REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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STARPACK PHILIPPINES CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6486

Members:

ACOSTA, Chairman
BAUTISTA, and
CASANOVA, JJ.

Promulgated:

APR 2 1 2005
(signature)

x -x

DECISION

CASANOVA, C., J.:

This is a judicial appeal from the decision of the respondent holding petitioner liable for the amount of P62,527,167.91 as deficiency value-added tax (VAT) for taxable year 1996.

The antecedent facts of the case are as follows:

Petitioner is a corporation duly established and registered under the laws of the Republic of the Philippines. It is engaged in the business of manufacturing containers and packaging materials *(Paragraph 1.1, Joint Stipulation of Facts)* with principal business address at F. Manalo Street, Punta, Sta. Ana, Manila *(Paragraph 1, Petition for Review)*.

On December 26, 1996, petitioner (under its old name AR Packaging Corporation) sold, transferred and conveyed machineries and equipment to Steniel Carton System

Corporation for a total consideration of P107,135,845.00 *(Exhibits "A").* It appears, however, that petitioner sold, transferred and conveyed several parcels of land to Steniel Manufacturing Corporation on various dates prior to December 26, 1996 *(Exhibits "B" to "N").*

On October 19, 2001, petitioner received a Formal Letter of Demand dated July 24, 2001 issued by respondent, through Assistant Commissioner of the Large Taxpayers Service Virginia Trinidad, including the final Formal Assessment Notice and Details of Assessment, demanding payment of the amount of P62,527,167.91, inclusive of penalties incident to delinquency, as deficiency VAT under Assessment Notice No. VT 96-000007 *(Par. 1.4, Joint Stipulation of Facts; pp. 1615-1616, BIR Records)*, detailed as follows:

Taxable Sales Receipts Per Original Inv	*Sale of Assets to Steniel Mfg Corp & Steniel Carton System was not included in the vat returns filed (Section 8[s] of Rev. Regulation 14-94).*	P1,457,238,992.50
Taxable Sales/Receipts per Re-inv.		P1,457,238,992.50
Output Tax Due		145,723,899.25
Less Creditable Input Tax		100,767220.80,
VAT Due		44,956,678.45
Less Tax Paid/Withheld Per Return		12,904,284.65
Deficiency Value-added Tax		32,052,393.80
Add:		
Interest to October 20, 2001	P30,449,774.11	
Compromise Penalty	25,000.00	P30,474,774.11
Total Amount Payable		**P62,527,167.91**

On November 16, 2001, petitioner filed its letter protest against said demand letter and notice questioning the aforesaid assessment *(Par. 1.5, Joint Stipulation of Facts)*, on the grounds, among others, that said assessment is without legal basis, and that the period to assess deficiency VAT had already expired *(pp. 1663-1672, BIR Records).*

Since respondent has not acted upon petitioner's protest *(Par. 1.6, Joint Stipulation of Facts)* petitioner filed the instant petition on June 14, 2002.

By way of an Answer filed on August 5, 2002, respondent asserted the following Special and Affirmative Defenses, to wit:

4. Investigation revealed that sometime during the last quarter of 1996, petitioner sold parcels of land with improvements thereon, like, building and machineries for P320,523,938.00 to Steniel Manufacturing Corporation and Steniel Carton System, Inc. Such sale is subject to VAT pursuant to Section 8(s) of Revenue Regulations 14-94 which provides, thus:

> "Sec. 8. On exempt transactions of real properties-
>
> xxx xxx xxx
>
> A sale of real property not primarily held for lease in the ordinary course of trade or business shall not be considered subject to VAT. Provided, however, That no input tax has been recognized thereon at the time of its acquisition. Input tax is presumed to have been recognized in the following cases:
>
> (A) The real property solely consists of a piece of land, without improvement, and was acquired by the seller/transferor on or after October 1, 1994;
>
> (B) In respect only of the improvement, if the property consists of (I) land acquired before October 1, 1994, and (II) improvement introduced by the seller/transferor on or after January 1, 1998;
>
> Provided, however, That the seller/transferor is a VAT-registered person at the time the said piece of land was acquired, also from a VAT-registered person, or the improvement was introduced, as the case may be.
>
> If based on the foregoing, it is considered that the seller/transferor recognized input tax at the time of acquisition of the real property and/or improvement, he shall pay a VAT on the sale even if he did not hold such property primarily for sale or lease, computed on the basis of his acquisition cost therefore as shown in his books of accounts and underlying accounting records."

5. The parcel of land, the factory building and the machineries were acquired by petitioner in 1995. Petitioner failed to submit proofs that

no input tax has been claimed from purchases of said assets. Hence, petitioner is presumed to have recognized input taxes at the time of acquisition of said assets, and, therefore, it is liable for VAT on the sale thereof even if it did not hold the same primarily for sale.

6. Petitioner and respondent had agreed to extend the period within which to assess the tax up to March 31, 2002. The assessment was received by petitioner on October 19, 2001, hence, within the period of extension agreed upon.

7. The various waivers of the defense of prescription executed by petitioner were accepted by respondent's duly authorized representatives pursuant to Revenue Memorandum Order No. 20-90. Hence, said waivers validly extended the period of prescription.

8. Petitioner failed to submit documents showing that no input tax has been claimed from purchases of assets within sixty (60) days from the filing of its protest as required under Section 228 of the Tax Code. Hence, the assessment has become final.

9. The assessment was issued in accordance with law and regulations.

10. All presumptions are in favor of the correctness of tax assessments.

The parties filed their Joint Stipulation of Facts on October 15, 2002 manifesting their mutual agreement on the issues involved in this case as follows:

1. Whether the VAT assessment against petitioner was issued beyond the prescriptive period.

2. Whether a one-time sale of real properties by a corporation engaged in the manufacturing business is subject to VAT.

3. Whether Revenue Regulation No. 7-95 in not restating the following provision:

> "If based on the foregoing, it is considered that the seller/transferor recognized input tax at the time of acquisition of the real property and/or improvement, he shall pay a VAT on the sale even if he did not hold such property primarily for sale or lease, computed on the basis of his acquisition cost therefor as shown in his books of accounts and underlying accounting records."

which was previously contained in Section 8 of Revenue Regulation No. 14-94 has effectively abandoned the concept that the sale of real properties are still subject to VAT even if sold by one who is not engaged in real estate business if it can be shown that the seller previously claimed input tax when the property was purchased.

4. Whether the machineries subject of the sale are real properties for VAT purposes.

5. Whether petitioner is liable for deficiency VAT in the amount of Php62,527,167.91 for taxable year 1996.

6. Whether the assessment has become final for failure of petitioner to submit documents showing that no input tax has been claimed from its purchases of the assets in 1995 and sold in 1996 within sixty (60) days from filing of its protest.

This case was submitted for decision on October 14, 2004 after both parties submitted their respective memoranda.

Before We delve deeply into the foregoing issues, this Court deems it necessary to address first the issue of prescription raised by the parties because the resolution thereof will determine the necessity of resolving the other legal and factual issues stipulated in the instant case.

Petitioner avers that the right of respondent to assess deficiency VAT for taxable year 1996 had already prescribed inasmuch as the assessment notice and final demand letter were issued beyond the three-year period allowed under Section 203 of the 1977 National Internal Revenue Code, as amended, hereunder quoted for ready reference:

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

Considering that the subject assessment arose from the sale by petitioner of certain real properties, which was made during the fourth quarter of the year 1996, petitioner maintains that the deadline for the BIR within which to assess deficiency VAT for the same taxable year is January 21, 2000, or three (3) years after the last day prescribed by law for filing of the VAT return.

Respondent, on the other hand, argued that the assessment notice and final demand letter were timely issued in view of the various waivers executed by petitioner extending the period to assess the 1996 VAT liabilities up to March 31, 2002. The relevant details of the aforesaid "Waivers of Statute of Limitations" are as follows:

Waiver	Date Executed	Extended Until	Exhibit
First	January 10, 2000	June 30, 2000	"O"
Second	May 8, 2000	September 30, 2000	"P"
Third	September 8, 2000	January 31, 2001	"Q"
Fourth	January 15, 2001	June 30, 2001	"R"
Fifth	April 23, 2001	September 30, 2001	"S"
Sixth	July 31, 2001	March 31, 2002	"T"

Respondent relied solely on Section 223 of the 1977 NIRC, as amended (now Section 222 of the 1997 NIRC), which specifically provides for exceptions on the period of limitation of assessment and collection of taxes. We quote paragraph (b) thereof, to wit:

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

Petitioner, however, questions the validity of the aforementioned series of waivers on the following grounds:

> 1. The waivers of the statute of limitation are not signed by the Commissioner of Internal Revenue; and
>
> 2. The waivers of the statute of limitation do not bear (a) the date of acceptance thereof by respondent and (b) proof of receipt by petitioner of the waiver signed and accepted by respondent.

With respect to the first ground alleged by petitioner, it posits that a waiver to be valid must be signed by both the Commissioner and petitioner pursuant to Section 223(b) as quoted above. Petitioner concludes that the subject waivers having been signed only by officers other than the respondent himself, there is no question that the waivers were not executed in accordance with law. Petitioner further argues that although under Revenue

Memorandum Order No. 20-90 the authority to accept and sign the "Waiver of Statute Limitations" may be delegated to certain revenue officials in certain cases, only the Commissioner of Internal Revenue is authorized to sign such waivers "for tax cases involving more than P1M", citing the cases of Boise Cascade Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 2858, March 30, 1987; and Hi Cement Corporation vs. Liwayway Vinzons-Chato, CTA Case No. 5026, January 29, 1998.

Furthermore, citing the case of Pelican, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5997, May 16, 2003, petitioner contends that it is not even necessary to probe the validity of the subsequent waivers as the same served no purpose since the first waiver *(Exhibit "O")* is void. Such subsequent waivers did not have a period to extend as there was no period extended by the first waiver.

As to the second ground, petitioner likewise anchors its argument on the focal provisions of Revenue Memorandum Order No. 20-90. To quote:

> In the execution of said waiver, the following procedures should be followed:
>
> xxx xxx xxx
>
> 2. The waiver shall be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials.
>
> Soon after the waiver is signed by the taxpayer, the Commissioner of Internal Revenue or the revenue official authorized by him, as hereinafter provided, shall sign the waiver indicating that the Bureau has accepted and agreed to the waiver. <u>**The date of such acceptance by the Bureau should be indicated**</u>. <u>Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.</u>
>
> xxx xxx xxx
>
> 4. The waiver must be executed in three (3) copies, the original copy to be attached to the docket of the case, <u>**the second copy for the taxpayer**</u> and the third copy for the Office accepting the waiver. <u>The</u> <u>**fact of receipt by the taxpayer of his/her file copy shall be indicated in the original copy.**</u>

5. The **foregoing procedures shall be strictly followed.** Any revenue official found not to have complied with this Order resulting in prescription of the right to assess/collect shall be administratively dealt with. *(Emphasis supplied and underlining)*

Now, in resolving the issue of prescription, this Court considers it apropos to discuss the provision of Section 223(b), in relation to Sec 203 of the 1977 NIRC, as amended.

Based on the abovementioned provisions, our tax laws clearly provide that if **before the expiration of the three-year period to assess, both the Commissioner and the taxpayer agreed in writing** that an assessment may still be had after such time, the tax may be assessed **within the period agreed upon**. And the period agreed upon **may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.** Thus,

> [T]he law is quite clear that the three-year prescriptive period to assess may be extended upon mutual agreement by the Commissioner and the taxpayer in writing and such period may still be extended if another written agreement is executed before the expiration of the new period to assess. Meaning to say, the period agreed upon also expires. The Tax Code is quite plain, definite and free from ambiguity on the matter. It does not provide that the prescriptive period to assess may be waived altogether or that there will be no more prescriptive period to assess the taxpayer by the mere execution of the Waiver of Statute of Limitations, as written agreement between the Commissioner and the taxpayer is so described. x x x ***(Enron Subic Power Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6029, November 4, 2003)***.

As repeatedly ruled by this Court in a number of similar cases, the defense of prescription is a safeguard for both the taxpayer and the government of their respective rights against assessment on internal revenue taxes. "The law prescribing a limitation of actions for the collection of the income tax is beneficial both to the Government and its citizens; to the Government because tax officers would be obliged to act promptly in the making of assessment, and to citizens because after the lapse of the period of prescription, citizens would have a feeling of security against unscrupulous tax agents who will always find an excuse to inspect the books of the taxpayers, not to determine the latter's real liability, but to take advantage of every opportunity to molest peaceful, law-abiding citizens.

xxx The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the beneficent purpose of affording protection to the taxpayer within the contemplation of the Commission which recommends the approval of the law ***(Republic vs. Ablaza, 108 Phil. 1105 [1960])***."

Relevant to Our discussion on the issue of prescription, We find it similarly important to quote the applicable tax provision Section 110 (now Section 114) of the 1977 NIRC, as amended, to wit:

> **SEC. 110. *Return and Payment of Value-added Tax.–***
>
> **(a) In General.** – Every person liable to pay the value-added tax imposed under this title shall file a quarterly return of the amount of his gross sales or receipts <u>within twenty (20) days following the close of each taxable quarter prescribed for each taxpayer:</u> x x x *(Underscoring supplied)*

Pursuant to Section 203, in relation to Section 110 of the 1977 NIRC, as amended, the period to assess commences after the last day prescribed by law for the filing of the return. In the case of VAT, it is twenty (20) days (now twenty-five [25] days) following the close of each taxable quarter. Hence, if the return was filed earlier than the last day allowed by law, the period to assess shall still be counted from the last day prescribed for filing of the return. However, if the return was filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed.

The law is clear that the taxpayer is required to file a quarterly VAT return not later than twenty (20) days (now twenty-five [25] days) following the close of each quarter. For each quarter, the taxpayer is mandated to file an adjusted and complete return. A final or adjustment return is not required in the case of VAT, unlike in the case of an annual Income Tax Return filed for income tax purposes. In other words, each taxable quarter shall have its own prescriptive period and not just after twenty (20) days following the close of the last quarter for the taxable year.

Based on the records of this case, it appears that petitioner filed its fourth quarter VAT return on January 20, 1997 *(p. 1204, BIR Records)*. Applying the above cited tax provisions and considering that the subject assessment arose from the sale by petitioner of certain real properties made during the fourth quarter of taxable year 1996, it is evident that respondent had until January 20, 2000, or exactly three (3) years from the date said VAT return was filed, within which to assess petitioner for VAT deficiencies.

Therefore, the respondent's right to assess of and collect from petitioner the alleged VAT deficiencies should be exercised within the three-year period prescribed by law, or until January 20, 2000, **unless, before the expiration of the said three-year period to assess, both the Commissioner and the taxpayer agreed in writing** that an assessment may still be had after such time as contemplated in Section 223(b) of the 1977 NIRC, as amended, the tax may be assessed **within the period agreed upon**, This Court has consistently ruled on the subject matter ***(HPCO Agridev Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6355, July 18, 2002***; ***IMA Land Holdings, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6389, October 7, 2004****, among others)*.

In the case at bar, respondent alleges that when petitioner signed the Waivers of the Statute of Limitations", the period to assess was extended up to March 31, 2002. Hence, the assessment received by the petitioner on October 19, 2001 was within the period of extension agreed upon.

Petitioner, on the other hand, disagrees. It asserts that the waivers were not valid and binding and that the subject assessment was issued beyond the three-year prescriptive period.

To determine whether or not the waiver executed on January 10, 2000 *(Exhibit "O")* is valid, it is imperative to look into the requirements and procedures laid down Revenue Memorandum Order No. 20-90 partly quoted earlier.

Time and again, this Court has maintained its position on the matter, wherein We pronounced, that:

> It bears stressing that RMO 20-90 is directed to all concerned internal revenue officers. The said RMO even provides that the procedures found therein should be strictly followed, under pain of being administratively dealt with should non-compliance result to prescription of the right to assess/collect. x x x RMO No. 20-90 was promulgated pursuant to Section 223 of the Tax Code. x x x ***(DOLE Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5705, July 1, 2003; citing Philippine Journalists, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6108, May 14, 2002)*** *(Underscoring and emphasis supplied)*

The strict compliance of the requirements provided for in Revenue Memorandum Order No. 20-90 has already been given *imprimatur* by the Supreme Court in the case of ***Philippine Journalists, Inc. vs. Commissioner of Internal Revenue, G.R. No. 162852, December 16, 2004 ("PJI Case", for brevity)***. The Supreme Court in reversing the decision of the Court of Appeals promulgated on August 5, 2003, and reinstating this Court's decision promulgated on May 14, 2002, held in this wise:

> The NIRC, under Sections 203 and 222, provides for a statute of limitations on the assessment and collection of internal revenue taxes in order to safeguard the interest of the taxpayer against unreasonable investigation. Unreasonable investigation contemplates cases where the period of assessment extends indefinitely because this deprives the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of a reasonable period of time. x x x
>
> xxx xxx xxx
>
> RMO No. 20-90 implements these provisions of the NIRC relating to the period of prescription for the assessment and collection of taxes. A cursory reading of the Order supports petitioner's argument that the RMO must be strictly followed, x x x *(Underscoring supplied)*

A careful scrutiny of the records and based on the foregoing jurisprudence, We could now determine with certainty that the Waiver of Statute of Limitations executed by petitioner on January 10, 2000 *(Exhibit "O")* is without any binding effect on the petitioner for the following reasons:

First, the waiver failed to state the date of acceptance by the BIR which under the aforequoted RMO should likewise be indicated. The said Order clearly states that: "[t]he date of such acceptance by the Bureau should be indicated. **Both the date of execution by the taxpayer and date of acceptance** by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed." Clearly, what is required by said Order is to specifically indicate on the face of the waiver not only the date of execution, but also the date of acceptance. The ultimate purpose of such requirement is to determine with certainty if the waiver was, in fact, accepted before the expiration of the three-year assessment period.

Second, the petitioner was not furnished a copy of the same. It is to be noted that under RMO No. 20-90, "[t]he waiver must be executed in three (3) copies, the original copy to be attached to the docket of the case, **the second copy for the taxpayer** and the third copy for the Office accepting the waiver. The **fact of receipt by the taxpayer of his/her file copy shall be indicated in the original copy**." Again, respondent failed to comply.

As already stated, the Supreme Court upheld the strict compliance of the requirements and procedures provided under RMO No. 20-90. We quote:

> Finally, the records show that petitioner was not furnished a copy of the waiver. Under RMO No. 20-90, the waiver must be executed in three copies with the second copy for the taxpayer. The Court of Appeals did not think this was important because the petitioner need not have a copy of the document it knowingly executed. It stated that the reason copies are furnished is for a party to be notified of the existence of a document, event or proceeding.
>
> **The flaw in the appellate court's reasoning stems from its assumption that the waiver is a unilateral act of the taxpayer when it is in fact and in law an agreement between the taxpayer and the BIR.** When the petitioner's comptroller signed the waiver on September 22, 1997, it was not yet complete and final because the BIR had not assented. **There is compliance with the provision of RMO No. 20-90 only after the taxpayer received a copy of the waiver accepted by the BIR. The requirement to furnish the taxpayer with a copy of the waiver is not only to give notice of the existence of the document but of the acceptance by the BIR and the perfection of the agreement**

(Philippine Journalists, Inc. vs. Commissioner of Internal Revenue, G.R. No. 162852, December 16, 2004). *(Emphasis supplied)*

Lastly, with respect to the argument of petitioner that the waiver is not valid because it was not signed by the Commissioner himself, We agree. Although it is established that RMO No. 20-90 likewise provides that the following revenue officials are authorized to sign the waiver, to wit:

A. In the National Office

xxx xxx xxx

1.	ACIRs for Collection, Special Operations, National Assessment, Excise And Legal on tax cases Pending before their respective offices.	For tax cases involving not more than P500,000.00
2.	Deputy Commissioner	For tax cases involving more that P500,000.00 but not more than P1M
3.	Commissioner	For tax cases <u>involving more than P1M</u>

B. In the Regional Offices

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

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

3. The Regional Director, the Assistant Regional Director, the Chief, Collection Branch or the Chief, Legal Branch with respect to cases still pending collection and the period to assess/collect is <u>about to prescribe, regardless of amount</u>. *(Underscoring supplied)*

xxx xxx xxx

this Court requires strict compliance with the requirements and procedures provided under RMO No. 20-90 pursuant to Section 223(b) of the 1977 NIRC, as amended.

As further enunciated in the "***PJI Case***":

> The waiver is also defective from the government side because it was signed only by a revenue district officer, not the Commissioner, as mandated by the NIRC and RMO No. 20-90. The waiver is not a unilateral act by the taxpayer or the BIR, but is a bilateral agreement between two parties to extend the period to a date certain. The conformity of the BIR must be made by either the Commissioner or the Revenue District Officer. This case involves taxes amounting to more than One Million Pesos (P1,000,000.00) and executed almost seven months before the expiration of the three-year prescription period. For this, RMO No. 20-90 requires the Commissioner of Internal Revenue to sign for the BIR. *(Underscoring supplied)*

The case of *Commissioner of Internal Revenue v. Court of Appeals* (303 SCRA 614) dealt with waivers that were not signed by the Commissioner but were argued to have been given implied consent by the BIR. We invalidated the subject waivers and ruled:

> Petitioner's submission is inaccurate...
>
> ...
>
> The Court of Appeals itself also passed upon the validity of the waivers executed by Carnation, observing thus:
>
> We cannot go along with the petitioner's theory. Section 319 of the Tax Code earlier quoted is clear and explicit that the waiver of the five-year prescriptive period must be in writing and signed by both the BIR Commissioner and the taxpayer.
>
> Here, the three waivers signed by Carnation do not bear the written consent of the BIR Commissioner as required by law.
>
> We agree with the CTA in holding "these 'waivers' to be invalid and without any binding effect on petitioner (Carnation) for the reason that there was no consent by the respondent (Commissioner of Internal Revenue)."
>
> ...
>
> For sure, no such written agreement concerning the said three waivers exists between the petitioner and private respondent Carnation.
>
> ...
>
> What is more, the waivers in question reveal that they are in no wise unequivocal, and therefore necessitates for its binding effect the concurrence of the Commissioner of Internal Revenue.... **On this basis neither implied consent can be presumed nor can it be contended that the waiver required under Sec. 319 of the Tax Code is one which is unilateral nor can it be said that concurrence to such**

> **an agreement is a mere formality because it is the very signatures of both the Commissioner of Internal Revenue and the taxpayer which give birth to such a valid agreement.** (Emphasis supplied)

In the present case, the subject assessment involves a total amount of P62,527,167.91 as deficiency VAT, definitely a tax case involving more than P1,000,000.00. Notwithstanding the fact that the waiver executed on January 10, 2000 *(Exhibit "O")* was just ten (10) days before the period to assess was about to prescribe, this Court is given no choice but to interpret the provisions of RMO No. 20-90 to the letter.

We note that the subject provisions of RMO No. 20-90 distinguish those revenue officials assigned in the National and Regional offices who are authorized to sign the waiver. By segregating the revenue officials, logic dictates that the qualification provided therein, particularly the phrase *"about to prescribe regardless of amount"*, is applicable only to the revenue officials enumerated under paragraph "B" thereof, titled: "In the Regional Offices". It does not include those revenue officials enumerated under paragraph "A" thereof, titled: "In the National Office", which includes the Assistant Commissioner of Internal Revenue. As a matter of fact, the authority granted to revenue officials enumerated under paragraph "A" is actually qualified depending upon the amount involved in a particular tax case. Therefore, revenue officials in the National office could not be authorized to sign a waiver, regardless of the amount involved, by mere implication. It is of no moment that they have a higher rank in position compared to the revenue officials in the Regional offices, as insisted upon by respondent. The said revenue memorandum could have easily provided the same if that was the intention.

In adopting the interpretation above-stated and after applying the foregoing jurisprudence, it is without a doubt that the aforesaid waiver *(Exhibit "O")*, which was signed by the Assistant Commissioner of Internal Revenue *(Exhibit "O-2")*, is not binding between the petitioner and the Commissioner due to failure of the latter to accept and sign the same himself. Consequently, as there was no valid waiver *(Exhibit "O")* executed by the petitioner before the expiration of the time prescribed by law for the assessment of the VAT, the waivers subsequently executed *(Exhibits "P" to "T")* after the prescribed period had no binding effect as there was nothing to extend in the first place.

In a capsule form, We hold that the waivers executed by petitioner are defective and therefore invalid. It follows that no extension of the three-year period prescribed by law took effect. Thus, the assessment notice and demand letter dated July 24, 2001 were issued beyond the prescriptive period provided under Section 203 of the 1977 NIRC, as amended, and petitioner is not liable to pay P62,527,167.91 as deficiency value-added tax (VAT) for taxable year 1996.

In view of the foregoing findings, We find the remaining stipulated issues, more particularly, the merits of the subject assessment, no longer necessary for the disposition of this case.

WHEREFORE, the instant petition is hereby **GRANTED**. Accordingly, the deficiency VAT assessment issued by respondent against petitioner in the total amount of P62,527,167.91 for taxable year 1996 is hereby **CANCELLED** and **SET ASIDE** due to prescription.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Chairman, First Division
Presiding Justice