REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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HANJIN HEAVY INDUSTRIES & CONSTRUCTION CO., LTD. (MANILA BRANCH),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8511

Members:

ACOSTA, *Chairperson*
UY, *and*
FABON-VICTORINO, *JJ.*

Promulgated:

NOV 19 2012 ; 2:00 p.m.

x - x

RESOLUTION

UY, J.:

For resolution are:

1. Respondent's **Motion to Dismiss** filed on July 12, 2012;
2. Petitioner's **Motion for Reconsideration with Request for Oral Arguments** filed on September 26, 2012; and
3. Respondent's **Manifestation** filed on October 5, 2012.

Respondent's Motion to Dismiss was set for hearing on September 28, 2012. During said hearing, counsel for petitioner manifested that he earlier filed a Motion for Reconsideration with Request for Oral Arguments; hence, upon motion, the Court granted respondent a period of five (5) days from September 28, 2012 or until October 3, 2012, to file a comment or opposition to petitioner's instant Motion, while petitioner was given a period of five (5) days from receipt of respondent's comment or opposition to file a reply thereto.

Subsequently, on October 5, 2012, respondent filed a Manifestation stating that she will forego with the filing of comment or opposition to petitioner's Motion as it merely contained arguments on the merit of the case as well as an enumeration of the projects of petitioner, and considering further that her Motion to Dismiss should take precedence over the ancillary remedy of suspension of payments.

Finding said Manifestation in order, the same is hereby **NOTED**.

In respondent's Motion to Dismiss, she prays for the dismissal of the instant petition on the ground of lack of jurisdiction. According to respondent, petitioner's main action is to assail the validity of an alleged decision on a disputed assessment, through the filing of its Petition for Review pursuant to Section 7 of Republic Act (RA) No. 1125, as amended, and Section 3, Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA), in relation to Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended.

By way of reiteration, and as previously discussed in the Resolution dated September 12, 2012, paragraphs 4 and 5 of the Petition for Review show that petitioner invokes the jurisdiction of the Court by filing the instant Petition for Review within thirty (30) days from its receipt of respondent's Final Notice Before Seizure dated June 15, 2012, and alleges that under Section 228 of the Tax Code, petitioner has a period of thirty (30) days from receipt thereof, or until July 20, 2012 within which to file its Petition for Review.

However, respondent claims that the Final Notice Before Seizure is not the decision contemplated in Section 228 that is appealable to this Court. She emphasizes that in paragraph 19 of the Petition for Review, petitioner already admitted that it received respondent's letter denying its protest on February 11, 2009. Respondent therefore concludes that the subject assessment has long become final, executory and demandable for petitioner's failure to appeal said decision before this Court.

In resolving respondent's Motion to Dismiss, this Court finds it apropos to restate herein for reference the following facts alleged by petitioner in its Petition for Review with Urgent Motion for Prohibition and/or Suspension of Collection of Tax:

> 1) On November 29, 2005, petitioner filed an administrative claim for Value-Added Tax (VAT) refund with the Large Taxpayers District Office – Makati (LTDO-Makati) in the total amount of Php166,379,452.02, wherein Php104,480,469.56 thereof pertains to 2004 and 2005;[1]

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[1] Annex D, Petition for Review with Urgent Motion for Prohibition and/or Suspension of Collection of Taxes, Docket, pp. 65 to 66; Par. 12, Statement of Antecedent Facts, *Id.*, p. 19.

2) Pursuant to said administrative claim for VAT refund, Letter of Authority (LOA) No. 00096116 *(for VAT Claim for Refund)* was issued by the LTDO-Makati on April 4, 2006. LOA No. 00096116 was signed by then OIC-Commissioner for Large Taxpayers Service (LTS), Merlinda L. Ordoyo;[2]

3) On June 13, 2006, petitioner received LOA No. 00067611 *(for Income and Withholding Taxes)* covering the period January 1, 2005 to December 31, 2005 which was also signed by Ms. Ordoyo;[3]

4) On February 1, 2007, petitioner settled the proposed tax assessment issued against it pursuant to LOA No. 00067611, in the amount of Php6,139,195.31 and signed the corresponding Taxpayer's Agreement Form;[4]

5) On November 7, 2007, petitioner received Letter Notice (LN) No. 122-WE-N-05-00-00005, signed by then Commissioner of Internal Revenue (CIR), Lilian B. Hefti, showing deficiency VAT in the amount of Php10,899,498.12 arising from the alleged discrepancies between income payments per alphalists of customers and sales reported by petitioner in its VAT Returns for the taxable year 2005;[5]

6) On January 5, 2009, petitioner received a Preliminary Assessment Notice (PAN) dated November 28, 2008, issued pursuant to LN No. 122-WE-N-05-00-00005, for alleged deficiency income and VAT for the taxable year 2005 in the total amount of Php328,001,684.91, inclusive of surcharges, interest and penalties;[6]

7) On January 22, 2009, petitioner received an undated Formal Letter of Demand (FLD) with two Assessment Notices numbered as LTDO-122-ITY-2005-00002 and LTDO-122-VAT-2005-00001 (Assessment Notices) for alleged deficiency income and VAT for the taxable year 2005 in the total amount of Php330,671,626.76, inclusive of surcharges, interest and penalties;[7]

[2] Annex D-1, *Id.*, p.67; Par. 13, *Id.*
[3] Annex E, *Id.*, p. 68; Par. 14, *Id.*, p. 20.
[4] Annex G, *Id.*, p. 69; Par. 15, *Id.*
[5] Annex H, Id., p. 70; Par. 15, *Id.*, pp. 20 to 21.
[6] Annex I, *Id.*, p. 71; Par. 17(a), Id., pp. 21 to 22.
[7] Annexes J and K, Id., pp. 74 to 78; Para 17(b), *Id.*, p. 22.

8) On January 26, 2009, petitioner filed a letter of even date protesting the issuance of the FLD and Assessment Notices, informing respondent that petitioner already settled its tax deficiency per LOA No. 00067611 covering the period January 1 to December 31, 2005 and requesting respondent to confer the matter with Revenue Examiners Aniceto Luna and Marilu Zeta;[8]

9) On February 11, 2009, petitioner received a letter dated January 30, 2009 signed by then OIC-Chief of LTDO-Makati, Cesar D. Escalada, denying its January 26, 2009 protest to the FLD and Assessment Notices. In said letter, it was stated that there was a consolidation of LOA No. 00096116 and LN No. 122-WE-N-05-00-00005 pursuant to Revenue Memorandum Order (RMO) No. 28-07 and that petitioner's protest letter dated January 26, 2009 was not a valid protest and that petitioner has thirty (30) days from receipt of the FLD to refute said assessment;[9]

10) Petitioner continued to pursue its administrative claim for VAT refund;[10]

11) Subsequently, the Bureau of Internal Revenue (BIR) issued (2) Collection Letters dated September 1, 2011 and September 28, 2011, respectively, which demanded for the payment of the alleged deficiency income and VAT for the taxable year 2005 in the total amount of Php330,671,626.76;[11]

12) Petitioner filed a reply letter on October 6, 2011, requesting cancellation and retraction of the September 1, 2011 and September 28, 2011 Collection Letters on the ground that the deficiency tax assessment is void as it was issued without legal authority and in violation of due process;[12]

13) Petitioner submitted a supplemental letter dated January 12, 2012 elaborating further on the basis and the merits of its position to persuade respondent to consider petitioner's factual as well as legal defenses relative to the cancellation and

[8] Annex L, *Id.*, p. 79; Par. 18, *Id.*, p. 23.
[9] Annex M, *Id.*, p. 80; Par. 19, *Id.*
[10] Par. 20, *Id.*, p. 24.
[11] Annexes N and O, *Id.*, pp. 81 to 82; Par. 21, *Id.*
[12] Par. 22, *Id.*; No copy of the reply letter dated October 6, 2011 was attached to the Petition for Review with Urgent Motion for Prohibition and/or Suspension of Collection of Taxes.

retraction of the September 1, 2011 and September 28, 2011 Collection Letters;[13]

14) On June 15, 2012, respondent, through OIC-Assistant Commissioner Alfredo V. Misajon, issued a Final Notice Before Seizure giving petitioner the last opportunity to make the necessary settlement of its tax liabilities for the taxable year 2005 in the total amount of Php330,671,626.76 within ten (10) days from receipt of said notice;[14] and

15) On July 2, 2012, petitioner filed with this Court a Manifestation with Urgent Motion for Leave of Court to File Petition for Review. On the same date, petitioner likewise filed with this Court a Petition for Review with Urgent Motion for Prohibition and/or Suspension of Collection of Tax, praying for this Court to:

a. Declare as null and void LN No. 122-WE-N-05-00 00005, PAN, FLD and Assessment Notices, the Collection Letters and Final Notice Before Seizure;

b. Directing respondent to cancel and withdraw the deficiency income and VAT assessments for the taxable year 2005 in the amount of Php330,671,626.76; and

c. Issuing an order prohibiting respondent from enforcing, and suspending the collection of the alleged deficiency income and VAT for the taxable year 2005 in the total amount of Php330,671,626.76, inclusive of surcharges, interest and penalties.

Significantly, Section 228 of the NIRC of 1997, as amended, categorically provides for the procedure in issuing and protesting tax assessments, thus:

"**SEC. 228.** *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper

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[13] Par. 23, *Id.*, p. 25; No copy of the supplemental letter dated January 12, 2012 was attached to the Petition for Review with Urgent Motion for Prohibition and/or Suspension of Collection of Taxes.
[14] Annex, *Id.*, p. 63; Par. 24, *Id.*

> taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, **the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision**, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." (*Emphasis supplied*.)

Relative thereto, Section 3.1.5 of Revenue Regulations (RR) No. 12-99 provides for the administrative remedies available to a taxpayer in cases where protests against assessments issued are filed before the Commissioner of Internal Revenue's (CIR) duly authorized representatives:

> "3.1.5 Disputed Assessment. — **The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof.** If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest. No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or

taxes attributable to the said undisputed issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended.

The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect. If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the taxpayer shall be required to pay the corresponding deficiency tax or taxes attributable thereto.

The taxpayer shall submit the required documents in support of his protest within sixty (60) days from the date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable. The phrase 'submit the required documents' includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation.

If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.

If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.

In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: Provided, however, that **if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory, demandable, in which case, the protest shall be decided by the Commissioner.**

If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise, the assessment shall become final, executory and demandable." (*Emphasis supplied.*)

It bears stressing that this Court is vested with exclusive appellate jurisdiction over decisions, rulings or inaction of the CIR on disputed assessments, as expressly provided in Sections 7(a)(1) and (2) of RA No. 1125, as amended by RA No. 9282, to wit:

"**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**, refund 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;

(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 provides a specific period for action, in which case the inaction shall be deemed a denial;" (*Emphasis supplied.*)

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

"**SEC. 3.** *Who may appeal; period to file petition –*

(a) **A party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue on disputed assessments** or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction **may appeal to the Court by petition for review filed within**

> **thirty (30) days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments.** xxx xxx xxx."
> (*Emphasis supplied.*)

Upon perusal of the facts attendant to the case and the above-quoted pertinent rules and provisions of the law, this Court finds merit in respondent's Motion to Dismiss.

First, a closer look at petitioner's alleged protest letter dated January 26, 2009 would show that, it merely stated that petitioner has already settled its tax deficiency per LOA NO. 00067611, covering the year 2005 and that petitioner requested Ms. Cabreros to confer the matter with Revenue Officers Aniceto Luna and Marilu Zeta. Thus, it appears that the same could not be regarded as a valid protest for its failure to comply with the requirements of a valid protest.

Pursuant to the above-cited Section 3.1.5 of RR No. 12-99, the taxpayer is required to state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect. Said Section 3.1.5 likewise provides that if the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.

Notably, in respondent's letter dated January 30, 2009, petitioner was clearly informed that its letter dated January 26, 2009 cannot be considered as a protest and that petitioner has thirty (30) days from receipt of the Formal Letter of Demand to refute the said assessment. However, petitioner failed to file a protest within the said thirty-day period. There being no valid protest on the assessments issued by respondent, the same had become final and executory by mere lapse of time and is no susceptible to questions and dispute.

Secondly, even assuming that a valid protest was filed, petitioner admitted, in its Petition for Review with Urgent Motion for Prohibition and/or Suspension of Collection of Taxes, that it received a letter from respondent on February 11, 2009, denying its protest letter dated January 26, 2009.[15] Since petitioner considered its letter dated January 26, 2009 as its protest and it received respondent's letter denying its protest on February 11, 2009, petitioner only had until March 13, 2009 to file an appeal before this Court, or in the alternative, to file a Motion for Reinvestigation before respondent CIR. Consequently, pursuant to Section 228 of the NIRC of 1997, as amended, in relation to Section 3.1.5 of RR No. 12-99, the subject assessment has become final and executory for failure of petitioner to appeal the denial of its protest before this Court within thirty (30) days from receipt thereof or move for a reinvestigation with respondent CIR within the same period.

Thirdly, even if this Court considers petitioner's assumption that the letter it received on February 11, 2009 is not the decision appealable to this

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[15] Par. 19, Statement of Antecedent Facts, Petition for Review, Docket, p. 23.

Court, the Collection Letter dated September 1, 2011 should have been considered by petitioner as the final decision on its protest. A careful scrutiny of the language used and the tenor of the Collection Letter dated September 1, 2011, to determine if the same constitutes respondent's final decision appealable to this Court, is appropriate.

The Collection Letter dated September 1, 2011 reads:

> **"COLLECTION LETTER**
> **FIRST NOTICE**
>
> **HANJIN HEAVY INDUSTRIES & CONST. CO. LTD.**
> 12th Floor, 1128 University Parkway
> North Bonifacio, Global City
> Taguig City
>
> Gentlemen:
>
> This is to inform you that you have an outstanding account with this Office amounting to **THREE HUNDRED THIRTY MILLION SIX HUNDRED SEVENTY ONE THOUSAND SIX HUNDRED TWENTY SIX PESOS AND 76/100 (₱330,671,626.76)** *excluding delinquency interest* representing income and value added tax liabilities for the taxable year ending December 31, 2005 pursuant to Letter of Authority No. 00096116 dated 4/4/2004 , which remain unpaid as of this date.
>
> You are therefore given ten (10) days from receipt thereof, within which to settle your account. Otherwise, this Office shall be constrained to collect through summary remedies as provided for by law.
>
> Please give this matter your preferential attention.
>
> Very truly yours,
>
> (Signed)
> **SULPICIO M. ADAPON**
> Chief, LTDO-Makati"[16]

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[16] Annex "N", Docket, p. 81.

Clearly, said Collection Letter categorically demanded the payment of petitioner's deficiency tax liability in the amount of Php330,671,626.76 for the taxable year 2005 and sternly warns petitioner that said deficiency tax liability must be settled within ten (10) days from notice, otherwise, summary remedies as provided for by law to enforce collection will be resorted to by respondent. Evidently, the tenor of the Collection Letter dated September 1, 2011 shows finality of the decision on the assessment issued against petitioner, which should have prompted petitioner to immediately appeal the same before this Court. Still, petitioner miserably failed to do so.

In the case of ***Commissioner of Internal Revenue vs. Ayala Securities Corporation and The Honorable Court of Tax Appeals***,[17] the Supreme Court emphasized that mere reiteration of the demand for immediate payment is certainly a clear indication of the firm stand of the Commissioner of Internal Revenue against the reconsideration of the disputed assessment. Relevant portions of said Supreme Court's decision are quoted below:

> "The letter of February 18, 1963 (Exh. G), in the view of the Court, is tantamount to a denial of the reconsideration or protest of the respondent corporation on the assessment made by the petitioner, considering that the **said letter is in itself a reiteration of the demand by the Bureau of Internal Revenue for the settlement of the assessment already made, and for the immediate payment of the sum of P758, 687.04 in spite of the vehement protest of the respondent corporation on April 21, 1961. This certainly is a clear indication of the firm stand of petitioner against the reconsideration of the *disputed assessment*** in view of the continued refusal of the respondent corporation to execute the waiver of the period of limitation upon the assessment in question.

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[17] G.R. No. L-29485, March 31, 1976.

> This being so, the **said letter amounts to a decision on a disputed or protested assessment** and, therefore, the court *a quo* did not err in taking cognizance of this case." (*Emphasis supplied.*)

Furthermore, in ***Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue, The Court of Tax Appeals, and the Court of Appeals***,[18] the High Court reiterated that a demand letter for payment of delinquent taxes may be considered a decision on a disputed or protested assessment and that the determination on whether or not a demand letter is final is conditioned upon the language used or the tenor of the letter being sent to the taxpayer, in the following fashion:

> "In this case, **the letter of demand dated January 24, 1991, unquestionably constitutes the final action taken by the Bureau of Internal Revenue on petitioner's request for reconsideration when it reiterated the tax deficiency assessments due from petitioner, and requested its payment. Failure to do so would result in the "issuance of a warrant of distraint and levy to enforce its collection without further notice."** In addition, the letter contained a notation indicating that petitioner's request for reconsideration had been denied for lack of supporting documents.
>
> xxx xxx xxx
>
> **The demand letter received by petitioner verily signified a character of finality.** Therefore, it was tantamount to a rejection of the request for reconsideration. As correctly held by the Court of Tax Appeals, "while the denial of the protest was in the form of a demand letter, the notation in the said letter making reference to the protest filed by petitioner clearly shows the intention of the respondent to make it as [his] final decision." (*Emphasis supplied.*)

Applying the foregoing discussion in the case at bench, although the tenor of the Collection Letter dated September 1, 2011 signified a character of finality, petitioner still failed to file an appeal before this Court. Instead, petitioner waited for the issuance of the Final Notice Before Seizure and

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[18] G.R. No. 148380, December 9, 2005.

mistakenly reckoned the prescriptive period to appeal from receipt of the same.

Bear in mind that the right to appeal is not a natural right or a part of due process. It is merely a statutory privilege and must be exercised in accordance with the law. In ***Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue,***[19] it was held that the 30-day period within which to file an appeal with this Court is jurisdictional and failure to comply therewith would bar the appeal and deprive this Court of its jurisdiction to entertain and determine the correctness of the assessments, that such period is not merely directory but mandatory, and it is beyond the power of the courts to extend the same. Accordingly, a taxpayer's failure to file a petition with the Court of Tax Appeals within the statutory period would render the disputed assessment final, executory and demandable, thereby precluding it from interposing the defenses of legality or validity of the assessment and prescription of the Government's right to assess.

In the present case, the failure of petitioner to timely file the Petition for Review before this Court rendered the assessment final, executory and demandable. As such, this Court has no jurisdiction to entertain and determine the correctness of the subject assessment. Therefore, We are constrained but to dismiss the instant case on the ground of lack of jurisdiction.

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[19] G.R. No. 168498, April 24, 2007.

Consequently, petitioner's Motion for Reconsideration with Request for Oral Arguments becomes moot as this Court has no jurisdiction over the present case.

WHEREFORE, in view of the foregoing considerations, respondent's **Motion to Dismiss** is **GRANTED**. Accordingly, the **"Petition for Review with Urgent Motion for Prohibition and/or Suspension of Collection of Tax"** filed on July 2, 2012 is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice