in addition to the ordinary prescriptive period.
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> 2. The waiver shall be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials.
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> Soon after the waiver is signed by the taxpayer, the Commissioner of Internal Revenue or the revenue official authorized by him, as hereinafter provided, shall sign the waiver indicating that the Bureau has accepted and agreed to the waiver. The date of such acceptance by the Bureau should be indicated. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.
>
> 3. The following revenue officials are authorized to sign the waiver.
>
> A. In the National Office
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> | | | |
> |---|---|---|
> | 1. | ACIRs for Collection, Special Operations, | For tax cases involving not more |

	National Assessment, Excise and Legal on tax cases pending before their respective offices. In the absence of the ACIR, the Head Executive Assistant may sign the waiver.	than P500,000.00
2.	Deputy Commissioner	For tax cases involving more than P500,000.00 but not more than P1M
3.	Commissioner	For tax cases involving more than P1M

B. <u>In the Regional Offices</u>

1. The Revenue District Officer with respect to tax cases still pending investigation and the period to assess is about to prescribe regardless of amount.

2. The Regional Director, the Assistant Regional Director, the Chief, Assessment Branch or the Chief, Legal Branch with respect to cases still pending review and the period to assess/collect is about to prescribe, regardless of amount.

3. The Regional Director, the Assistant Regional Director, the Chief, Collection Branch or the Chief, Legal Branch with respect to cases still pending collection and the period to assess/collect is about to prescribe regardless of amount.

4. The waiver must be executed in three (3) copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy shall be indicated in the original copy.

5. The foregoing procedures shall be strictly followed. Any revenue official found not to have complied with this Order resulting in prescription of the right to assess/collect shall be administratively dealt with."

In other words, the waiver must be in the following tenor:

WAVER OF THE STATUTE OF LIMITATIONS UNDER THE NATIONAL INTERNAL REVENUE CODE[9]

_______________________________________ in consideration of the approval by the Commissioner of Internal Revenue of my request for re-investigation and/or reconsideration of my pending internal revenue case involving the assessment of the sums of _______________________________________ as _________________ for the years _____________, hereby waive the running of the prescriptive period provided for in Sections 203 and 223 and other relevant provisions of the National Internal Revenue Code, and consent to the assessment and collection of the taxes which may be found due after re-investigation and reconsideration at any time before or after the lapse of the period of limitations fixed by said Sections 203 and 223 and other relevant provisions of the National Internal Revenue Code, but not after ___________, 19___.

The intent and purpose of this waiver is to afford the Commissioner of Internal Revenue ample time to carefully consider the instant protest of the undersigned taxpayer against the assessment. It is understood, however, that the undersigned taxpayer does not, by the execution of this waiver, admit in advance the correctness of the assessment which may be made against him for the periods above mentioned; nor does he waive his right to use any of the legal remedies afforded by law to secure a credit or refund on such tax that may be assessed and paid for the same period pursuant to Sections 204 and 230 of the National Internal Revenue Code. The period of suspension agreed upon herein may be extended by subsequent agreement in writing made before the expiration of said period of extension.

Executed this ________ day of ___________ 19 ___, in Quezon City, Philippines.

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(Taxpayer or Authorized Representative)

ACCEPTED AND AGREED TO:

Commissioner of Internal Revenue
Date _________________

[9] Annex "A", Revenue Memorandum Order No. 20-90, April 4, 1990

A perusal, however, of the Waivers of the Statute of Limitations[10] executed by petitioner, reveals that the waivers suffer from material defects as to form and as to execution. It bears stressing that the purpose of a Waiver of the Statute of Limitations is to afford the Commissioner or his duly authorized representative sufficient time to verify/investigate whatever tax or taxes which may be found due from petitioner. This waiver, however, does not give the Commissioner or his duly authorized representative an indefinite period of time within which to examine petitioner's alleged deficiency taxes, nor does the waiver give them the right to investigate any and all kinds of taxes.

The prescriptive period or statute of limitations benefits both the government and the taxpayer. The government is benefited because tax officers would be obliged to act properly and promptly in making assessments. On the other hand, the taxpayer is benefited because after the lapse of the period of prescription, he would have the feeling of security against unscrupulous tax agents who would find an excuse to inspect the books of the taxpayer to take advantage of every opportunity to abuse law-abiding taxpayers. Without such legal defense, taxpayers would furthermore be under obligation to always keep their books and keep them open for inspection subject to harassment by unscrupulous tax agents. The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the positive purpose of affording protection to the taxpayer.

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[10] Exhibits "J" to "M"

The subject waivers[11] are found to be defective on the following aspects:

a. Except for the waiver dated March 8, 2002, the other waivers do not reflect the type or kind of tax subject of the assessment. The waivers failed to indicate the amount of deficiency taxes. On the prescribed form of a waiver under RMO No. 20-90, it is required that the kind of tax and the amount of the tax due must be indicated.

b. The actual forms signed by the parties did not follow the correct form pursuant to RMO 20-90. The same RMO likewise provides that there should be no deviation from the form of the waiver.

c. Not all waivers showed the date of acceptance by respondent or his authorized representative. By failing to indicate in the waiver the date of acceptance, it cannot be determined with certainty if the waiver was actually accepted before the expiration of the 3-year assessment period.

In the present case, acceptance of the waiver should have been made by respondent Commissioner of Internal Revenue himself pursuant to Section 3(A)(3) of RMO No. 20-90, in view of the fact that the assessments involved amounts that are more than one million pesos. The OIC Deputy Commissioner and/or Assistant Commissioner of the Large Taxpayers Services cannot sign in behalf of the Commissioner.

In the case of **Philippine Journalists, Inc., vs. Commissioner of Internal Revenue**[12], the Supreme Court discussed lengthily the nature and laid down the requisites of a valid Waiver of the Statute of Limitations. Aside from stating that RMO No. 20-90 must be strictly followed, the Supreme Court ruled that:

> "**A waiver of the statute of limitations under the NIRC, to a certain extent, is a derogation of the taxpayers' right to security against prolonged and unscrupulous investigations and must therefore be carefully and strictly construed.** The waiver of the statute of limitations is not a waiver of the right to invoke

[11] Exhibits "J" to "M"

[12] G.R. No. 162852, December 16, 2004

> the defense of prescription as erroneously held by the Court of Appeals. It is an agreement between the taxpayer and the BIR that the period to issue an assessment and **collect the taxes due is extended to a date certain**. The waiver does not mean that the taxpayer relinquishes the right to invoke prescription unequivocally particularly where the language of the document is equivocal. For the purpose of safeguarding taxpayers from any unreasonable examination, investigation or assessment, our tax law provides a statute of limitations in the collection of taxes. Thus, **the law on prescription, being a remedial measure, should be liberally construed in order to afford such protection**. As a corollary, the exceptions to the law on prescription should perforce be strictly construed. xxx" (*Emphasis supplied*)

Moreover, in the case of **Dole Philippines, Inc. vs. Commissioner of Internal Revenue**[13], this Court explained the reason for the need to state the specific tax and amount of tax in the waiver, in the following manner:

> The purpose of stating the specific kind of tax and the amount of tax due is for the petitioner **to pinpoint which among the proposed tax assessments may subsequently be issued without the petitioner invoking the defense of prescription** (*Pfizer, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6135, April 21, 2003*). **If the amount and kind of tax were not indicated in the said waiver, logically, there was no agreement to speak of** *(Solid Cement Corporation vs. Liwayway Vinzons-Chato, in her capacity as the Commissioner of Internal Revenue, CTA Case No. 5420, May 27, 1999*). It should be emphasized that RMO No. 20-90 requires specific information. Hence, to substitute the same with general statements is a departure from RMO No. 20-90." (*Emphasis supplied*)

In view of the foregoing, since the waivers executed by petitioner are not valid, they did not have the effect of extending the three (3)-year period within which to allow respondent to issue the assessment. Thus, the subject Formal Letter of Demand and Assessment Notices on March 26, 2004, which were issued beyond

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[13] CTA Case No. 5705, July 1, 2003

the three (3)-year prescriptive period, have no binding effect and are considered barred by prescription.

It is noteworthy that an unsigned Decision[14] on petitioner's request for reconsideration was issued by respondent, withdrawing and canceling the assessments issued against petitioner in the amount of P280,842,678.60. Consequently, the Large Taxpayers, Collection Enforcement Division was ordered to issue the corresponding Authority to Cancel Assessment (ATCA) covering the aforementioned deficiency tax assessments against petitioner. The case was then considered closed and terminated, with finality.

With regard to petitioner's claim for attorney's fees, filing fees, and costs of suit, the same cannot be granted. Although as a general rule, the prevailing party is allowed to recover costs, Section 1 of Rule 142 of the Revised Rules of Court provides that no cost shall be allowed against the Republic of the Philippines unless otherwise provided by law. The Court therefore finds no basis in law in granting attorney's fees, filing fees, and costs as prayed for by petitioner.

As regards the other issue raised, this Court deems it no longer necessary to resolve the same.

WHEREFORE, the instant Petition for Review is hereby **GRANTED**. Respondent's Final Decision dated September 13, 2004 is hereby **REVERSED** and **SET ASIDE**. Accordingly, the Formal Letter of Demand and Assessment Notices issued by respondent against petitioner for deficiency income, value-added,

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[14] BIR Records, pages 854-865

expanded withholding, excise taxes for the taxable year 1999 in the total amount of P280,842,678.60, are hereby **CANCELLED** and **WITHDRAWN.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division