REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Second Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

MERRYSUN CORPORATION,
(Unit 2508 & 2509, World Trade Exchange, 215 Juan Luna St., Binondo, Manila),

ARLENE YU BENITEZ,
(Unit 2508 & 2509, World Trade Exchange, 215 Juan Luna St., Binondo, Manila),

SAM RAMOS VILLA,
(Bantug Norte, Cabanatuan City),

SHARLY CAI TAN,
(215 Juan Luna St., Binondo, Manila)

-ALL AT LARGE-,
Accused.

CTA CRIM. CASE NO. O-1056
(NPS Docket No. XVI-INV-18D-00108)

Members:
RINGPIS-LIBAN, *Chairperson*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:

JUL 10 2023

10:20 a.m.

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RESOLUTION

For the Court's resolution is an Information, filed on 20 April 2023, accusing Merrysun Corporation and its officers of willfully, knowingly, and unlawfully failing to pay excise tax covering sixty-five (65) boxes of cigarettes, which were discovered to have allegedly counterfeit Bureau of Internal Revenue ("BIR") cigarettes seals when said cigarette boxes were found by the police being loaded into accused's vehicle.

The Information must be dismissed for lack of jurisdiction.

The prescriptive period for any violation of the ***National Internal Revenue Code of 1997, as amended*** ("***NIRC***") is governed by ***Sec. 281*** of the same:

> **SEC. 281.** ***Prescription for Violations of any Provision of this Code.*** — All violations of any provision of this Code shall prescribe after five (5) years.
>
> **Prescription shall begin to run** from the day of the commission of the violation of the law, and **if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.**
>
> **The prescription shall be interrupted when the proceedings are instituted against the guilty persons** and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.
>
> x x x"
>
> (Emphasis supplied.)

Meanwhile, the phrase "institution of judicial proceedings for its investigation and punishment" has been interpreted by the Supreme Court in ***Emilio E. Lim Sr. and Antonio Sun Lim v. Court of Appeals and People of the Philippines*** ("***Lim Case***") as follows:

> "Not only that. The Solicitor General stresses that Section 354 speaks not only of discovery of the fraud but also institution of judicial proceedings. Note the conjunctive word 'and' between the phrases 'the discovery thereof' and 'the institution of judicial proceedings for its investigation and proceedings.' In other words, **in addition to the fact of discovery, there must be a judicial proceeding for the investigation and punishment of the tax offense before the five-year limiting period begins to run.** It was on September 1, 1969 that the offenses subject of Criminal Cases Nos. 1790 and 1791 were indorsed to the Fiscal's Office for preliminary investigation. **Inasmuch as a preliminary investigation is a proceeding for investigation and punishment of a crime, it was only on September 1, 1969 that the prescriptive period commenced.**"
> (Emphasis supplied.)

The Supreme Court, in the ***Lim Case***, also observed that the prescriptive period is interrupted with the filing of an information with the court:

> "The Court is inclined to adopt the view of the Solicitor General. For while that particular point might have been raised in the Ching Lak case, the Court, at that time, did not give a definitive ruling which would have settled the question once and for all. As Section 354 stands in the statute book (and to this day it has remained unchanged) **it would indeed seem that tax cases, such as the present ones, are practically imprescriptible for as long as the period from the discovery *and* institution of judicial proceedings for its investigation and punishment, *up to* the filing of the information in court does not exceed five (5) years.**"
> (Italics in original; emphasis supplied.)

Finally, the matter was further clarified by ***Sec. 2, Rule 9 of the Revised Rules of the Court of Tax Appeals, as amended*** ("***RRCTA***"):

> "SEC. 2. *Institution of criminal actions.* — All criminal actions before the Court in Division in the exercise of its original jurisdiction shall be instituted by the filling of an information in the name of the People of the Philippines. x x x
>
> The institution of the criminal action shall interrupt the running of the period of prescription."

To summarize the above, when a crime is not known at the time it was committed, the prescriptive period begins upon the violation's "discovery" and the "institution of judicial proceedings for its investigation and punishment", following ***Sec. 281 of the NIRC***. Due to the presence of the conjunction "and" in the above, the prescriptive period practically only starts upon the institution of proceedings for the violation's investigation and punishment, which the ***Lim Case*** interprets as the filing of a complaint with the authorized body for the violation's preliminary investigation. Finally, ***Sec. 2, Rule 9 of the RRCTA*** mandates that the prescriptive period is interrupted upon the filing of an information before the Court of Tax Appeals in Division, an interruption earlier identified in the ***Lim Case***.

The violation in the present case was not known at the time of its commission—the same had to be discovered. The police only apprehended accused's vehicle on 2 April 2018 due to a traffic violation and only discovered the boxes of cigarettes involved in this case when the same accidentally fell out of the boxes being loaded into the aforementioned vehicle. The BIR, meanwhile, only discovered the allegedly counterfeit BIR seals on said cigarette boxes when the police sent them a report, also dated 2 April 2018, regarding the incident.[1] Prior to that, the BIR clearly did not know that the counterfeit seals were being produced and placed upon the cigarettes or that the cigarettes bearing such seals were being delivered by accused's vehicle.

Given the above, the prescriptive period began upon the BIR's filing of a Complaint-Affidavit with the Department of Justice on 13 April 2018.[2]

The instant Information, meanwhile, was filed on 20 April 2023. However, the prescriptive period ended on 13 April 2023, five (5) years after 13 April 2018. As the Information was filed seven (7) days late, the Court does not have any jurisdiction over this case, which must accordingly be dismissed.

WHEREFORE, the instant Information is hereby **DISMISSED** for lack of jurisdiction.

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1 *See* Incident Report, dated 2 April 2018, Records; *see also* Complaint-Affidavit, dated 13 April 2018, *id.*

2 *See* Investigation Data Form, dated 13 April 2018, *id.* The same bears a stamp from the Department of Justice showing that it was received by said Department on 13 April 2018.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice