

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

EN BANC

**COMMISSIONER OF
INTERNAL REVENUE,**
Petitioner,

CTA EB NO. 2583
(CTA Case No. 10341)

Present:

- versus -

**DEL ROSARIO, PJ,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, *and*
FERRER-FLORES, JJ.**

GB GLOBAL EXPREZ, INC.,
Respondent.

Promulgated:

JUN 22 2023

X - - - - -

 4:14p.m. -X

DECISION

CUI-DAVID, J.:

Before the Court *En Banc* is a *Petition for Review*¹ filed by petitioner Commissioner of Internal Revenue (CIR) on April 7, 2022, seeking the reversal and setting aside of the Decision² dated August 31, 2021 (assailed Decision) and the Resolution³ dated March 1, 2022 (assailed Resolution), both rendered by this Court's First Division (Court in Division) in CTA Case No. 10341 entitled "*GB Global Exprez, Inc. v. Commissioner of Internal Revenue.*"



¹ *En Banc (EB)* docket, pp. 7-42.

² *EB* docket, pp. 49-108.

³ *EB* docket, pp. 121-128.

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THE FACTS AND THE PROCEEDINGS

The relevant facts,⁴ as narrated by the Court in Division in the assailed Decision, are as follows:

[Respondent] is a duly organized and existing corporation registered with the Securities and Exchange Commission (SEC) with Company Registration No. CS-201008416 issued on June 2, 2010. [Respondent] is also registered with the Bureau of Internal Revenue (BIR) with Tax Identification Number (TIN) 007-783-570-000.

[Petitioner] Commissioner of Internal Revenue (CIR) is the head of the BIR with office address at Room 511, BIR National Office Building, BIR Road, Diliman, Quezon City, through which he can be served with notices, orders, resolutions, and other legal processes.

[Respondent's] Amended Articles of Incorporation states its primary purpose as:

"To engage in the business of manufacturing, production, sub-contracting, export, import, purchase, sale and distribution of any forms of commodities, goods or merchandise which may be the object of commerce such as but not limited to cigarette manufacturing and processing of tobacco and other related products."

Since August 2010, [respondent] was registered as an Ecozone Export Enterprise as shown in the Certificate of Registration No. 10-676 issued by the Philippine Economic Zone Authority (PEZA) and in the Registration Agreement entered by and between PEZA and [respondent]. [Respondent's] registered activity, based on the Registration Agreement, is "limited to manufacture of cigarettes for export and the importation of raw materials, machinery, equipment, tools, goods, wares, articles, or merchandise directly used in its registered operations at the Angeles Industrial Park (AIP)."

On October 26, 2010, [respondent's] registered activity was amended to include the manufacture of Cut-Rolled Expanded Stems (CRES) and Cigarettes Tubes at AIP through a Supplemental Agreement executed by and between PEZA and [respondent].

Among others, [respondent] manufactures four (4) brands of cigarettes, namely:



⁴ Note 2, *Supra*, pp. 49-54.

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- a. SOHO in Red and Black Colors (SOHO);
- b. PROMAX MENTHOL 20 in Green Color (PROMAX);
- c. A380 in Green Color (A380); and
- d. BLUE STAR TWO MOON NATIONAL in Blue and Silver Colors (Two Moon).

The instant case is limited to the brands Soho and Two Moon.

On July 29, 2020, a BIR Strike Team, composed of agents and personnel from the National Bureau of Investigation (NBI), Intellectual Property Office (IPO), and a local barangay representative arrived and entered [respondent's] manufacturing facility at Block 2, Lot 7, AIP, Bo. Calibutbut, Bacolor, Pampanga, purportedly to conduct surveillance of [respondent's] business activities. This was pursuant to Mission Order with No. MS0201400018132. On the said date, the BIR Strike Team conducted inspection and inventory-taking of the finished and in-process products, raw materials, supplies, machineries, and equipment inside the facility. The BIR Strike Team likewise collected and seized samples of finished and in-process products. Eventually, the BIR Strike Team Leader ordered the closure of the business operations of the [respondent] and physically padlocked its manufacturing facility.

On August 5, 2020, [respondent] received the CIR's Closure Order, which states:

"This refers to the On-The-Spot surveillance conducted against your company by the BIR STRIKE TEAM pursuant to Mission Order No. 00018132 dated July 29, 2020. Please be informed that your company was closed for manufacturing Two Moon and Soho brands of cigarettes, which violated the conditions enumerated in the Permit to Operate as manufacturer of cigarette and cigarette filter tube issued to your company by our Bureau's Excise LT Regulatory Division dated December 6, 2010.

Consequently, all 4,786 master cases/boxes of said Two Moon and Soho cigarette products, including the cigarette machines and other related items of the production of cigarettes (i.e., paper tape, labels, cigarette boxes, tobacco raw materials, and the likes), shall be seized for reason of the above violation.

Please be guided accordingly."



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On September 4, 2020, [respondent] filed the present *Petition for Review [With Urgent Prayer for an Ex-Parte Status Quo Ante Order and/or Application for Writ of Preliminary Mandatory Injunction]*.

On September 23, 2020, the Court issued a Temporary Restraining Order, with the following dispositive portion:

WHEREFORE, considering that the matter is of extreme urgency and, unless restrained, the petitioner will suffer grave injustice and irreparable injury, respondent, its representatives, agents or any persons acting in his behalf, are DIRECTED to CEASE and DESIST from proceeding with the hauling and dismantling of petitioner's products and machines, respectively, and from destroying any of the cigarettes hauled from petitioner's plant, effective immediately.

... ..

SO ORDERED.

On October 27, 2020, the Court issued a Resolution, partially granting the Application for Writ of Preliminary Mandatory Injunction. The Resolution ordered the removal of the padlocks and closing mechanisms attached to [respondent's] premises; to allow [respondent] to take possession of the properties seized by [petitioner] such as equipment, cigarettes and raw materials, subject to the posting of a surety bond in the amount of Php151,253,655.78. The Resolution, however, denied [respondent's] prayer to resume the manufacturing of the cigarette brands, Soho and Two Moon.

On November 23, 2020, the Writ of Preliminary Mandatory Injunction was issued.

On November 27, 2020, the Writ of Preliminary Mandatory Injunction was executed by this Court's Sheriff.

In the meantime, and within the extended period granted, [petitioner] posted his Answer on November 23, 2020 which was received by the Court on December 3, 2020.

[Respondent] filed its Reply (Re: [Petitioner's] Answer dated November 20, 2020) with Motion to Admit on December 17, 2020.



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The Pre-Trial Conference was held on January 28, 2021, with [respondent] having submitted its Pre-Trial Brief on January 22, 2021. Meanwhile, [Petitioner's] Pre-Trial Brief Ad Cautelam was posted on January 22, 2021, and received by the Court on February 1, 2021.

The parties filed via email their Joint Stipulation of Facts and Issues (JSFI) on February 2, 2021, with hard copies being submitted on February 3, 2021. The JSFI was approved by the Court in the Resolution dated February 10, 2021 and the Pre-Trial Order (PTO) was issued on March 18, 2021.

In the meantime, trial proceeded.

On February 11, 2021, [respondent] presented its witnesses: Mr. Gregory G. Lim and Mr. Franklin S. Cortez. [Respondent] thereafter filed its Formal Offer of Evidence on February 22, 2021.

On March 10, 2021, [petitioner] presented his witnesses: Ms. Ma. Rosario O. Puna and Mr. Remedios C. Advincula. [Petitioner] filed his Formal Offer of Evidence on March 22, 2021.

On May 20, 2021, the Court issued its Resolution admitting all the parties' respective pieces of evidence, except for [petitioner's] Exhibit "R-1". However, Exhibit "R-1" was subsequently admitted on reconsideration, in the Resolution dated July 8, 2021.

On June 4, 2021, the parties filed their respective memoranda.

The case was submitted for decision on July 8, 2021.

In the meantime, on July 15, 2021, [respondent] filed an *Ex-Parte* Motion for Early Resolution informing this Court that [petitioner] is continuously causing irreparable damages to it despite the Court's Writ of Preliminary Mandatory Injunction dated November 23, 2020, as evidenced by: (a) the April 24, 2021 of the Director General, PEZA, cancelling all PEZA transactions of [respondent], including but not limited to its import and export permits, and transfer of goods and machineries; and, (b) a new Mission Order dated May 14, 2021 issued by [petitioner] authorizing the seizure of [respondent's] manufactured cigarettes.

On August 31, 2021, the Court in Division rendered the assailed Decision, the dispositive portion of which reads:



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WHEREFORE, in light of the foregoing, petitioner GB Global Exprez, Inc.'s *Ex-Parte Motion for Early Resolution* is NOTED. The present Petition for Review is hereby **PARTIALLY GRANTED** and the *Writ of Preliminary Injunction* dated November 23, 2020 is hereby made **PERMANENT**. Accordingly, Mission Order dated July 29, 2020, Mission Order dated May 14, 2021 and Closure Order dated August 4, 2020 are **CANCELLED and SET ASIDE**.

Respondent Commissioner of Internal Revenue is further **ORDERED** to:

- (i) RETURN all items it seized and confiscated from petitioner GB Global Exprez, Inc. in connection with this case, specifically the dismantled cigarette manufacturing equipment (including all items and accessories appurtenant thereto) as well as all cigarettes and raw materials; and,
- (ii) ALLOW petitioner GB Global Exprez, Inc. to resume business operations;
- (iii) ALLOW petitioner GB Global Exprez, Inc. to manufacture Two Moon and Soho brands of cigarettes, upon compliance with registration requirements thereof in accordance with Revenue Regulations No. 3-2006 and other pertinent rules and regulations.

Respondent Commissioner of Internal Revenue is **DIRECTED** to explain within five (5) days from receipt hereof why he and his representatives should not be cited in contempt for violating this Court's *Writ of Preliminary Injunction*, specifically for issuing Mission Order dated May 14, 2021 and again seizing petitioner's manufactured cigarettes.

Let a copy of this Decision be furnished to Hon. Charito B. Plaza, Director General, Philippine Ecozone Authority, and Mr. Danilo V. San Gabriel, Officer-in-Charge, Angeles Industrial Park – Special Economic Zone.

SO ORDERED.

In holding in favor of respondent, the Court in Division opined that while respondent committed violations concerning the registration and reporting requirements of its cigarettes intended for exports, the BIR Strike Team violated respondent's right to due process and privacy by overriding its own rules and regulations in the issuance and implementation of the Mission Order, Closure Order and attendant seizure of respondent's goods.

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Not satisfied, petitioner moved for reconsideration,⁵ but the same was denied in the equally assailed Resolution of March 1, 2022, the dispositive portion of which reads:

WHEREFORE, petitioner's (sic) *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.

Undeterred, petitioner filed a *Motion for Extension of Time to File Petition for Review*⁶ on March 21, 2022, praying before this Court *En Banc* for an extension of fifteen (15) days from March 23, 2022, or until April 7, 2022, to file his *Petition for Review*, which the Court *En Banc* granted in a Minute Resolution⁷ dated March 22, 2022.

On April 7, 2022, petitioner filed the instant *Petition for Review*. Subsequently, in the Resolution⁸ dated May 2, 2022, the Court *En Banc* directed respondent to file its comment within ten (10) days from notice.

On May 13, 2022, respondent filed a *Motion for Additional Time*,⁹ asking for an extension of ten (10) days from May 15, 2022, or until May 25, 2022, to file its *Comment*, which the Court *En Banc* granted in the Resolution¹⁰ dated June 1, 2022.

On May 25, 2022, respondent filed its *Comment/Opposition [Re: Commissioner of Internal Revenue's Petition for Review dated 7 April 2022]*,¹¹ which the Court *En*

⁵ Division docket, pp. 2076-2102.

⁶ EB docket, pp. 1-4.

⁷ EB docket, p.6.

⁸ EB docket, pp. 130-131.

⁹ EB docket, pp. 132.-134.

¹⁰ EB docket, pp.204-205.

¹¹ EB docket, pp. 136-201.

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Banc noted and deemed the case submitted for decision in the Resolution¹² promulgated on June 14, 2022.

Hence, this Decision.

THE ISSUES

Petitioner anchors his petition on the following grounds, to wit:

- I. THE HONORABLE COURT IN DIVISION ERRED IN RULING THAT IT HAS JURISDICTION OVER THE CASE;
- II. THE HONORABLE COURT IN DIVISION ERRED IN RULING THAT REVENUE MEMORANDUM ORDER 03-2009 IS APPLICABLE TO SEIZURE, APPREHENSION, AND DETENTION OF PETITIONER'S (sic) EXCISABLE PRODUCTS; and
- III. THE HONORABLE COURT IN DIVISION ERRED IN RULING THAT THE BIR STRIKE TEAM VIOLATED RESPONDENT'S RIGHT TO DUE PROCESS.

Petitioner's Arguments:

In support of his *petition*, petitioner submits that the Court in Division erred when it assumed jurisdiction over respondent's original Petition for Review.

According to petitioner, the surveillance of respondent's premises and seizure of its illicit articles were conducted pursuant to the police power vested to revenue officers under Section 171¹³ of the National Internal Revenue Code (NIRC) of 1997, as amended. While the 1987 Constitution prohibits seizures without a court order, the surveillance and seizure conducted is not a form of unreasonable search that the Constitution proscribes, and such search may also be justified as a valid warrantless search within the purview of the Bill of Rights. He added that Section 171 of the NIRC of 1997, as

¹² *EB* docket, pp. 207-208.

¹³ SEC. 171. *Authority of Internal Revenue Officer in Searching for Taxable Articles.* — Any internal revenue officer may, in the discharge of his official duties, enter any house, building or place where articles subject to tax under this Title are produced or kept, or are believed by him upon reasonable grounds to be produced or kept, so far as may be necessary to examine, discover or seize the same. xxx



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amended, does not require any warrant or order issued by the court for searches and seizures of articles subject to tax by an Internal Revenue Officer. The purpose, according to petitioner, is to allow the Bureau of Internal Revenue (BIR) to effectively implement this tax enforcement measure with due dispatch as the lifeblood of the nation is at stake.

Moreover, the original case brought by respondent primarily involves an administrative action and the exercise of petitioner's regulatory function under Sections 2¹⁴ and 15¹⁵ of the NIRC of 1997, as amended. Nothing in the record shows that the case stemmed from a disputed assessment, nor was any collection effort made against respondent, which will bring the subject matter within the special jurisdiction of the Court of Tax Appeals (CTA).

Also, the original *petition* does not fall within the context of "*other matters arising under the National Internal Revenue Code.*" According to petitioner, "other matters" under Section 7(a)(1) of Republic Act (RA) No. 1125,¹⁶ as amended, has been qualified as follows: it should be understood as matters of the same kind as the preceding enumeration in the same provision. One cannot merely invoke "other matters" in isolation to magically summon the CTA's jurisdiction; no less important, these "other matters" must pertain to a quasi-judicial decision.

The instant case concerns the validity of the seizure of respondent's unregistered tobacco products. Unlike assessment and refund cases, the same does not directly relate to government collection, says petitioner.

Assuming that the original *Petition for Review* falls under "other matters arising under the NIRC," petitioner still claims that the Court in Division has no jurisdiction as the same was belatedly filed.



¹⁴ Sec. 2. *Powers and Duties of the Bureau of Internal Revenue.* — The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and its powers and duties shall comprehend the assessment and collection of all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts.

The Bureau shall give effect to and administer the supervisory and police powers conferred to it by this Code or other laws.

¹⁵ Sec. 15. *Authority of Internal Revenue Officers to Make Arrests and Seizures.* — The Commissioner, the Deputy Commissioners, the Revenue Regional Directors, the Revenue District Officers and other internal revenue officers shall have authority to make arrests and seizures for the violation of any penal law, rule or regulation administered by the Bureau of Internal Revenue. Any person so arrested shall be forthwith brought before a court, there to be dealt with according to law.

¹⁶ AN ACT CREATING THE COURT OF TAX APPEALS.

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Petitioner avers that respondent's primary allegations rest upon the invalidity of the seizure of its tobacco products by virtue of the Mission Order issued and implemented on July 19, 2020. According to petitioner, since what is assailed is the validity of the said Mission Order, respondent should have elevated its case to the Court within thirty (30) days from its issuance and implementation, citing this Court's ruling in *Oceanagold (Philippines), Inc. v. Commissioner of Internal Revenue*.¹⁷ Considering that respondent filed the original *Petition for Review* only on September 4, 2020, petitioner submits that the same was filed out of time.

Petitioner likewise submits that the Court in Division erred in applying Revenue Memorandum Order (RMO) No. 3-2009¹⁸ to the seizure, apprehension, and detention of respondent's illicitly manufactured products.

Petitioner emphasizes that RMO No. 3-2009 was created to prescribe guidelines and procedures to be observed in implementing Section 115¹⁹ of the NIRC of 1997, as amended, which gives the CIR the power to suspend the business operations of a taxpayer. Under RMO No. 3-2009, a business may be suspended for non-compliance with such essential requirements as the issuance of receipts, filing of returns, declaration of taxable transactions, taxpayer registration, and paying the correct amount of taxes as mandated by the norms/standards of their particular industry or line of business. Specifically, the provisions of the NIRC of 1997, as amended, covered under RMO No. 3-2009 are:

1. Section 113. Invoicing and accountability;
 2. Section 114. Return and Payment of Value-Added Tax;
 3. Section 236. Registration Requirements;
 4. Section 237. Issuance of Receipts and Commercial Invoices;
and
 5. Section 238. Printing of Receipts or Sales or Commercial Invoices.
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¹⁷ CTA EB Case No. 1222 (CTA Case No. 8618), September 22, 2017.

¹⁸ 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.

¹⁹ 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.

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For petitioner, the violations committed by respondent do not fall in any of the above. As testified by Mr. Remedios Advincula, Jr., respondent violated Section 23 of Revenue Regulations (RR) No. 3-2006²⁰ and provisions under Chapter VIII of Title VI "Excise Taxes on Certain Goods", of the NIRC of 1997, as amended, which provides for the administrative provisions regulating the business of persons dealing in articles subject to excise tax.

While respondent asserted that the BIR did not issue a 48-Hour Notice and 5-Day VAT Compliance Notice, petitioner submits that the issuance of a 48-Hour Notice and 5-Day VAT Compliance Notice is not applicable in this case. According to petitioner, said notice is issued to give the taxpayer a chance to rectify its violation so that the business will not be closed. Admittedly, the cigarette product manufactured by respondent did not undergo the required registration requirements under the law. The failure of respondent to register its cigarette brands as required by law for it to be regulated made its products illicit and, thus, subject to immediate confiscation by the BIR for destruction under Section 225²¹ of the NIRC of 1997, as amended. Hence, petitioner asserts that the guidelines laid down in RMO No. 3-2009 are inapplicable in the case at bar due to the peculiar nature of the violations committed by respondent.

Petitioner also submits that contrary to the Court in Division's ruling, he did not violate respondent's right to due process and its right against unreasonable searches and seizures.

According to petitioner, while the 1987 Constitution prohibits seizures without a court order, such prohibition refers only to unreasonable searches and seizures. In the case at bar, the seizure of respondent's illicit cigarettes and items was conducted under Section 171 of the NIRC of 1997, as amended. Petitioner emphasizes that the issuance of a search warrant

²⁰ Prescribing the Implementing Guidelines on the Revised Tax Rates on Alcohol and Tobacco Products Pursuant to the Provisions of Republic Act No. 9334, and Clarifying Certain Provisions of Existing Revenue Regulations Relative Thereto.

²¹ Sec. 225. *When Property to be Sold or Destroyed.* — Sales of forfeited chattels and removable fixtures shall be effected, so far as practicable, in the same manner and under the same conditions as the public notice and the time and manner of sale as are prescribed for sales of personal property distrained for the non-payment of taxes.

Distilled spirits, liquors, cigars, cigarettes, other manufactured products of tobacco, and all apparatus used in or about the illicit production of such articles may, upon forfeiture, be destroyed by order of the Commissioner, when the sale of the same for consumption or use would be injurious to public health or prejudicial to the enforcement of the law.

All other articles subject to excise tax, which have been manufactured or removed in violation of this Code, as well as dies for the printing or making of internal revenue stamps and labels which are in imitation of or purport to be lawful stamps, or labels may, upon forfeiture, be sold or destroyed in the discretion of the Commissioner.

Forfeited property shall not be destroyed until at least twenty (20) days after seizure.

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from a court is not required under Section 171 of the Tax Code. Hence, the issuance and implementation of the Mission Order did not violate respondent's right to due process and its right against unreasonable search and seizure.

Lastly, petitioner submits that the Court in Division erred in ordering the return of respondent's seized and confiscated unregistered articles as said articles are in *custodia legis*, citing *Alih v. Castro*.²²

Respondent's Arguments:

In its *Comment/Opposition*, respondent counters that the Court in Division has jurisdiction over the original *petition* based on the following reasons:

First, settled is the rule that jurisdiction over the subject matter is conferred by law and determined by the allegations in the complaint, including the character of the reliefs prayed for. According to respondent, the Court in Division's jurisdiction is not limited to disputed tax assessments and tax refund claims, and that the term "other matters" under Section 7(a)(1) of Republic Act (RA) No. 1125, as amended, has been ruled to include, but not limited to: review of the CIR's authority and decision to compromise; prescription of the CIR's right to collect taxes; determination of the validity of a warrant of distraint and/or levy issued by the CIR; and the validity of the waiver of the statute of limitations.

Second, the BIR Strike Team Head, Mr. Advincula, admitted and acknowledged this Court's jurisdiction over the present case.

Third, the law itself confers jurisdiction upon the Court in Division to review actions and decisions of the CIR on "other matters arising under the NIRC." By invoking Sections 2 and 15 of the NIRC of 1997, as amended, the CIR just admitted that the Court in Division has jurisdiction considering that Sections 2 and 15 are matters arising under the NIRC.

Fourth, the CIR Closure Order which concluded that petitioner violated its Permit to Operate and failed to register its products with the BIR thereby justifying its closure is a decision of the CIR from which an appeal may be had.

Fifth, in the case of *Banco De Oro v. Republic of the Philippines*,²³ the Supreme Court has put to rest that within

²² 235 Phil. 270, 278 (1987).

²³ G.R. No. 198756, August 16, 2016.



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the judicial system, the law intends the CTA to have exclusive jurisdiction to resolve all tax problems.

Sixth, the CIR is mistaken when he argued that petitioner's closure of business was not effected under the auspices of his "Oplan Kandado" nor under Revenue Memorandum Order (RMO) No. 3-2009 considering that his own witness, Mr Burgos, a member of the BIR Strike Team, admitted that RMO No. 3-2009 governs the conduct of BIR's operations on petitioner. Further, the invocation of police power does not divest the CTA of its jurisdiction and power of judicial review, it being a court of justice. Simply put, police power is not an excuse for courts to be deprived of their power to take cognizance of a case. Also, the CIR wrongfully claimed that petitioner's Petition for Review was belatedly filed depriving the court of jurisdiction to take cognizance of the same.

Respondent likewise counters that the Court in Division is correct in holding that RMO No. 3-2009 applies to the instant case; hence, the CIR's non-compliance renders his actions null and void.

According to respondent, petitioner's claim that RMO No. 3-2009 only applies to violations of Sections 113, 114, 236, 237, and 238 of the NIRC of 1997, as amended, and not the supposed violation of petitioner under Section 23 of RR No. 3-2006, is wholly devoid of merit. *Firstly*, RMO No. 3-2009 covers all internal revenue taxes, not Value-Added Tax (VAT) transactions alone. *Secondly*, even the BIR Strike Team relied on the said RMO No. 3-2009 to enforce the assailed Mission Order as admitted during the cross-examination of Mr. Burgos during the October 1, 2020 hearing. *Thirdly*, CIR's reliance on Sections 154, 156, 159, and 225 of the NIRC of 1997, as amended, is misplaced, considering that its cigarette products are not subject to excise tax since they are purely for export and never withdrawn from the Ecozone.

Further, respondent emphasizes that with petitioner's failure to establish the inapplicability of RMO No. 3-2009, the latter's undated Mission Order, which is patterned after the mission orders of the "Oplan Kandado" program under RMO No. 3-2009, is void.

According to respondent, for the subject Mission Order to be valid, it should have complied with RMO No. 3-2009 requirements. However, the subject Mission Order failed to satisfy such requirements. Respondent avers that the subject



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Mission Order was undated and lacked the period covered. Under RMO No. 3-2009, Mission Orders should be chronologically recorded in the Mission Order Register. For respondent, this requirement was not complied with, considering that the subject Mission Order bears no date of issuance. Hence, considering the nullity of the subject Mission Order, the corresponding surveillance conducted is likewise null and void.

Assuming, for the sake of argument, that Section 225 of the NIRC of 1997, as amended, applies herein, respondent submits that the same does not automatically empower the CIR to confiscate and destroy its cigarettes immediately. Respondent pointed out that based on the wording of Section 225, the destruction of cigarettes must be preceded by a prior finding that its consumption or use "would be injurious to public health or prejudicial to the enforcement of the law." As correctly found by the Court in Division, there is no prior finding in this case.

Respondent also pointed out that the last paragraph of Section 225 explicitly mandates that the "*forfeited property shall not be destroyed until at least twenty (20) days after seizure.*" Here, the confiscation and destruction of its cigarettes were immediate. Thus, petitioner even failed to comply with Section 225, which he now invokes to justify his theory that RMO No. 3-2009 does not apply.

Respondent likewise takes strong exception to petitioner's statement that "*these illicit cigarette products manufactured by [respondent] is akin to illegal drugs, which is illegal per se...*" For one, there is a difference between illegal drugs and cigarettes. Be that as it may, even for illicit drugs, which are prohibited, their confiscation follows a strict procedure or chain of custody; non-compliance entitles the accused to an acquittal. For another, respondent's notion that its cigarettes are counterfeit or illegal merely because they are unregistered is unacceptable.

Also, respondent counters that petitioner violated its constitutional right to due process and right against unreasonable searches and seizures.

In the case at bar, petitioner invokes his right to enforce police powers under Section 2 of the NIRC of 1997, as amended, in arguing that the BIR acted well within its authority in confiscating respondent's cigarette manufacturing equipment,



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as well as all cigarettes and raw materials and eventually closing its manufacturing plant. However, 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. And 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.

Respondent submits that its constitutional right against unreasonable searches and seizures was violated when petitioner issued the undated Mission Order without particularly describing the things to be searched and seized on its business premises. It added that the undated Mission Order is a general warrant heavily proscribed in our jurisdiction. For one, it did not specify with particularity the revenue law or regulation allegedly committed by respondent. For another, it unduly gives *carte blanche* authority to conduct inventory-taking of the goods without limit. And lastly, it failed to specify clearly and distinctly the house, building, place, or articles to be searched and seized.

Respondent further submits that the undated Mission Order and the Closure Order violated its constitutional right to due process under Article III, Section 1 of the 1987 Constitution. According to respondent, RMO No. 3-2009 mandates that the taxpayer be allowed to be heard before a closure order may be issued due to surveillance. However, petitioner completely disregarded his very own issuance when he closed respondent's business on the same day the BIR Strike Team conducted its surveillance.

Respondent likewise stresses that petitioner cannot rely on Section 171 of the NIRC of 1997, as amended, to justify his position that no prior search warrant is necessary before he conducts his surveillance activities. According to respondent, Section 171 is inapplicable as the same authorizes revenue officers to enter any building to seize an article only when such article is subject to excise tax. However, its cigarettes are not



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subject to excise tax as they are purely for export and were never withdrawn from the Angeles Industrial Park Ecozone.

Likewise, the Closure Order offends its right to due process since petitioner's justification for effecting the closure is not even a ground authorized by law. According to respondent, the alleged violation of the BIR Permit to Operate, which petitioner invokes, is not a ground for the closure of the business.

Finally, respondent counters that the Court in Division committed no error in ordering the return of its illegally seized cigarettes. Contrary to petitioner's asseveration, there was already a determination by the Court in Division that its cigarettes are neither counterfeit nor intended to be sold domestically as to be subject to excise tax. There was also no categorical finding that its cigarettes are contraband *per se*. Thus, when the Court in Division issued the *Temporary Restraining Order* (TRO), and subsequently a *Writ of Preliminary Mandatory Injunction*, the illegally seized articles became in *custodia legis* of the Court in Division and not of petitioner as he claims. As such, it is within the province of the Court in Division to order the return of the illegally seized articles following the ruling of the Supreme Court in *Del Rosario v. People*.²⁴

THE COURT *EN BANC*'S RULING

The Court En Banc has jurisdiction over the instant Petition.

Before proceeding to the merits of the case, We shall first determine whether the Court *En Banc* has jurisdiction to take cognizance of this case.

Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) states:

SEC. 3. *Who may appeal; period to file petition. — xxx*

... ..

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing

²⁴ G.R. No. 142295, May 31, 2001.



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before it a petition for review **within fifteen days from receipt of a copy of the questioned decision or resolution.** Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (*Emphasis supplied*)

Petitioner received the assailed Resolution on March 8, 2022. Thus, he had fifteen (15) days from March 8, 2022 or until March 23, 2022, to file a *Petition for Review* before the Court *En Banc*.

On March 21, 2022, petitioner filed a *Motion for Extension of Time to File Petition for Review*,²⁵ asking for an additional fifteen (15) days from March 23, 2022, or until April 7, 2022, to file his *Petition for Review*. The *Motion* was granted in the *Minute Resolution*²⁶ dated March 22, 2022.

Petitioner timely filed his *Petition of Review* on April 7, 2022.

Having settled that the *Petition* was timely filed, We likewise rule that the Court has the requisite jurisdiction to take cognizance of this *Petition*.

We now proceed to the merits of the case.

After a judicious review of the parties' arguments and the case record, the Court *En Banc* finds no reason to modify, much more reverse, the assailed Decision and Resolution of the Court in Division.

The record reveals that the Court in Division had thoroughly and exhaustively resolved the arguments raised in the instant petition in the assailed Decision of August 31, 2021, and Resolution of March 1, 2022. Be that as it may, and if only to put petitioner's mind to rest, the Court *En Banc* will discuss them anew *in seriatim*.



²⁵ EB docket, pp. 1-4.

²⁶ EB docket, p. 6.

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The Court in Division did not err in holding that it has jurisdiction over the original Petition for Review filed by respondent.

The CTA, a court with special and limited jurisdiction, can only take cognizance of matters clearly within its jurisdiction.²⁷ Section 7(a)(1) of RA No. 1125,²⁸ as amended, provides:

Sec. 7. ***Jurisdiction.*** — The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, **or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;**

2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, **or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial; (*Emphasis supplied*)

Similarly, Section 3 of Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA) states:

SEC. 3. *Cases within the jurisdiction of the Court in Division.* — The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, **or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;**

²⁷ *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 190021, October 22, 2014.

²⁸ AN ACT CREATING THE COURT OF TAX APPEALS.



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(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, **or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**, where the National Internal Revenue Code or other applicable law provides a specific period for action: *xxx (Emphasis supplied)*

Aside from the provisions of RA No. 1125, as amended, the NIRC of 1997, as amended, provides the CTA's jurisdiction as follows:

SEC. 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.* — The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, **or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals**. (*Emphasis supplied*)

Petitioner claims that the surveillance of respondent's premises and seizure of its illicit articles and items were conducted pursuant to the police power vested to revenue officers under *Section 171*²⁹ of the NIRC of 1997, as amended; that the case involves an exercise of petitioner's regulatory function under *Section 230* of the NIRC of 1997, as amended; that *Section 15*³¹ of the NIRC of 1997, as amended, vested revenue officers an authority to make arrests and seizures; that the instant case is not of the same nature and kind as disputed assessment and tax refund utilizing *ejusdem generis* and thus, it cannot be said that the same can be considered as "other matters" under *Section 7(a)(1)* of RA No. 1125, as amended.³²

Petitioner further states in his Petition before the Court *En Banc* that:³³



²⁹ See Note 13, *Supra*.

³⁰ See Note 14, *Supra*.

³¹ See Note 15, *Supra*.

³² Petition for Review, pp. 9-22, *En Banc* docket, pp. 15-28.

³³ *Id.*, p. 26.

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Similarly, in the original case, the controversy here does not involve an action of petitioner exercising his quasi-judicial power but his regulatory or police power. Likewise, there is no assessment yet to speak of; there is not even a quasi-judicial proceeding from which an appealable decision may emanate. Hence, the instant case does not fall under the definition of “other matters” as provided by Section 7 of RA 1125, and the same is not within the jurisdiction of the Court.

Another, in the original petition, respondent argues that the Honorable Court has jurisdiction to review if petitioner properly exercised his power under Section 115 of the NIRC of 1997 (involving “Oplan Kandado”) and citing a CTA case, *Commissioner of Internal Revenue and Perfecto L. Aranas, Regional Director of Revenue Region No. 19, Davao City, v. Elric Auxiliary Services Corporation/ Sacred Heart Gas Station* (“Elric Case”).

Respondent is misguided. Unfortunately, the Honorable Court in Division seems to agree with respondent.

It is glaring that the alternative legal basis for assuming jurisdiction under “other matters” is not jurisprudence but a mere CTA case – against the clear dictates of the law. Assuming the CTA case may constitute legal basis, petitioner submits that this is not a case under Section 115 of the NIRC, nor a case involving implementation ... (*Emphasis supplied*)

The Court *En Banc* strongly disagrees with petitioner. If anyone is misguided here, it is petitioner, as discussed below.

The issue presented in this case, *i.e.*, the jurisdiction of the CTA on “other matters,” which petitioner repetitively raised in his Answer,³⁴ Memorandum,³⁵ and Motion for Partial Reconsideration³⁶ filed before the Court in Division, had already been exhaustively passed upon by the court *a quo*. ||

Moreover, this issue is not novel as it has already been settled in several cases decided by the Supreme Court.

In the recent case of *Commissioner of Internal Revenue v. Manila Medical Services, Inc.*³⁷ (*Manila Medical Services*), the Supreme Court squarely addressed petitioner’s issue as regards the “other matters” jurisdiction of the CTA in this wise:

³⁴ Division docket, pp. 1064-1080.

³⁵ Division docket, pp. 1905-1911.

³⁶ Division docket, pp. 2085-2095.

³⁷ G.R. No. 255473, February 13, 2023.



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Contrary however to the CIR's argument, Section 7 (a) (1) of Republic Act No. (RA) 1125, as amended by RA 9282, which confers upon the CTA the jurisdiction to decide not only cases on disputed assessments and refunds of internal revenue taxes, **but also "other matters" arising under the NIRC:**

SEC. 7. Jurisdiction. — The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue [Code] or other laws administered by the Bureau of Internal Revenue[.]

As explained by the Court in *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division*, the exclusive appellate jurisdiction of the CTA Division is not limited to cases involving decisions of the CIR or matters relating to assessments or refunds. The **second part of the provision covers other cases that arise out of the NIRC or related laws administered by the BIR.** The wording of the provision is clear and simple. It gives the CTA the jurisdiction to determine the validity of the warrant of distraint and levy. (*Emphasis supplied*)

The case of *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division (CTA-Second Division)*³⁸ cited in the *Manila Medical Services* case, is more enlightening, viz.:

The CIR's argument must fail in light of Section 7 (a) (1) of Republic Act No. (RA) 1125, as amended by RA 9282, which confers upon the CTA the jurisdiction to decide not only cases on disputed assessments and refunds of internal revenue taxes but also **"other matters"** arising under the NIRC:

SEC. 7. Jurisdiction. — The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation

³⁸ G.R. No. 258947, March 29, 2022.



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thereto, **or other matters arising under the National Internal Revenue [Code]** or other laws administered by the Bureau of Internal Revenue[.] (*Emphasis supplied*)

Based on the foregoing provision, the exclusive appellate jurisdiction of the CTA Division is not limited to cases involving decisions of the CIR or matters relating to assessments or refunds. In *CIR v. Hambrecht & Quist Philippines, Inc.*, the Court held that the issue of prescription of the CIR's right to collect taxes is covered by the term "**other matters**" over which the CTA has appellate jurisdiction:

x x x [T]he issue of prescription of the BIR's right to collect taxes may be considered as covered by the term "**other matters**" over which the CTA has appellate jurisdiction.

Furthermore, the phraseology of Section 7, number (1), denotes an intent to view the **CTA's jurisdiction over disputed assessments and over "other matters"** arising under the NIRC, or other laws administered by the BIR, as **separate and independent of each other**. This runs counter to petitioner's theory that the latter is qualified by the status of the former, *i.e.*, an "other matter" must not be a final and unappealable tax assessment or, alternatively, must be a disputed assessment.

To be sure, the fact that an assessment has become final for failure of the taxpayer to file a protest within the time allowed only means that the validity or correctness of the assessment may no longer be questioned on appeal. However, the validity of the assessment itself is a separate and distinct issue from the issue of whether the right of the CIR to collect the validly assessed tax has prescribed. This issue of prescription, being a matter provided for by the NIRC, is well within the jurisdiction of the CTA to decide. (*Emphasis supplied*)

In *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.* (*Hambrecht & Quist Philippines*)³⁹ cited by the Court in Division and in the above *CTA-Second Division* case, the Supreme Court was clear-cut in its pronouncement that the CTA's jurisdiction over disputed assessments and over "**other matters**" arising under the NIRC, or other laws

³⁹ G.R. No. 169225, November 17, 2010.



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administered by the BIR, are **separate and independent** of each other, to wit:

Thus, on the strength of such observation, we have previously ruled that the appellate jurisdiction of the CTA is not limited to cases which involve decisions of the CIR on matters relating to assessments or refunds. **The second part of the provision covers other cases that arise out of the National Internal Revenue Code (NIRC) or related laws administered by the Bureau of Internal Revenue (BIR).**

In the case at bar, the issue at hand is whether or not the BIR's right to collect taxes had already prescribed and that is a subject matter falling under Section 223 (c) of the 1986 NIRC, the law applicable at the time the disputed assessment was made. ...

In connection therewith, Section 3 of the 1986 NIRC states that the collection of taxes is one of the duties of the BIR, to wit: ...

Thus, from the foregoing, the ***issue of prescription*** of the BIR's right to collect taxes may be considered as covered by the term "**other matters**" over which the CTA has appellate jurisdiction.

Furthermore, **the phraseology of Section 7, number (1), denotes an intent to view the CTA's jurisdiction over disputed assessments and over "other matters" arising under the NIRC or other laws administered by the BIR as separate and independent of each other.** This runs counter to petitioner's theory that the latter is qualified by the status of the former, i.e., an "other matter" must not be a final and unappealable tax assessment or, alternatively, must be a disputed assessment. (*Emphasis supplied*)

Here, petitioner incessantly invokes Sections 2, 15, and 171 of the NIRC of 1997, as amended, as the basis of the BIR officers' authority to search respondent's premises and seize taxable articles.

The Supreme Court's pronouncements in *Manila Medical Services*, *CTA-Second Division*, and *Hambrecht & Quist Philippines* cases debunk petitioner's assertion that petitioner must issue a decision on matters involving disputed assessments and/or refunds before the CTA can exercise its jurisdiction.



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Given the foregoing, the Court in Division correctly assumed jurisdiction over the original *Petition for Review* filed by respondent. Petitioner's surveillance, search, and seizure activities that led to respondent's business closure are matters allegedly sanctioned under Sections 2, 15, and 171 of the NIRC of 1997, as amended; hence, they fall under the term "*other matters arising under the NIRC*" over which the CTA has appellate jurisdiction.

Besides, the Supreme Court effectively affirmed this Court's jurisdiction when it ruled against petitioner's *Petition for Certiorari and Prohibition (SC Petition for Certiorari)* entitled *Commissioner of Internal Revenue, as represented by Commissioner Cesar R. Dulay v. First Division of the Court of Tax Appeals and GB Global Exprez, Inc.*⁴⁰ (an offshoot of the instant case), in the following fashion:

"Acting on the petition for *certiorari* and prohibition under Rule 65 with urgent prayer for issuance of temporary restraining order and/or writ of preliminary injunction assailing the Resolutions dated October 27, 2020, and January 15, 2021, of the Court of Tax Appeals, Quezon City, in CTA Case No. 10341, the Court Resolves to **DISMISS** the petition for failure to sufficiently show that any grave abuse of discretion was committed by the appellate court in rendering the challenged resolutions which, on the contrary, appear to be in accord with the facts and the applicable law and jurisprudence." ⁴¹ (*Boldfacing and underscoring supplied*)

It is well to emphasize that one of the grounds raised by petitioner in the above-cited *SC Petition for Certiorari* was:

PUBLIC RESPONDENT VIOLATED THE LAW, RULED CONTRARY TO JURISPRUDENCE, AND ACTED WITH GRAVE ABUSE OF DISCRETION WHEN IT ASSUMED JURISDICTION OVER PRIVATE RESPONDENT'S PETITION FOR REVIEW;

Undoubtedly, the Supreme Court has put to rest the subject issue on the CTA's jurisdiction with the dismissal of petitioner's *SC Petition for Certiorari* challenging, among others, the Court in Division's assumption of jurisdiction over the original *Petition for Review* filed by respondent.



⁴⁰ G.R. No. 256354, September 15, 2021.

⁴¹ Notice, Division docket, p. 2546.

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There is also no merit in petitioner's assertion that the original *petition* was belatedly filed. Under Section 11 of RA No. 1125, as amended, a party adversely affected by *a decision, ruling, or inaction* of the CIR may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action. On this score, We reiterate the ruling in *Hambrecht & Quist Philippines, viz.:*

Likewise, the first paragraph of Section 11 of Republic Act No. 1125, as amended by Republic Act No. 9282, belies petitioner's assertion as the provision is explicit that, for as long as a party is adversely affected by any decision, ruling, or inaction of petitioner, said party may file an appeal with the CTA within 30 days from receipt of such decision or ruling. The wording of the provision does not take into account the CIR's restrictive interpretation as it clearly provides **that the mere existence of an adverse decision, ruling or inaction along with the timely filing of an appeal operates to validate the exercise of jurisdiction by the CTA.** (*Emphasis supplied*)

Petitioner insists that the 30-day period should be reckoned from the issuance and implementation of the Mission Order.

The Court *En Banc* disagrees.

A perusal of RMO No. 3-2009 shows that a Mission Order is the authority issued to revenue or apprehending officers to conduct surveillance activities and apprehension on identified business establishments. A Mission Order is not a *decision or ruling* but a written authority for revenue or apprehending officers.

The record reveals that respondent received petitioner's Closure Order (the product of the Mission Order issued) on August 5, 2020. Counting 30 days from August 5, 2020, respondent had until September 4, 2020 to appeal petitioner's Closure Order.

Considering that the original Petition for Review questioning, among others, the validity of the Closure Order dated August 4, 2020 was filed on September 4, 2020, the same was timely filed.



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The Court in Division committed no error in applying RMO No. 3-2009 in the present case.

Petitioner maintains that RMO No. 3-2009 only applies to violations of Sections 113, 114, 236, 237, and 238 of the NIRC of 1997, as amended, and not to the alleged violation of respondent under Section 23⁴² of RR No. 3-2006.⁴³ He adds that RMO No. 3-2009 is for *VAT* transactions, while the issue here is an *excise tax*. According to petitioner, RMO No. 3-2009 was created to prescribe guidelines and procedures to be observed in implementing Section 115 of the NIRC of 1997, as amended, which gives the CIR the power to suspend the business operations of a taxpayer.

The Court *En Banc* is not convinced.

As the Court in Division correctly pointed out, 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.

⁴² Sec. 23 *Administrative Requirements*. — All manufacturers, exporters and importers of alcohol or tobacco products shall comply with the following administrative requirements:

A. *Registration of New Brands and Variants of Existing and New Brands*.

Prior to the initial manufacture or importation of new brands and variants of existing brands and variants of new brands, an application for registration thereof shall be filed with the BIR Office where the manufacturer or importer is registered or required to be registered as an excise taxpayer. The application shall be accompanied by the following:

xxx

⁴³ Subject: *Prescribing the Implementing Guidelines on the Revised Tax Rates on Alcohol and Tobacco Products Pursuant to the Provisions of Republic Act No. 9334, and Clarifying Certain Provisions of Existing Revenue Regulations Relative Thereto.*

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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.

Indeed, RMO No. 3-2009 covers *all internal revenue taxes* and prescribes the guidelines for the implementation of the administrative sanction of *suspension and temporary closure* of business and enforcement of *Closure Orders*.

Even petitioner’s witness, Mr. Angelito B. Burgos, a member of the BIR Strike Team, admitted during his cross-examination that the surveillance they conducted on respondent was governed by RMO No. 3-2009.⁴⁴

⁴⁴ Transcript of Stenographic Notes (TSN) dated October 1, 2020, pp. 87-88.

“JUSTICE MANAHAN:
PJ, clarificatory questions. So, you are saying that because your Strike Force and BIR Strike Team is newly formed.

MR. BURGOS:
A: Yes, your Honors.

JUSTICE MANAHAN:
Q: That you are not governed by any existing guidelines in the conduct of your on-the-spot surveillance?

MR. BURGOS:
A: We don’t have any written guidelines.

JUSTICE MANAHAN:
So, you are saying that you are not governed by the provisions of the Revenue Memorandum Order No. 3-2009, which pertains to the amendment and consolidation of the guidelines in the conduct of surveillance and stock-taking activities and implementation on administrative sanction of suspension and temporary closure of business? You are saying that when you conducted that July 29 surveillance on the GB Global Expres, you are not governed by this RMO?

MR. BURGOS:
A: The provision that you said, your Honors, are being used by all the examiners and the investigators.

JUSTICE MANAHAN:
So, I am asking, if you confirm that you are saying that you are new strike team, there are no guidelines to govern your conduct of that surveillance?

MR. BURGOS:
A: We are following whatever guidelines that is issued by the BIR.

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It is well to note that while petitioner insists in his letter to respondent⁴⁵ and his pleadings that the latter's reliance on RMO No. 3-2009 is misplaced, his witness, Mr. Burgos, testified otherwise. Mr. Burgos admitted in no uncertain terms that no specific guideline was created for the Strike Team and that RMO No. 3-2009 governs the conduct of their surveillance on respondent.

Moreover, the format or template of the said Mission Order is similar or has the semblance of the Mission Order appended to RMO No. 3-2009 as Annex A.

Thus, the Court in Division did not err in concluding that the RMO itself and the admission of petitioner's witness belie the latter's claim that RMO No. 3-2009 is not applicable in this case. However, petitioner miserably failed to observe the requirements of the RMO. The failure of the BIR Strike Team to comply with the guidelines and procedures under RMO No. 3-2009 when it conducted the surveillance, search, seizure, and business closure operation against respondent is indisputably fatal to petitioner's cause.

The Court in Division committed no error in holding that petitioner violated respondent's right to due process of law and its right against unreasonable searches and seizures.

Petitioner maintains that he did not violate respondent's right to due process and its right against unreasonable searches and seizures. According to him, the seizure of respondent's illicit cigarettes and items was conducted pursuant to *Section 171* of the NIRC of 1997, as amended. Section 171 does not

JUSTICE MANAHAN:

So, you are governed by this RMO.

MR. BURGOS:

A: Yes Ma'am, but not specific guideline was created for the Strike Team. I was referring that no specific guidelines for strike team.

JUSTICE MANAHAN:

So, you agree that this RMO governs the conduct of your surveillance?

MR. BURGOS:

A: Yes Ma'am." (Boldfacing supplied)

⁴⁵ Dated September 2, 2020, Exhibit "R-15," Division docket, p.797.

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require any warrant or order from the Court for searches and seizures of articles subject to tax by revenue officers. Hence, the issuance and implementation of the Mission Order does not violate respondent's right to due process and its right against unreasonable search and seizure.

Petitioner further claims that the case involves an exercise of petitioner's regulatory function under *Section 2* of the NIRC of 1997, as amended, and that *Section 15* of the NIRC of 1997, as amended, vests revenue officers authority to make arrests and seizures.

The Court *En Banc* is not persuaded.

Section 171 of the NIRC of 1997, as amended, states:

SEC. 171. *Authority of Internal Revenue Officer in Searching for Taxable Articles.* — Any internal revenue officer may, in the discharge of his official duties, enter any house, building or place where articles subject to tax under this Title are produced or kept, or are believed by him upon reasonable grounds to be produced or kept, so far as may be necessary to examine, test, discover or seize the same.

While Sections 15 and 2 of the NIRC of 1997, as amended, read:

SEC. 15. *Authority of Internal Revenue Officers to Make Arrests and Seizures.* - The Commissioner, the Deputy Commissioners, the Revenue Regional Directors, the Revenue District Officers and other internal revenue officers shall **have authority to make arrests and seizures for the violation of any penal law, rule or regulation administered by the Bureau of Internal Revenue.** Any person so arrested shall be forthwith brought before a court, there to be dealt with according to law.

SEC. 2. *Powers and Duties of the Bureau of Internal Revenue.* — The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and its powers and duties shall comprehend the assessment and collection of all national internal revenue taxes, fees, and charges and the enforcement of all forfeitures, penalties and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. **The Bureau shall give effect to and administer the supervisory and police powers conferred to it by this Code and other laws.** (Emphasis supplied)



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While it is true that petitioner and his representatives have the power and authority to *search* for taxable articles under Section 171 and to make *arrests and seizures* under Section 15, no less than the Constitution mandates that no arrest, search, and seizure can be made without a valid warrant issued by a competent judicial authority,⁴⁶ premised on a finding of probable cause. This is because a person's right to be secure against unreasonable searches and seizures is sacred in this jurisdiction.⁴⁷

The Honorable Presiding Justice Roman G. Del Rosario (*PJ* Del Rosario), in his *Concurring Opinion*,⁴⁸ aptly explained that the mere grant of police power to an administrative agency does not constitute a blanket authority to intrude, enter and search the premises of private property to verify, and confirm whether an offense is being committed. Otherwise stated, the power 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 enshrined in Section 2 Article III-Bill of Rights of the 1987 Philippine Constitution, *viz.*:

"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."

Adopting *PJ* Del Rosario's highly instructive opinion, the Court *En Banc* finds that the NIRC, in giving the BIR authority to make arrests and seizures, simply recognized such agency as a law enforcement entity (akin to police officers). It did not envision the BIR to possess powers that blatantly violate the constitutional right against *unreasonable* searches and seizures, much less did it exempt it – like any other police or law enforcement officers – from the general rule of securing a search warrant from the court before making searches and seizures.

⁴⁶ *People of the Philippines v. Jamal Rangaig Y Ampuan, et al.*, G.R. No. 240447, April 28, 2021.

⁴⁷ *Id.*

⁴⁸ *EB* docket, pp. 109-120.

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While jurisprudence recognizes exceptional instances where searches and seizures are declared as “reasonable,” *albeit* in the absence of a search warrant, the same considers the “uniqueness of the circumstances involved, including the purpose of the search and seizure, the presence or absence of probable cause, the manner in which the search and seizure were made, the place or thing searched, and the character of the articles procured.”⁴⁹

At this juncture, the Court *En Banc* finds it fit to quote with approval, the Court in Division’s disquisition on the matter,⁵⁰ to wit:

Undoubtedly, [petitioner] and his representatives have the power or authority to make arrests and seizures for the violation of any penal law, rule, or regulation administered by the BIR. However, the exercise of such authority to make arrests and seizures must be made with a valid search warrant, and the only exception, just like in arrest, is under Section 5(a), Rule 113 of the Rules of Criminal Procedure, when, in [petitioner] or his representative's presence, the taxpayer to be searched has committed, is actually committing, or is attempting to commit an offense under the 1997 NIRC, as amended, other laws or rules or regulations administered by him.

In the case of *People of the Philippines v. Jerry Sapla y Guerrero, a.k.a. Eric Salibad y Mallari*,⁵¹ the Supreme Court ruled that:

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, ... for the right to personal security which, along with the right to privacy, is the

⁴⁹ *People of the Philippines v. Gerry Sapla y Guerrero*, G.R. No. 244045, June 16, 2020.

⁵⁰ Annex “A”, *EB* docket, pp. 49-108.

⁵¹ G.R. No. 244045, June 16, 2020.



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foundation of the right against unreasonable search and seizure."

The right of the people against unreasonable searches and seizures is found in Article III, Section 2 of the 1987 Constitution, which reads: ...

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.**

... ..

There are, however, instances wherein searches are reasonable even in the absence of a search warrant, taking into account the "uniqueness of circumstances involved including the purpose of the search or seizure, the presence or absence of probable cause, the manner in which the search and seizure was made, the place or thing searched, and the character of the articles procured."

The known jurisprudential instances of reasonable warrantless searches and seizures are:

- (1) warrantless search incidental to a lawful arrest;
- (2) seizure of evidence in plain view;
- (3) search of a moving vehicle;
- (4) consented warrantless search;
- (5) customs search;
- (6) stop and frisk; and
- (7) exigent and emergency circumstances."



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In order to avail of such exception in warrantless searches, there should be a probable cause or personal knowledge of the facts and circumstances which would lead the [petitioner] or his representative to reasonably conclude that an offense or infraction is committed under the 1997 NIRC, as amended, laws or rules or regulations administered by him, and that the objects sought in connection with such offenses or infraction are in the place sought to be searched.⁵²

However, as discussed above, **the BIR Strike Team merely relied on the allegations or "tip" in said complaint letter without proper validation**, and immediately proceeded to GB Global's premises, then, when they saw that the two brands of cigarettes were in the latter's premises, **they immediately assumed that those articles or items were illegal articles which were allegedly illegally manufactured and sold in the domestic market.**

The BIR Strike Team need not personally witness the commission of such offense or infraction. However, it must, at least, have personal knowledge of the facts and circumstances indicating that the place sought to be searched contains the objects allegedly illegally sold in the domestic market. The complaint letter or a hearsay tip by itself does not justify a warrantless search.⁵³

Thus, the **BIR Strike Team should have secured first a search warrant** from the court prior to the entry of [respondent's] premises, and in the absence of a valid search warrant, the succeeding actions of the BIR Strike Team were all illegal. ...

The BIR Strike Team discharged its surveillance, search, and seizure activities under the mistaken belief that the MO *per se* authorized the Team to seize [respondent's] goods as admitted during the testimony of Mr. Remedios C. Advincula, Jr. in the Hearing dated March 10, 2021, to wit:⁵⁴

... ..

A close scrutiny of the MO reveals that the Two Moon and Soho brands of cigarettes as the subjects to be seized from [respondent's] premises were not indicated on the face of the MO itself as admitted by Mr. Advincula, the Team Leader of the BIR Strike Team, to wit:⁵⁵

... ..



⁵² *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 2009 Edition, Joaquin G. Bernas, S.J., p. 170.
⁵³ *Mario Veridiano y Sapi v. People of the Philippines*, G.R. No. 200370, June 7, 2017.
⁵⁴ TSN, Hearing dated March 10, 2021, p. 75.
⁵⁵ TSN, Hearing dated March 10, 2021, p. 68.

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The MO is not equivalent to a valid search warrant issued by the court. A search warrant must have particularity on the subject matter to be seized as held in *People of the Philippines v. Amador Pastrana and Rufina Abad*,⁵⁶ the Supreme Court ruled:

It is elemental that in order to be valid, a search warrant must particularly describe the place to be searched and the things to be seized. The constitutional requirement of reasonable particularity of description of the things to be seized is primarily meant to enable the law enforcers serving the warrant to: (1) readily identify the properties to be seized and thus prevent them from seizing the wrong items; and (2) leave said peace officers with no discretion regarding the articles to be seized and thus prevent unreasonable searches and seizures. It is not, however, required that the things to be seized must be described in precise and minute detail as to leave no room for doubt on the part of the searching authorities.

What was surprising in this raid is the fact that [petitioner] and his agents equated unregistered goods with counterfeit goods as admitted during the testimony by Mr. Advincula, Jr. in the same Hearing, to wit:⁵⁷ ... (*Emphasis supplied*)

Notably, the doctrine laid down in *People of the Philippines v. Jerry Sapla y Guerrero, a.k.a. Eric Salibad y Mallari (Sapla)*, cited in the above-quoted Decision of the Court in Division, was echoed in the recent case of *Virgilio Evarado y Lopena v. People of the Philippines (Lopena)*,⁵⁸ where the Supreme Court emphasized the horrid scenarios if courts were to allow intrusive warrantless searches and seizures on the solitary basis of unverified, anonymous tips, to wit:

This Court has maintained that, for purposes of probable cause, "[t]here must be a confluence of several suspicious circumstances. A **solitary tip** hardly suffices as probable cause; items seized during warrantless searches based on solitary tips are inadmissible as evidence."

Any doubt on this was settled in *People v. Sapla*. ...

This Court's pronouncements in *Sapla* came with a **recognition of the dangers of extensive searches (i.e., beyond mere visual surveys)** that are induced by **tips**. It

⁵⁶ G.R. No. 196045, February 21, 2018.

⁵⁷ TSN, Hearing dated March 10, 2021, pp. 74, 85-86, 90-91.

⁵⁸ G.R. No. 234317, May 10, 2021.



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recognized how such searches are a grievous intrusion into our most basic freedoms:

Adopting a contrary rule would set an extremely dangerous and perilous precedent wherein, on the sheer basis of an unverified information passed along by an alleged informant, the authorities are given the unbridled license to undertake extensive and highly intrusive searches, even in the absence of any overt circumstance that engenders a reasonable belief that an illegal activity is afoot.

... ..

It is not hard to imagine the horrid scenarios if the Court were to allow intrusive warrantless searches and seizures on the solitary basis of unverified, anonymous tips.

Any person can easily hide in a shroud of anonymity and simply send false and fabricated information to the police. Unscrupulous persons can effortlessly take advantage of this and easily harass and intimidate another by simply giving false information to the police, allowing the latter to invasively search the vehicle or premises of such person on the sole basis of a bogus tip.

On the side of the authorities, unscrupulous law enforcement agents can easily justify the infiltration of a citizen's vehicle or residence, violating his or her right to privacy, by merely claiming that raw intelligence was received, even if there really was no such information received or if the information received was fabricated.

Simply stated, **the citizen's sanctified and heavily-protected right against unreasonable search and seizure will be at the mercy of phony tips.** The right against unreasonable searches and seizures will be rendered hollow and meaningless. The Court cannot sanction such erosion of the Bill of Rights. (*Citations omitted; Emphasis supplied*)

In fine, the right against unreasonable searches and seizures is a matter of constitutional dictum. There must be a warrant issued by a judge and premised on a finding of probable



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cause before a search can be effected.⁵⁹ There are exceptions⁶⁰ mentioned in the *Sapla* and *Lopena* cases; however, none is present in the instant case.

The BIR Strike Team had sufficient time to obtain a search warrant. As testified by the BIR witness, Mr. Burgos, three years ago, the BIR already noticed the alleged illegal activities and complaint letters implicating respondent were sent to their office in 2018 and February 2020.⁶¹ Also, a search warrant may

⁵⁹ *Virgilio Evardo y Lopena v. People of the Philippines*, G.R. No. 234317, May 10, 2021.

⁶⁰ The known jurisprudential instances of reasonable warrantless searches and seizures are:

- (1) warrantless search incidental to a lawful arrest;
- (2) seizure of evidence in plain view;
- (3) search of a moving vehicle;
- (4) consented warrantless search;
- (5) customs search;
- (6) stop and frisk; and
- (7) exigent and emergency circumstances.

⁶¹ Exhibit "R-14," Judicial Affidavit of Angelito B. Burgos, Docket Vol I, p. 546.

9. Q. You mentioned earlier that you are here to testify on the circumstances surrounding the seizure of illegal articles and items of GB Global. What triggered these events?
 - A. The recent seizure of illegal articles and items by the BIR Strike Team stemmed from a complaint letter dated 24 July 2020, but received on 27 July 2020, providing information on the operations of an illegal cigarette manufacturing facility run by GB Global. However, dating back to around three years ago, we were already noticing illicit cigarettes pop up in stores around the Pampanga, Tarlac, Nueva Ecija, and Bulacan areas since we were doing tax mapping activities in those parts. I personally saw Two Moon cigarettes being sold in stores around those areas. Also, there have been a number of news reports on the proliferation of fake Two Moon cigarettes in different areas of the country.
10. Q. So there was a recent complaint letter detailing these supposed activities, but three years ago you already noticed similar illegal activities being conducted?
 - A. Yes. Actually, the recent complaint was just the latest complaint filed against GB Global. Similar complaint letters were sent to our office in 2018 and early this year, around February. These complaint letters also implicated GB Global.

TSN, Hearing dated October 1, 2020, pp. 58-59.

ATTY. DELA CRUZ:

Q: In your Judicial Affidavit, in reply to Question No. 10 in your answer, you said that you received several complaint-letters sent to your office as early as 2018.

MR. BURGOS:

A: Yes, your Honors.

ATTY. DELA CRUZ:

Q: And these complaint-letters also implicated the GB Global, is that correct?

MR. BURGOS:

A: Yes.

ATTY. DELA CRUZ:

Q: Now, from 2018 to 2020, did you file any case against GB Global?

MR. BURGOS:

A: Hindi.

ATTY. DELA CRUZ:

Q: Did you conduct any raids prior to the subject of this case?

MR. BURGOS:

A: We conducted an operation there: we inspected there.

ATTY. DELA CRUZ:

Q: But that was in July 24, 2020?

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readily be obtained when the search is made in a store, dwelling house, or other *immobile* structure.⁶² However, instead of securing the necessary search and seizure warrant in 2018 and February 2020, the BIR opted to issue a Mission Order and conducted the search, seizure, and business closure on respondent two days after receiving the anonymous letter on July 27, 2020.

Assuming *arguendo* that a valid search warrant is not required, and the Mission Order was validly issued under Section 171 of the NIRC of 1997, as amended, the conduct of search, seizure, and closure would still be void given the infirmities surrounding the implementation of the Mission Order.

As aptly explained by the Court in Division in the assailed Decision:⁶³

RMO No. 3-2009 dated January 15, 2009... provides for the guidelines and procedure in conducting **surveillance** and **closure of business**, to wit:

... ..

Based on the foregoing guidelines, there are three (3) types of surveillance which may be used by the [petitioner]. Two of which involve surveillance without the knowledge of the subject taxpayer, *i.e.* Covert Surveillance and Short-Duration Surveillance, while the other one is known to the subject taxpayer, *i.e.*, Overt Surveillance.

In the instant case, the latter type of surveillance was resorted to by the [petitioner's] representative. Hence, the procedure on Overt Surveillance, outlined below, should have been followed by the BIR Strike Team.

First, RMO No. 3-2009 requires that the surveillance team should possess a Mission Order (MO) which the BIR Strike Team had acquired.

However, the copy of the MO (Exhibit P-26-29) given to GB Global's representative had some **inconsistency or disparity** when compared to the copy (Exhibit R-2) presented

MR. BURGOS:

A: No. In 2018, we conducted an operation there, but during that time we see that, there are questions that we are trying to verify, whether these products are registered. So, we even have this (*Interrupted*)

⁶² *Virgilio Evardo y Lopena v. People of the Philippines*, G.R. No. 234317, May 10, 2021.

⁶³ Annex "A", EB docket, pp. 49-108.



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by the member of the BIR Strike Team, Mr. Angelito B. Burgos.

... ..

It appears that what was given to GB Global's representative was a photocopy of the MO prior to making the handwritten entries as to the date and period covered. **Thus, the original MO was tampered after the issuance of said MO.**

Second, under RMO No. 3-2009, the surveillance team, after informing the subject taxpayer of their purpose and duties of the implementing officer as stated in the MO, shall conduct the inventory taking of "all unused sales invoices, official receipts and such other documents used in the movement of goods" then seize the "unauthorized official receipts or invoices" and issue the Apprehension Slip (AS). A report of said apprehension should be made on the day after such.

Nowhere in the said RMO does it provide that the goods or the product of the subject taxpayer should be the subject of inventory taking and seizure. In the instant case, as admitted by Mr. Burgos, the BIR Strike Team made an inventory not of the documents stated in RMO No. 3-2009 but of the goods of GB Global, particularly the "Two Moon" and "Soho" cigarette brands. Hence, the BIR Strike Team did not follow its own rules and regulations pertaining to surveillance procedure.

Third, RMO No. 3-2009 provides that "if after the conclusion of the surveillance, there is a sufficient ground for the closure of the establishment as provided for under Section 115 of the NIRC, as amended, a recommendation shall be made to effect such closure."

Pursuant to Item B(3) of RMO No. 3-2009, prior to the issuance of a Closure Order, the following procedures should be observed, to wit:

... ..

In the instant case, the BIR Strike Team there and then decided to **close down GB Global's facility** without evaluating first the supposed evidence that it gathered during the surveillance activity, making a recommendation on such closure to the higher office of BIR that issued the MO, and informing the [respondent] of its initial findings and recommendation in order to give it the opportunity to explain its position. **This only shows that GB Global was not given an opportunity to assail the Strike Team's findings prior to the closure of its facilities.**



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What was appalling in the instant case is that the BIR Strike Team did not validate if the allegations in the complaint letter were true or not. The Strike Team merely relied on the allegations in the said complaint letter and immediately proceeded to GB Global's premises and when they saw that the two brands of cigarettes were in the latter's premises, they immediately assumed that they were illegal articles allegedly illegally manufactured and sold in the domestic market.

As admitted by the Team Leader of said BIR Strike Team, Mr. Remedios C. Advincula, Jr., they have no prior knowledge as to the legitimate manufacturer of the Two Moon and Soho brands of cigarettes and the one selling such brands locally outside the PEZA territory but merely assumed that such is the [respondent], to wit:

... ..

The BIR Strike Team's evidence of alleged domestic sale of the said cigarette brands (i.e., Soho and Two Moon) by [respondent] was based only on a **tip** and not from its own actual knowledge. **[Petitioner] neither adduced any evidence that [respondent] is actually selling said brands of cigarettes in the local market outside the PEZA territory nor [respondent] manufactured the Soho and Two Moon brands which are allegedly being sold in the local market.**

It should be emphasized that the production facility of [respondent] is within the PEZA area which is considered a separate territory as held in *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.), Inc.*, to wit:

... ..

Thus, it is important for the BIR Strike Team to have a personal knowledge or probable cause to believe that **GB Global indeed sold these brands of cigarettes outside the PEZA area prior to the closure of its facilities.** However, the Strike Team merely relied on the allegations in the complaint letter.

The failure of the BIR Strike Team to observe and follow properly its own rules and regulations is tantamount to a violation of GB Global's right to due process. The importance of a taxpayer's right to due process has been elucidated by the Supreme Court in *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, to wit: ...

Thus, the succeeding action and issuances of the BIR Strike Team were all null and void. (Emphasis supplied)



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It is well to add that the Mission Order⁶⁴ did not authorize the BIR Strike Team to close respondent's business or premises. It directs the conduct of the following activities, but not the suspension or closure of respondent's business and operation, to wit:

1. To monitor sales and/or place of business establishment of GBGEI under observation or surveillance for violation of bookkeeping rules and regulations, particularly on non-issuance of sales invoice or receipts;
2. To apprehend violators of revenue laws and regulations governing the activities above mentioned;
3. To conduct immediate inventory-taking of the goods on hand by the aforementioned taxpayer and reconcile the same with his/its inventory lists as of ____, 20__; and
4. Others:
 - a. To enter any house, building or place where articles subject to excise tax are produced or kept, or are believed upon reasonable grounds to be produced or kept, so far as may be necessary to examine, discover or seize the same;
 - b. **To make seizures of any articles wherein excise taxes has not been paid** and also for the violation of any penal law, rule or regulation administered by the BIR;
 - c. To conduct inventory-taking of all products subject to excise tax and check compliance on affixture of internal revenue stamps in accordance with RR No. 7-2014;
 - d. To check the authenticity of the affixed stamps using Mobile Verification Device (Intermec) and Taggant Reader;
 - e. To perform other acts necessary to ensure the compliance of provisions of the National Internal Revenue Code of 1997, and its implementing rules and regulations; and
 - f. To secure any document/accounting record related to the unregistered and untaxed business.

Moreover, RMO No. 3-2009 provides that the only grounds for suspension or temporary closure of business are as follows:

⁶⁴ Exhibit P-26-2, Division docket, p. 294.



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- (a) Failure to issue receipts or invoices by a VAT-registered or registrable taxpayer;
- (b) Failure to file a Value-Added Tax return;
- (c) Understatement of taxable sales or receipts by 30% or more of the correct amount thereof in the case of a VAT-registered or registrable taxpayer; or
- (d) Failure to register.

The BIR Strike Team found no violation of the above grounds that would warrant suspending or closing respondent's business and operation. In relation thereto, in the Closure Order letter of Deputy Commissioner Arnel SD. Guballa, dated August 4, 2020,⁶⁵ he informed respondent that its company was closed for manufacturing unregistered brands of cigarettes in violation of its Permit to Operate, *viz.*:

"This refers to the On-The-Spot surveillance conducted against your company by the BIR STRIKE TEAM pursuant to Mission Order No. 00018132 dated July 29, 2020.

Please be informed that **your company was closed for manufacturing unregistered Two Moon and Soho brands of cigarettes**, which violated the conditions enumerated in the **Permit to Operate** as manufacturer of cigarette and cigarette filter tube issued to your company by our Bureau's Excise LT Regulatory Division **dated December 6, 2010**.

Consequently, all 4,786 master cases /boxes of said Two Moon and Soho cigarette products, including the cigarette machines and other related items of the production of cigarettes (i.e., paper tape, labels, cigarette boxes, tobacco raw material,s and the like), shall be **seized for reason of the above violation.**"

Clearly, the *seizure* of all 4,786 master cases/boxes of Two Moon and Soho cigarette products, machines, and related items and the *closure* of respondent's business were due to respondent's failure to register the said cigarette brands, violating its Permit to Operate.

However, upon perusal of respondent's Permit to Operate dated December 6, 2010,⁶⁶ the Court *En Banc* notes that the violation of any of the conditions of the Permit to Operate shall be a ground for its *revocation*, without prejudice to the assessment and collection of the corresponding excise tax due,

⁶⁵ Division docket, p. 78.

⁶⁶ Permit to Operate as Manufacturer of Cigarettes and Cigarette Filter Tubes, Exhibit R-15, Division docket, pp. 1380-1382.



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NOT seizure of unregistered cigarette product and business closure, to wit:

... ..

Relative thereto, the following conditions shall be complied with in the operations of your manufacturing plant facility:

1. A permit shall be secured from this Office prior to the conduct of transactions/activities such as, but not limited to, the following:

a. **Registration of each and every brand/variant of cigarettes** and printing of new label/redesigned product labels and secondary containers (reams and master cases) to be used in the manufacture of such brand(s); ...

... ..

Non-compliance with or violations of any of the conditions enumerated above or any provisions of existing rules, laws and regulations pertinent to your business operation shall be a valid ground for the **revocation of this permit**, without prejudice to the assessment and collection of the corresponding excise tax due and penalties attendant to such violations. (*Emphasis supplied*)

It is clear from the foregoing that respondent's failure to register the said cigarette brands warrants only the *revocation* of its Permit to Operate and the assessment and collection of excise taxes.

The BIR Strike Team undoubtedly exceeded the penalty for such a violation when it seized respondent's equipment, raw materials, and finished products and closed its business and manufacturing plant operation.

With the foregoing, this Court would be remiss in its duty as guardian of the judicial branch if We let pass unnoticed petitioner's serious violations against respondent's right to due process and its right against unreasonable searches and seizures.

The Court in Division committed no error in ordering the return of the seized and confiscated unregistered articles.

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Petitioner maintains that respondent's unregistered tobacco products should not have been returned on the ground that the seized unregistered articles are in the official custody of the BIR in the exercise of its police power and the same are to be *destroyed* for being illegal.

The Court *En Banc* disagrees.

As discussed above, the very reason for the seizure of the unregistered articles was respondent's failure to register the Two Moon and Soho brands, as provided in its Permit to Operate.

We reiterate that the said Permit to Operate only warrants the revocation of the permit, and the assessment and collection of the corresponding excise taxes, in case of violation of any of its conditions. There is nothing in the Permit to Operate that authorizes the BIR Strike Team, or any revenue officer for that matter, to conduct a search and seizure on respondent or order the closure of its business in case it violates any of the conditions in the operation of its manufacturing plant facility. Neither did the Permit to Operate allow the *destruction* of the unregistered cigarette brand or related items. Even the Mission Order did not authorize the Team to order the closure of respondent's business or operation or destroy the seized unregistered cigarettes.

Hence, petitioner's seizure and closure operation against respondent on July 27, 2020, and the intended destruction of the seized articles are without any factual and legal basis.

We affirm and quote below the relevant portion of the assailed Resolution, *viz.*:⁶⁷

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

... ..

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

⁶⁷ Annex "B", *EB* docket, pp. 121-128.



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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.

Finally, *PJ Del Rosario* has proffered an enlightening discourse in granting relief to respondent that is worth including here, *viz.*:

In search warrant proceedings, probable cause is defined as such facts and circumstances that would lead a reasonably discreet and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place sought to be searched.

As succinctly put by Honorable Supreme Court Associate Justice Marvic M.V.F. Leonen, **a solitary tip hardly suffices as probable cause.**

As borne by the records, the Mission Order was issued pursuant to an anonymous letter which alleges that Two Moon and Soho brands of cigarettes are being sold in the domestic market. To my mind, **a mere anonymous letter is not sufficient to constitute probable cause that would justify the issuance of the Mission Order.** More is demanded from the BIR prior to the issuance of the Mission Order, which the BIR failed to do.

Truth to tell, there is no iota of proof presented by respondent that petitioner manufactured and caused the withdrawal of the Two Moon and Soho brands of cigarettes from the Philippine Economic Zone Authority (PEZA) zone for sale in the domestic market. Differently put, there is nothing on record which would point to the fact that petitioner withdrew cigarettes from Angeles Industrial Park, not to export them, but to sell them in the domestic market.

The fact that the Two Moon and Soho brands of cigarettes are being sold in the local market does not automatically prove that the same were manufactured by petitioner. For one, the Team Leader of the BIR Strike Team was candid in admitting that there are other manufacturers of Two Moon aside from petitioner, *viz.*: ...

JUSTICE SAN PEDRO:

Mr. Advincula, please listen carefully. My question is, did you in the course of your investigation before going to the premises of petitioner, determine **if petitioner is the only**



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manufacturer of Two Moon cigarettes? Are there other manufacturers (Interrupted)

MR. ADVINCULA:

A: **Yes, there are other manufacturers.**" (Boldfacing supplied)

For another, during trial, petitioner was insistent that the Two Moon and Soho brands of cigarettes which were allegedly being sold in the domestic market were fake or counterfeit as shown in the marked difference between the packaging and logos of the Two Moon and Soho brands manufactured by petitioner and those found by respondent in the domestic market. This claim of petitioner was not sufficiently rebutted by respondent.

Indeed, the hackneyed proposition that the Two Moon and Soho brands of cigarettes being sold in the domestic market is manufactured by petitioner *sans* any showing, directly or circumstantially, of movement of such items from petitioner's premises to the domestic market, is simply too flawed and fallacious.

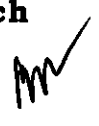
In fine, without any evidence as to the involvement of petitioner in the alleged domestic sale of Two Moon and Soho brands of cigarettes (which brands are intended for export and which were seized inside the manufacturing plant of petitioner), I submit that probable cause is wanting in this case and the issuance of Mission Order was unjustified.

... ..

No less than respondent's witness, Mr. Remedios C. Advincula, admitted during his cross-examination that the Mission Order gives him a blanket authority to seize any item found inside petitioner's premises that violates the NIRC, and to determine on the spot whether or not there is a violation of the NIRC or its implementing regulations being committed by petitioner, viz.: ...

Evidently, the Mission Order was a *carte balance* grant of total and absolute power to the BIR Strike Team to enter any house, building or place, and fish for violation of law and seize whatever articles are found therein, in complete and wanton disregard of petitioner's constitutional right against unreasonable searches and seizures.

Considering that the search of petitioner's premises, the seizure of petitioner's cigarette manufacturing equipment (including all items and accessories appurtenant thereto) as well as all cigarettes and raw materials, and the eventual closure of petitioner's manufacturing plant were conducted *sans* a valid search



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warrant, I concur with the ponencia in granting relief to petitioner.

All told, the Court *En Banc* concurs with and affirms the Court in Division's ruling ordering the return of the seized articles and the issuance of Permit to Operate to respondent upon compliance with the pertinent requirements in accordance with RR No. 3-2006.

Besides, the Supreme Court effectively affirmed the validity of the Court in Division's order to return the seized and confiscated unregistered articles when it ruled against petitioner's *SC Petition for Certiorari*, where one of the issues raised was that:

PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION WHEN IT ORDERED THE RETURN TO PRIVATE RESPONDENT OF THE UNREGISTERED ARTICLES.

It is worth reiterating that the Supreme Court resolved to dismiss petitioner's *SC Petition for Certiorari* because the challenged resolutions of the Court in Division appear to be in accord with the facts and the applicable law and jurisprudence, to wit:

"Acting on the petition for *certiorari* and prohibition under Rule 65 with urgent prayer for issuance of temporary restraining order and/or writ of preliminary injunction assailing the Resolutions dated October 27, 2020, and January 15, 2021, of the Court of Tax Appeals, Quezon City, in CTA Case No. 10341, the Court Resolves to **DISMISS** the petition **for failure to sufficiently show that any grave abuse of discretion was committed by the appellate court in rendering the challenged resolutions which, on the contrary, appear to be in accord with the facts and the applicable law and jurisprudence.**" ⁶⁸ (*Boldfacing and underscoring supplied*)

MN

⁶⁸ Notice, Division division docket, p. 2546.

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WHEREFORE, premises considered, the *Petition for Review* filed by the Commissioner of Internal Revenue is **DENIED** for lack of merit. The assailed Decision dated August 31, 2021, and Resolution dated March 1, 2022, are **AFFIRMED**.

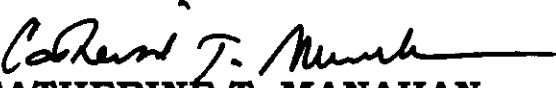
SO ORDERED.


LANEE S. CUI-DAVID
Associate Justice

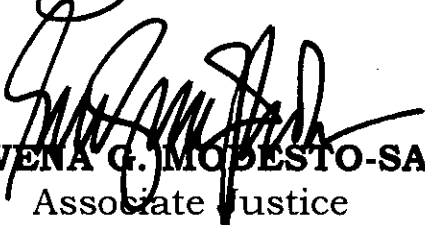
WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice


MA. BELEN RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA G. MODESTO-SAN PEDRO
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice


CORAZON G. FERRER-FLORES
Associate Justice

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CERTIFICATION

Pursuant to Section 13, Article VIII 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.


ROMAN G. DEL ROSARIO
Presiding Justice

