REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Special Third Division

ST. GERRARD CONSTRUCTION GEN. CONTRACTOR AND DEVELOPMENT CORPORATION, Petitioner,	**CTA CASE NO. 10427**
-versus-	Members: **UY**, *Chairperson*, **RINGPIS-LIBAN**, *and* **MODESTO-SAN PEDRO**, *JJ*.
BUREAU OF INTERNAL REVENUE, Respondent.	Promulgated: APR 05 2023 11:02 a.m.

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DECISION

RINGPIS-LIBAN, *J*.:

THE CASE

The instant case is a *Petition for Mandamus* filed under Rule 65 of the Rules of Court[1] in relation to Rule 4, Section 3 of the Revised Rules of the Court of Tax Appeals.[2] Petitioner prays that in view of its availment of the tax amnesty on delinquencies pursuant to Republic Act (RA) No. 11213,[3] or the *Tax Amnesty Act*, the Court mandate the respondent to issue the *Certificate of Tax Delinquencies* (CTD) and *Acceptance Payment Form* (APF) in its favor in order that it may be deemed to have fully complied with all the conditions set forth in the law, including the payment of its amnesty tax, that its delinquency may be considered settled, and that the tax amnesty granted become final and irrevocable.[4]

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[1] Resolution dated March 9, 2022, Docket, pp. 267 to 268.
[2] Petition for Review, par. 1-5, Docket, pp. 6-7.
[3] AN ACT ENHANCING REVENUE ADMINISTRATION AND COLLECTION BY GRANTING AN AMNESTY ON ALL UNPAID INTERNAL REVENUE TAXES IMPOSED BY THE NATIONAL GOVERNMENT FOR TAXABLE YEAR 2017 AND PRIOR YEARS WITH RESPECT TO ESTATE TAX, OTHER INTERNAL REVENUE TAXES, AND TAX ON DELINQUENCIES.
[4] Petition for Review, Docket, p. 27.

THE PARTIES

Petitioner St. Gerrard Construction Gen. Contractor and Development Corporation is a corporation duly organized and existing under the laws of the Philippines, with principal office at 35 Tatco Compound, Jacinto Street, Malinao, Pasig City, Metro Manila, represented by their president, Mr. Pacifico F. Discaya II.[5]

Respondent is the Commissioner of Internal Revenue, duly appointed to perform the duties of his office, including, *inter alia*, the power to decide disputed assessments subject to the exclusive appellate jurisdiction of this Court, pursuant to Section 4 of the Tax Code and Section 7 of the Republic Act (RA) No. 1125, as amended by RA No. 9282. He holds office at Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.[6]

ANTECEDENTS

In the present *Petition for Review*, petitioner alleges the following:

"15. On 08 July 2018, Petitioner received a Letter of Authority from Respondent.

16. On 01 October 2019, Petitioner sent Respondent a Request for Penalty Assessment for taxable year 2017.

17. On 04 October 2019, Petitioner sent a follow-up letter to Respondent about its request for Penalty Assessment.

18. Respondent sent Petitioner another LOA, LOA-043-2019-00000893, to replace LOA#043-2018-00000305 for 2017, dated 04 October 2019.

19. On 08 October 2019, Petitioner received Respondent's letter-reply to the request for penalty assessment stating that the Petitioner's Request for penalty Assessment and Follow up Notice be held in abeyance pending the conclusion of the tax investigation.

20. On 15 October 2019, Petitioner sent Respondent a Final Notice Before Suits reiterating in the letter that Notice for Informal Conference must be issued within 180 days from the issuance of the original Letter of Authority.

[5] Par. 6, *Petition for Review*, p. 7.
[6] Statement of Facts, *Memorandum with Manifestation (For Respondent)*, Docket, p. 300.

21. On 25 October 2019, Petitioner received Respondent's Supplemental Letter informing Petitioner, that **it is hereby allowed to pay the deficiency withholding tax on compensation, inclusive of surcharge, interest and compromise penalty**.

22. On 14 November 2019, Petitioner applied for Tax Amnesty by requesting the release of the Certificate of Tax Delinquencies (CTD), along with the payment of document stamps and certification fee.

23. On 14 November 2019, Petitioner requested Respondent to sign its Acceptance Payment Form (APF) or BIR Form 621DA, with its notarized Tax Amnesty Return (TAR) attached thereto.

24. On 25 November 2019, Petitioner sent its Formal Demand to Sign APF and Formal Demand to Sign CTD to Respondent.

25. On 29 November 2019, Petitioner sent its Last Opportunity Before Suits (CTD) and Final Notice Before Suits (APF) to Respondent.

26. On 09 December 2019, Petitioner received Respondent's Denial Letter for Request for CTD-Release and Request for APF Signature, citing Q7 and A7 of RMC No. 57-2019 as its basis for the denial, to wit:

> 'Q7. Can a taxpayer avail of the tax amnesty for 2017 tax liabilities which are currently under investigation pursuant to a Letter of Authority (LOA)?
>
> A7. Since the investigation pursuant to the letter of authority is still on-going, the tax liability, if any, is not yet considered delinquent account and therefore cannot be the subject of the tax amnesty on delinquencies.
>
> The requirement that tax liabilities must be delinquent accounts prior to the effectivity of RR No. 4-2019, however, does not apply to tax liabilities of withholding agents, pertaining to failure to remit withheld taxes for taxable year 2017 and prior years which may be the subject to tax amnesty on delinquencies at any stage /time of investigation for as long as the amount of the tax liabilities are properly determined by the BIR.'

27. On 10 December 2019, Petitioner sent its Last Opportunity Before Suits APF to remind Respondent of its legal duty to release Petitioner's CTD and signed APF.

28. On January 2020, Petitioner received Respondent's reply letter referring to its request for CTD, stating that based on Respondent's records, Petitioner has no delinquent account.

29. On 06 February 2020, Petitioner paid the 100% of the basic withholding tax in the amount of one million two hundred sixty-nine thousand nine hundred fifteen & 29/100 pesos only (₱1,269,915.29), pursuant to Section 4, RR 4-2019:

> 'Tax Amnesty Rates. The tax amnesty rates shall be as follows:

xxx

D. Withholding agents who withheld taxes but failed to remit the same to the Bureau	100% of the basic tax assessed

'The tax amnesty rate of one hundred percent (100%) provided in letter (D) shall apply in all cases of non-remittance of withholding taxes, even if the same shall fall under letters (A), (B) or (C) above.

30. On 12 February 2020, Petitioner submitted its Compliance Letter for RA 11213 to Respondent, attaching thereto its BIR Form 621DA (APF) with AAB-validated deposit slip for tax amnesty payment and notarized BIR Form 2118DA (TAR).

31. On 06 March 2020, Petitioner received Respondent's reply letter saying that Petitioner's Compliance to RA 11213 application has been forwarded to the Legal Division.

32. On 13 March 2020, Petitioner sent Respondent a Request for ARTA obedience, particularly that all pending applications are deemed APPROVED if a government office or agency fails to approve/disapprove within the prescribed processing time, pursuant to Republic Act No 11032, or the *'Ease of Doing Business and Efficient Government Service Delivery Act of 2018'*, which amended Republic Act No. 9485, otherwise known as the *'Anti-Red Tape Act of 2007'*, specifically Sections 9(b) and 10.

xxx xxx xxx

33. Sometime in June 2020, Petitioner received Respondent's reply letter stating that in order to avail of the Tax Amnesty, it is necessary that the Respondent's case be considered *delinquent account.*

34. On 22 June 2020, Petitioner received Respondent's reply letter referring to Request for ARTA Obedience, which request was forwarded to the Office of the Chief Legal Division.

35. Sometime in July 2020, Petitioner received Respondent's reply letter encouraging the Petitioner to submit claim or request in a clear, categorical and comprehensive manner, supported with relevant laws, rules and regulations.

36. Petitioner received Respondent's reply letter stating that the Last Opportunity before Suits has been forwarded to the Office of the Chief Legal Division.

37. On 18 June 2020, Petitioner sent Respondent a Notice of Deemed Approval.

38. On 22 July 2020 Petitioners received from Respondent an undated Notice of Informal Conference, for taxable year 2017 under Electronic Letter of Authority LOA#043-2019-00000893, dated June 18, 2019, with details of discrepancies on Income Tax, Value Added Tax,

Documentary stamp tax, **Withholding tax on Compensation** and Compromise Penalty.

39. Petitioner received Respondent's reply letter stressing that any other concern or issue of similar import should be raised before the BIR Legal Division, Revenue Region 7B.

40. On 10 August 2020, Petitioner sent Respondent a Very Last Opportunity Before Suits CTD.

41. On 20 August 2020, Petitioner sent Respondent a Request for CTD Release using the Notice of Informal Conference.

42. On 20 August 2020, Petitioner sent Respondent a Request for Evidence-Validation APF and Request for Evidence-Validation CTD.

43. On 28 of August 2020, Petitioner submitted to Respondent a Request for Speedy Resolution.

44. Despite receiving the required documents in support of Petitioner's amnesty application in line with the provisions of RR 4-2019, Section 5, as well as numerous follow-up letters of their request for the signature and release of the CTD and APF, Respondent either denied or ignored Petitioner's requests.

45. Petitioner was prevented from availing of the benefits of the Tax Amnesty Law. Despite filing with the Respondent's appropriate office which has jurisdiction over the residence or principal place of business of the taxpayer, a sworn Tax Amnesty on Delinquencies Return accompanied by a Certification of Delinquency (CTD), as well as the Acceptance Payment Form (APF), Respondent refused and continues to refuse to issue Petitioner's respective CTD and APF."[7] *(Citations omitted)*

PROCEEDINGS BEFORE THIS COURT

Petitioner filed the present *Petition for Review* on December 22, 2020.[8]

In a Resolution dated January 15, 2021,[9] the Court resolved to treat the *Petition for Review* as a *Petition for Mandamus* and ordered respondent to submit the requirements under Rule 7, Sections 5 and 6 of A.M. No. 19-10-20-SC within five (5) days from notice.

On March 12, 2021, petitioner filed its Compliance and Notice of Change of Address.[10]

[7] Docket, pp. 11 to 16.
[8] Docket, pp. 6 to 27.
[9] Docket, pp. 128 to 129.
[10] Docket, pp. 130 to 131.

In a Resolution dated May 20, 2021,[11] respondent was ordered to file its comment. However, respondent failed to file the same.[12]

On February 21, 2022, petitioner filed a *Motion To Submit Memorandum*.[13] In a Resolution dated March 9, 2022,[14] the Court granted the motion, and gave the parties a period of thirty (30) days from notice within which to submit their respective memorandum.

Petitioner filed its *Memorandum* on May 4, 2022,[15] while the respondent filed a *Memorandum With Manifestation (For Respondent)* on June 1, 2022.[16]

The present case was deemed submitted for decision on June 7, 2022.[17]

THE ISSUES RAISED BY PETITIONER

Petitioner submitted the following issues for the Court's resolution, to wit:

> "I
> Whether or not a Petition for Certiorari under the Rules of Court Rule 65, Section 1 filed with the Court of Tax Appeals is the correct remedy
>
> II
> Whether or not Respondent has the ministerial duty to issue a Certificate of Tax Delinquency and Acceptance Payment Form in favor of Petitioner for taxable year 2017 and prior years even if the assessment notices or similar documents are issued after the effectivity of the implementing rules and regulations.
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> III
> In the alternative, whether or not Petitioner is entitled to avail itself of the benefits of the Tax Amnesty Law, even if Respondent refused to sign its Certificate of Tax Delinquency and Acceptance Payment Form, as it is Respondent's ministerial duty to issue a Notice of Issuance of Authority to Cancel Assessment (NIATCA) in Petitioner's favor after it filed its TAR and APF as well as paid the amnesty taxes.
>
> IV
> Whether or not Petitioner has no other plain, speedy and adequate remedy in the ordinary course of law, thus, this petition for certiorari."[18]

[11] Docket, pp. 259 to 260.
[12] Records Verification Report dated February 11, 2022 issued by the Judicial Records Division of this Court, Docket, p. 262.
[13] Docket, pp. 263 to 265.
[14] Docket, pp. 267 to 268.
[15] Docket, pp. 269 to 296.
[16] Docket, pp. 299 to 310.
[17] Resolution dated June 7, 2022, Docket, p. 312
[18] Statement of Issues, *Memorandum for Petitioner*, Docket, pp. 274 to 275.

Petitioner's arguments:

Petitioner argues that a petition for *certiorari* under Rule 65, Section 1, of the Rules of Court filed with this Court is the correct remedy; that respondent has the ministerial duty to issue a CTD and APF in its favor for taxable year 2017 and prior years, even if the assessment notices or similar documents are issued after the effectivity of the implementing rules and regulations; that in the alternative, petitioner is entitled to avail itself of the benefits of the Tax Amnesty Law, even if respondent refused to sign its CTD and APF, as it is respondent's ministerial duty to issue a NIATCA in petitioner's favor after it filed its TAR and APF as well as paid the amnesty taxes; and that petitioner has no other plain, speedy and adequate remedy in the ordinary course of law.

Respondent's counter-arguments:

Respondent contends that petitioner is, in truth and in fact, not entitled to the Tax Amnesty Program under RA No. 11213; that because petitioner is *not* qualified to avail of the Tax Amnesty Program, the *Petition for Mandamus*, will not lie; and that petitioner failed to state the cause of action in the *Petition for Review*.

RULING OF THE COURT

At the outset, it must be emphasized that the Court treated the present *Petition for Review* as one for the issuance of a writ of *mandamus*[19] under Rule 65 of the Rules of Court in view of the allegations in paragraph 4 of the petition.[20] However, based on its *Memorandum*, petitioner appeared to have shifted its remedy as one for *certiorari* by alleging grave abuse of discretion.[21] Nonetheless, neither *certiorari* nor *mandamus* lie in the present case. Thus, the present *Petition for Review* must be dismissed.

There is no showing that petitioner <u>timely</u> filed the present Petition for Review.

Section 4, Rule 65 of the Rules of Court, as amended, provides, in part:

> "Sec. 4. *When and where to file the petition.* – <u>The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution</u>. In case a motion for reconsideration or new trial is timely filed,

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[19] Refer to Resolution dated March 9, 2022, Docket, pp. 285 to 289.
[20] Docket, p. 7.
[21] Docket, pp. 269 to 296.

> whether such motion is required or not, the petition shall be filed not later than sixty (60) days counted from the notice of the denial of the motion.
>
> If the petition relates to an act or an omission of a municipal trial court or of a corporation, a board, an officer or a person, it shall be filed with the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed with the Court of Appeals or with the Sandiganbayan, whether or not the same is in aid of the court's appellate jurisdiction. If the petition involves an act or an omission of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed with and be cognizable only by the Court of Appeals.
>
> In election cases involving an act or an omission of a municipal or a regional trial court, the petition shall be filed exclusively with the Commission on Elections, in aid of its appellate jurisdiction." *(Underscoring added)*

Based on the foregoing provision, both petitions for *certiorari* and *mandamus* must be filed not later sixty (60) days from notice of judgment, order or resolution.

In this case, petitioner has not shown that the present *Petition for Review* was filed within the said 60-day reglementary period. Considering that the same was filed on December 22, 2020,[22] the 60-day period commenced on October 23, 2020. However, the *Petition for Review* is bereft of the proper allegations on its timeliness by stating the act or omission or the judgment, order or resolution, which is the subject of the petition.

Even on the assumption that the act or omission or the judgment, order or resolution of the respondent being assailed pertains to the last letter dated June 23, 2020 petitioner received,[23] the *Petition for Review* which was filed only on December 22, 2020 was clearly filed beyond the 60-day reglementary period prescribed in Rule 65, Section 4 of the Rules of Court.

On this score, the present *Petition for Review* is already dismissible.

Even granting that the present petition was timely filed, the same still lacks merit, as will be discussed below.

There was a plain, speedy and adequate remedy in the ordinary course of law.

Sections 1 and 3, both of Rule 65 of the Rules of Court provide as follows:

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[22] Docket, p. 6.
[23] Exhibit P-31, Docket, p. 110.

> "SECTION 1. *Petition for certiorari*. – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and **there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law**, a person aggrieved thereby may file a verified petition in the proper court, alleging facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.
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> xxx xxx xxx." *(Emphasis added)*

> "SECTION 3. *Petition for mandamus*. – When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and **there is no other plain, speedy and adequate remedy in the ordinary course of law**, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.
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> xxx xxx xxx." *(Emphasis added)*

Based on the foregoing provisions, a common condition in order for the petitions for *certiorari* and for *mandamus* to prosper is that there must be no other plain, speedy and adequate remedy in the ordinary course of law.

A remedy is considered *"plain, speedy and adequate"* if it will promptly relieve the petitioner from the injurious effects of the judgment and the acts of the lower court or agency.[24] In this case, a plain, speedy and adequate remedy is available.

Sections 19 and 20, Chapter 4, Book VII, of the Administrative Code of 1987 (Executive Order EO No. 292, Series of 1987), read:

> "SECTION. 19. *Appeal*. – **Unless otherwise provided by law or executive order, <u>an appeal from a final decision of the agency may be taken to the Department head</u>.**
>
> SECTION 20. *Perfection of Administrative Appeal*. – (1) **Administrative appeals under this Chapter shall be perfected <u>within fifteen (15) days</u> after receipt of a copy of the decision complained of by the party adversely affected, by filing with the agency which adjudicated the case a notice of appeal**, serving copies thereof upon the prevailing party and the appellate agency, and paying the required fees.

[24] *Tagle vs. Equitable PCI Bank, et al.*, G.R. No. 172299, April 22, 2008.

> (2) If a motion for reconsideration is denied, the movant shall have the right to perfect his appeal during the remainder of the period for appeal, reckoned from receipt of the resolution of denial. If the decision is reversed on reconsideration, the aggrieved party shall have fifteen (15) days from receipt of the resolution of reversal within which to perfect his appeal.
>
> (3) The agency shall, upon perfection of the appeal, transmit the records of the case to the appellate agency." *(Emphases and underscoring added)*

The foregoing provisions govern the appellate procedure concerning a final decision[25] of an agency[26], which necessarily includes a bureau, such as respondent,[27] to the Department head, which in turn refers to the Secretary of Finance.[28] Particularly, the appeal must be made within fifteen (15) days from receipt of a copy of the final decision of the agency concerned. Such appeal shall be perfected by filing a notice of appeal with the said agency.

The writ of *certiorari* is an extraordinary remedy that is justified in the absence of an appeal or any plain, speedy and adequate remedy in the ordinary course of law. It may be given due course as long as petitioners allege that they had no appeal or any other efficacious remedy against the appellate court's decision.[29]

In the same manner, a writ of *mandamus* will not issue unless it is shown that there is no other plain, speedy, and adequate remedy in the ordinary course of law.[30]

However, in this case, it is apparent that petitioner failed to file an appeal on the supposed decision of respondent being assailed. Thus, the present *Petition for Review* is not proper.

There is no grave abuse of discretion. Petitioner also failed to establish that it has a clear legal right to be issued a CTD and APF.

[25] As used in Book VII of the Administrative Code of 1987, the term "decision" means "**the whole or any part of the final disposition**, not of an interlocutory character, whether affirmative, negative, or injunctive in form, of an agency **in any matter...**" [Section 2(8), Chapter 1, Book VII, of the Administrative Code of 1987].

[26] The term "agency" includes "**any** department, **bureau,** office, commission, authority or officer **of the National Government** authorized by law or executive order to make rules, issues licenses, grant rights or privileges, and adjudicate cases..." [Section 2(1), Chapter 1, Book VII, of the Administrative Code of 1987].

[27] The Revenue Operations Group of the Department of Finance is composed, *inter alia*, of the BIR. [Refer to Section 16(1)(a), Chapter 4, Title II, Book IV, of the Administrative Code of 1987].

[28] Refer to Section 4, Chapter 1, Title II, Book IV, of the Administrative Code of 1987.

[29] *Commissioner of Internal Revenue vs. Kepco Ilijan Corporation*, G.R. No. 199422, June 21, 2016.

[30] *Lihaylihay vs. The Treasurer of the Philippines, et al.*, G.R. No. 192223, July 23, 2018.

By grave abuse of discretion is meant, such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. It is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim and deposition.[31]

Anent *mandamus*, in *Harbour Centre Port Terminal, Inc. vs. Arreza, et al.*,[32] the Supreme Court said:

> "For a writ of *mandamus* to issue, there must be concurrence between a clear legal right accruing to petitioner and a correlative duty incumbent upon respondents to perform an act, this duty being imposed upon them by law.
>
> The duty subject of *mandamus* must be ministerial rather than discretionary. A purely ministerial act or duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the existence of his or her own judgment upon the propriety or impropriety of the act done."

In this case, to resolve the issues of whether respondent has gravely abused its discretion, and whether there is a concurrence between a clear legal right accruing to petitioner and a correlative duty incumbent upon respondent to perform an act, it is necessary to determine whether petitioner is qualified to avail of the benefits under the pertinent provisions of RA No. 11213.

For easy reference, Title IV (Tax Amnesty on Delinquencies) of RA No. 11213, or the *Tax Amnesty Act*, reads:

> **"TITLE IV**
>
> **TAX AMNESTY ON DELINQUENCIES**
>
> SEC. 17. *Coverage.* – **There is hereby authorized and granted a tax amnesty herein called the Tax Amnesty on Delinquencies, which shall cover all national internal revenue taxes such as, but not limited to, income tax, withholding tax,** capital gains tax, donor's tax, value-added tax, other percentage taxes, excise tax and documentary stamp tax collected by the Bureau of Internal Revenue, including value-added tax and excise taxes collected by the Bureau of Customs for taxable year 2017 and prior years.

[31] *Confederation For Unity, Recognition And Advancement of Government Employees (COURAGE), et al. vs. Commissioner, Bureau of Internal Revenue, et al., et seq.*, G.R. Nos. 213446 and 213658, July 3, 2018.
[32] G.R. No. 211122, December 6, 2021.

For purposes of this Act, the Tax Amnesty on Delinquencies may be availed of in the following instances:

(a) Delinquencies and assessments, which have become final and executory, including delinquent tax account, where the application for compromise has been requested on the basis of: (1) doubtful validity of the assessment; or (2) financial incapacity of the taxpayer, but the same was denied by the Regional Evaluation Board or the National Evaluation Board, as the case may be, on or before the Implementing Rules and Regulations take effect;

(b) Pending criminal cases with the Department of Justice or the courts for tax evasion and other criminal offenses under Chapter II of Title X and Section 275 of the National Internal Revenue Code of 1997, as amended, with or without assessments duly issued;

(c) Tax cases subject of final and executory judgment by the courts on or before the Implementing Rules and Regulations take effect; and

(d) Withholding tax agents who withheld taxes but failed to remit the same to the Bureau of Internal Revenue.

SEC. 18. *Entitlement of Tax Amnesty on Delinquencies.* – **Any person may enjoy the immunities and privileges of the Tax Amnesty on Delinquencies and pay the following tax amnesty rates:**

(a) Delinquencies and assessments which have become final and executory...............40% of the basic tax assessed;

(b) Tax cases subject of final and executory judgment by the courts..............50% of the basic tax assessed;

(c) Pending criminal cases with criminal information filed with the Department of Justice or the courts for tax evasion and other criminal offenses under Chapter II of Title X and Section 275 of the National Internal Revenue Code of 1997, as amended, with assessments duly issued and otherwise excluded in Titles II and III hereof..............60% of the basic tax assessed; and

(d) Withholding agents who withheld taxes but failed to remit the same to the Bureau of Internal Revenue...............100% of the basic tax assessed.

SEC. 19. *Availment of the Tax Amnesty on Delinquencies; When and Where to File and Pay.* – **Any person, natural or juridical, who wishes to avail of the Tax Amnesty on Delinquencies shall, within one (1) year from the effectivity of the Implementing Rules and Regulations of this Act, file with the appropriate office of the Bureau of Internal Revenue, which has jurisdiction over the residence or principal place of business of the taxpayer, a sworn Tax Amnesty on Delinquencies Return accompanied by a Certification of Delinquency. The payment of the amnesty tax shall be made at the time the Return is filed.**

Provided, **That the Revenue District Officer shall issue and endorse and Acceptance Payment Form,** in such form as may be prescribed in the Implementing Rules and Regulations of this Act authorizing the authorized agent bank, or in the absence thereof, the revenue collection agent or municipal treasurer concerned, to accept the amnesty tax payment.

Provided, further, That the availment of the Tax Amnesty on Delinquencies and the issuance of the corresponding Acceptance Payment Form do not imply any admission of criminal, civil or administrative liability on the part of the availing taxpayer.

SEC. 20. *Immunities and Privileges.* – **The tax delinquency of those who avail of the Tax Amnesty on Delinquencies and have fully complied with all the conditions set forth in this Act and upon payment of the amnesty tax shall be considered settled** and the criminal case under Section 18(c) and its corresponding civil or administrative case, if applicable, be terminated, and **the taxpayer shall be immune from all suits or actions, including the payment of said delinquency or assessment, as well as additions thereto, and from all appurtenant civil, criminal, and administrative cases, and penalties under the National Internal Revenue Code of 1997, as amended**, as such relate to the taxpayer's assets, liabilities, networth, and internal revenue taxes that are subject of the tax amnesty, and from such other investigations or suits insofar as they relate to the assets, liabilities, networth and internal revenue taxes that are subject of the tax amnesty: *Provided,* **That any notices of levy, attachments and/or warrants of garnishment issued against the taxpayer shall be set aside pursuant to a lifting of notice of levy/garnishment duly issued by the Bureau of Internal Revenue or its authorized representative: *Provided, further,* That the Authority to Cancel Assessment shall be issued by the Bureau of Internal Revenue in favor of the taxpayer availing of the Tax Amnesty on Delinquencies within fifteen (15) calendar days from submission to the Bureau of Internal Revenue of the Acceptance Payment Form and the Tax Amnesty on Delinquencies Return. <u>Otherwise, the duplicate copies, stamped as received, of the Acceptance Payment Form, and the Tax Amnesty on Delinquencies Return shall be deemed as sufficient proof of availment</u>:** *Provided, furthermore,* That the Tax Amnesty on Delinquencies Return and the Acceptance Payment Form shall be submitted to the Revenue District Office after complete payment. **The completion of these requirements shall be deemed full compliance with the provisions of this Act.**

Upon full compliance with all the conditions set forth in this Title and payment of the corresponding tax on delinquency, the tax amnesty granted under this Title shall become final and irrevocable." *(Emphases and underscoring added)*

Based on the foregoing provisions, the Tax Amnesty on Delinquencies covers all national internal revenue taxes, such as income tax, withholding tax, VAT, and DST. The same may be availed of: (1) by filing with the appropriate office of respondent a sworn *Tax Amnesty on Delinquencies Return* accompanied by a *Certification of Delinquency*, within a period of one (1) year from the effectivity of the Implementing Rules and Regulations of RA No. 11213; and (2) by paying, *inter alia*, 40% of the basic tax assessed, in case of delinquencies and assessments, which have become final and executory, and 100% of the basic tax assessed, in case of withholding tax agents who withheld taxes but failed to remit the same to the BIR.

Upon compliance with all the conditions set forth in RA No. 11213 and payment of the pertinent amnesty tax, the tax delinquency of the availing taxpayer shall be considered settled; and the taxpayer shall be immune from all suits or actions, including the payment of said delinquency or assessment, as well as additions thereto, and from all appurtenant civil, criminal, and administrative cases, and penalties under the NIRC of 1997, as amended.

Based on Section 17 of RA No. 11213, it is clear that the instances that the Tax Amnesty on Delinquencies may be availed of include: "(d)*elinquencies and assessments, which have become final and executory*"; and "(w)*ithholding tax agents who withheld taxes but failed to remit the same to the Bureau of Internal Revenue.*"

Relative thereto, Sections 2 and 3 of RR No. 4-2019,[33] the Implementing Rules and Regulations of RA No. 11213 reads:

> "**SECTION 2. DEFINITION OF TERMS.** For purposes of these Regulations, the words used herein shall be defined as follows:
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> A. **Delinquent Account – shall pertain to a tax due from a taxpayer arising from the audit of the Bureau of Internal Revenue (BIR) which had been issued Assessment Notices that have become final and executory** due to the following instances:
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> 1. Failure to pay the tax due on the prescribed due date provided in the Final Assessment Notice (FAN)/Formal Letter of Demand (FLD) and for which no valid Protest, whether a request for reconsideration or reinvestigation, has been filed within thirty (30) days from receipt thereof;
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> 2. Failure to file an appeal to the Court of Tax Appeals (CTA) or an administrative appeal before the Commissioner of Internal Revenue (CIR) within thirty (30) days from receipt of the decision denying the request for reinvestigation or reconsideration; or
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> 3. Failure to file an appeal to the CTA within thirty (30) days from receipt of the Decision of the CIR denying the taxpayer's administrative appeal to the Final Decision on Disputed Assessment (FDDA).
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> xxx xxx xxx
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> **SECTION 3. COVERAGE.** All persons, whether natural or juridical, with internal revenue tax liabilities covering taxable year 2017 and prior years, may avail of Tax Amnesty on Delinquencies within one (1) year

[33] SUBJECT: Implementing Rules and Regulations of Republic Act No. 11213, Otherwise Known as the "Tax Amnesty Act", Providing for the Guidelines on the Processing of Tax Amnesty Application on Tax Delinquencies.

from the effectivity of these Regulations, under any of the following instances:

> A. **Delinquent Accounts as of the effectivity of these Regulations, including the following:**
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> xxx xxx xxx
>
> 2. **Delinquent Withholding Tax liabilities <u>arising from non-withholding of tax</u>**; and
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> xxx xxx xxx
>
> D. **Withholding tax liabilities of withholding agents <u>arising from their failure to remit withheld taxes</u>.**" *(Emphases and underscoring added*

On the basis of the foregoing provisions, for the purpose of the coverage of withholding taxes by the provisions of the tax amnesty under RA No. 11213, the delinquency must arise *"from non-withholding of tax"*, or the withholding tax liabilities must arise from the withholding agent's *"failure to remit withheld taxes"*. In other words, in the case of the former, the same must be covered by an *Assessment Notice* that has become *final and executory*. In the case of the latter, there must be a showing that the withholding agent was able to withhold the tax but was *unable to remit* the same to the BIR.

In this case, there is no allegation or proof that an *Assessment Notice* was previously issued against petitioner for non-withholding of tax, much less, that the same had become *final and executory*, as required by RA No. 11213 or the *Tax Amnesty Act*.

In fact, what is clear based on petitioner's narration of facts is that when it filed its Acceptance Payment Form (BIR Form 0621-DA) dated November 11, 2019 and declared a tax amnesty amount of ₱1,269,915.29,[34] it just received a Letter of Authority (LOA) from respondent on July 8, 2018,[35] a little over a year before this amnesty availment. Therefore, the investigation for all internal revenue taxes for calendar year 2017 *began only in 2018, with the issuance of the LOA, and was still ongoing even in 2019, at the time of the tax amnesty availment.*

This is the reason why, in a letter dated October 7, 2019, Revenue District Office No. 43, Pasig City, explained that petitioner's request for penalty assessment "cannot be given due course for the simple reason that St. Gerard is currently under tax audit/investigation....[the] result of which is not yet finalized":[36]

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[34] Exhibit P-12, Docket, p. 53.
[35] Petition for Review, Par. 15, Docket, p. 11; Letter of Authority dated July 9, 2018, Exhibit P-1, Docket, p. 28.
[36] Petition for Review, Par. 19, Docket, p. 11; Exhibit P-5, Docket, pp. 34-36.

> "This refers to your Request for Penalty Assessment and Follow Up Notice dated September 30, 2019 and October 4, 2019, but were received by this Office only on October 1, 2019 and October 4, 2019, respectively, where you are requesting to issue a written advise on how to proceed in settling the unpaid withholding tax on compensation of St. Gerard Construction Gen. Contractor and Development Corporation (St. Gerrard) for taxable year 2016.
>
> In this connection, we would like to remind you that your request, in the meantime, cannot be given due course for the simple reason that St. Gerrard is currently under tax audit/investigation of Revenue Officer (RO) Mathew Michael V. Torio under Group Supervisor (GS) Michelle E. Dela Torre pursuant to eLA No. 201600059311 dated October 4, 2019; result of which, however, is not yet finalized by the assigned Bureau personnel. As such, the List of Working Papers having the details of erroneously computed Withholding Tax on Compensation, Vouchers, Checks, BIR Forms 2316, 1604E, 1604CF, etc. that were appended in your letters are now consolidated to the tax docket of St. Gerrard for the year 2016.
>
> In view of the foregoing, you are hereby instructed to remain lenient while waiting for the issuance of the Notice for Informal Conference that will be served upon you after the conclusion of the tax investigation pursuant to Revenue Regulations (RR) No. 12-99, as amended by RR 18-13, and further amended by R 7-2018, Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of the National Internal Revenue Taxes, Civil Penalties and Interest and the Extrajudicial Settlement of a Taxpayer's Criminal Violation of the Code through Payment of a Suggested Compromise Penalty, *viz*:
>
> xxx xxx xxx
>
> In short, "[t]he purpose of sending a Notice for Informal Conference is but part of the 'due process requirement in the issuance of a deficiency tax assessment,' the absence of which renders nugatory any assessment made by the tax authorities" (*Spouses Emmanuel D. Pacquiao and Jinkee J. Pacquiao v. CTA First Division and CIR*, (G. R. No. 213394, 06 April 2016).
>
> I hope and pray that this letter of explanation properly present our side that your Request for Penalty Assessment and Follow up Notice be held in abeyance pending the conclusion of the tax investigation thus cited.
>
> Very truly yours,
>
> (signed)
> VICENTE P. GAMAD, Jr.
> Revenue District Officer"
> (*Underscoring added*)

Also, in a letter dated March 3, 2020, respondent informed petitioner that under Revenue Regulation No. 4-2019 it is necessary that its case be considered "delinquent account" as defined therein, in order to avail of the tax amnesty.[37]

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[37] Exhibit P-25, Docket, p. 97.

On July 22, 2020, several months *after* the availment of the tax amnesty in 2019 and the receipt of the letters from respondent notifying petitioner that it could *not* qualify under the *Tax Amnesty Act*, petitioner finally received an undated *Notice of Informal Conference.*[38] This means that, as of that date, the tax investigation had *not even progressed to the assessment stage* with the issuance of an Assessment Notice. Because the respondent had yet to issue any Assessment Notice against petitioner, no Assessment Notice could have had become final and executory against it and, thus, no tax could have had been due from it.[39] When petitioner availed of the tax amnesty in 2019, it had yet no tax delinquency which would qualify under the *Tax Amnesty Act.*

Finally, there is also no showing that petitioner withheld taxes *and* had failed to remit the same, as required by the *Tax Amnesty Act.* Although petitioner claimed that it had "unremitted" withholding taxes and, thus, qualified to avail of the tax amnesty, no evidence was presented that it initially withheld the taxes on the compensation of its employees, and that such withheld taxes remained unremitted until the payment of the tax amnesty amount of ₱1,269,915.29.

Accordingly, in view of the foregoing, petitioner has failed to convince the Court that it is covered by the tax amnesty under RA No. 11213. There was *no* positive duty or duty enjoined by the same law, which respondent was called upon to perform or do, particularly the issuance of the CTD and APF. Correspondingly, there is no legal right accruing to the petitioner to be issued the same documents.

Therefore, this Court finds *no grave abuse of discretion* on the part of respondent, which may warrant the issuance of a writ of *certiorari* directed against the latter; and that there is *no correlative duty* incumbent and imposed upon respondent to perform, which may call for the issuance of a writ of *mandamus* against it.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **DISMISSED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[38] Petition for Review, Par. 38, Docket, p. 15; Notice of Informal Conference with Details of Discrepancies, Exhibit P-30, Docket, pp. 105-109.
[39] Revenue Regulations No. 4-2019, Section 2A.

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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