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

## SPECIAL SECOND DIVISION

**J. MARKETING CORPORATION,**
Petitioner,

- versus -

**BUREAU OF INTERNAL REVENUE,**
Respondent.

**CTA CASE NO. 10426**

Members:

**BACORRO-VILLENA,** *Acting Chairperson, and*
**CUI-DAVID,** *JJ.*

Promulgated:
JUN 19 2023
4:20 p.m.

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# DECISION

***BACORRO-VILLENA, J.:***

At bar is a Petition for Review[1] filed by petitioner J. Marketing Corporation (**petitioner/JMC**) pursuant to Section 3(a)(1)[2], Rule 4[3] and Section 4(a)[4], Rule 8[5] of the Revised Rules of the Court of Tax Appeals

[1] Filed on 21 December 2020, Division Docket, pp. 6-107, with exhibits.

[2] **SEC. 3.** *Cases within the jurisdiction of the Court in Divisions.* — …
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
(1) **Decisions of the Commissioner of Internal Revenue in cases involving** disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**[.] (Emphasis supplied)

[3] **JURISDICTION OF THE COURT.**

[4] **SEC. 4.** *Where to appeal; mode of appeal.* —
(a) **An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue** on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, **shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.** (Emphasis supplied)

[5] **PROCEDURE IN CIVIL CASES.**

(**RRCTA**). In the same petition, petitioner also deems the same to be an action for *mandamus* under Section 3[6], Rule 65[7] of the Rules of Court, as amended, as it prays for this Court to mandate respondent Bureau Internal Revenue (**respondent/BIR**) to issue the Certificate of Tax Delinquencies/Tax Liabilities (**CTD**) and Acceptance Payment Form (**APF**) in its favor so that it may be considered to have fully complied with all the conditions set forth in Republic Act (**RA**) No. 11213, otherwise known as the "Tax Amnesty Act"[8] (**TAA**). This includes the payment of its amnesty tax, settling its tax delinquency, and making the granted tax amnesty final and irrevocable.

## PARTIES OF THE CASE

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at 3F-2 Sunlife Building, 19th to 20th Lacson Streets, Barangay 4, Bacolod City, Negros Occidental, herein represented by its General Manager, Teresa Angela G. Salvallon (**GM Salvallon**).[9]

Respondent, on the other hand, is the government agency charged with, among other powers and duties, the collection of all national internal revenue taxes. It has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (**NIRC**) of 1997, as amended, and other laws administered by it, with office address at BIR National Office Building, BIR Road, Diliman, Quezon City.

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6 Sec. 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. (Emphasis supplied)

7 **CERTIORARI, PROHIBITION AND MANDAMUS.**

8 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.

9 Paragraph. 6, Parties, Petition for Review, supra at note 1, p. 7.

## FACTS OF THE CASE

On 14 February 2019, RA 11213 or the TAA was approved or signed into law. It covers all national internal revenue taxes, including income tax (**IT**), value-added tax (**VAT**), expanded withholding tax (**EWT**), withholding tax on compensation (**WTC**), documentary stamp tax (**DST**), and other taxes collected by respondent for the taxable year (**TY**) 2017 and prior years. The law aims to provide a mechanism for taxpayers to settle their unpaid taxes, delinquencies, and other obligations by granting them amnesty and relieving them of penalties, interests, and civil and criminal liabilities related to such unpaid taxes.

On 24 April 2019, respondent's Revenue Regulations (**RR**) No. 4-2019[10], the implementing rules and regulations (**IRR**) of the TAA, took effect after fifteen (15) days from the publication thereof in Malaya Business Insight on 09 April 2019. This provides guidelines on the processing of tax amnesty applications on tax delinquencies.

Subsequently, on 03 September 2019, petitioner received a Notice of Informal Conference[11] (**NIC**) of even date, signed by Revenue District Officer Socrates O. Regala (**RDO Regala**), to discuss the result of the tax investigation conducted against it pursuant to electronic Letter of Authority (**eLOA**) No. 077-2018-00000198 dated 10 April 2018. Attached thereto is a summary of the proposed assessment for TY 2016 in the aggregate amount of ₱316,752,601.28, broken down as follows:

| Tax Type | Basic | Surcharge | Interest | Compromise Penalty | Total |
|---|---|---|---|---|---|
| IT | ₱71,087,030.60 | ₱35,543,515.30 | ₱34,978,714.24 | ₱- | ₱141,609,260.14 |
| VAT | 72,986,136.40 | 36,493,068.20 | 39,112,570.63 | - | 148,591,775.23 |
| EWT | 484,164.91 | - | 262,112.29 | 20,000.00 | 766,277.20 |
| WTC | 13,842,009.08 | - | 7,493,646.56 | 51,000.00 | 21,386,655.64 |
| DST | 2,439,621.97 | 609,905.49 | 1,334,105.60 | 15,000.00 | 4,398,633.07 |
| **Total** | **₱160,838,962.96** | **₱72,646,488.99** | **₱83,181,149.32** | **₱86,000** | **₱316,752,601.28** |

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10 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.

11 Exhibit "P-1", Division Docket, pp. 26-33.

To avail of the benefits of the TAA, on 30 September 2019, petitioner, through GM Salvallon, filed a "Request for Signature" dated 23 September 2019[12], asking respondent to sign a *pro-forma* CTD and APF following the procedure laid down in RR No. 4-2019.

On 04 October 2019, petitioner, through GM Salvallon, sent a letter captioned "Formal Demand to Sign"[13], asking respondent once again to sign and release the requested *pro-forma* CTD and APF.

On 21 October 2019, petitioner, through GM Salvallon, sent a letter captioned "Formal Request for Immediate Resolution"[14], reminding respondent of its purported legal duty to sign and release the requested *pro-forma* CTD and APF.

On 15 November 2019, petitioner received respondent's Letter dated 22 October 2022[15] (**First Denial Letter**), stating that it is not qualified to apply for tax amnesty since the NIC[16] was issued after the effectivity of RR No. 4-2019[17] pursuant to Revenue Memorandum Circular (**RMC**) No. 57-2019.[18]

On 18 November 2019, petitioner, through GM Salvallon, sent another letter captioned "Last Opportunity Before Suits"[19] of even date, insisting that it is qualified to apply for tax amnesty and reminding respondent of the consequences of its failure to sign and release the requested *pro-forma* CTD and APF.

On 03 January 2020, petitioner paid in full the above basic EWT of ₱484,164.91 as *per* Section 4 of RR No. 4-2019. On 07 February 2020, it then submitted a letter captioned "Compliance Letter for RA 11213"[20], with attached Tax Amnesty Return[21] (**TAR**) (or BIR

[12] Exhibit "P-2", id., pp. 34-48, with attachments.
[13] Exhibit "P-3", id., pp. 49-55.
[14] Exhibit "P-4", id., pp. 56-58.
[15] Exhibit "P-5", id., pp. 59-61.
[16] Supra at note 11.
[17] Supra at note 10.
[18] **Clarifies Certain Issues on Tax Amnesty on Delinquencies under Revenue Regulations No. 4-2019 which Implemented Title IV of Republic Act No. 11213 or the Tax Amnesty Act.**
[19] Exhibit "P-6", Division Docket, pp. 62-70.
[20] Exhibit "P-7", id., pp. 71-73.
[21] Exhibit "P-8", id., pp. 74-77.

Form No. 2118-DA) and APF[22] (or BIR Form No. 0621-DA) with Authorized Agent Bank (**AAB**)-validated deposit slip[23] for the said EWT payment.

On 07 February 2020, petitioner received respondent's Letter[24] of even date (**Second Denial Letter**), indicating that its tax amnesty application is denied for the same reason aforecited, *i.e.*, that the NIC[25] was issued way beyond 24 April 2019 or the effectivity date of RR No. 4-2019.[26]

Aggrieved, on 04 March 2020, petitioner, through GM Salvallon, filed a "Request for [Anti-Red Tape Authority (**ARTA**)] Obedience" dated 03 March 2020[27], citing ARTA Memorandum Circular No. 2020-02 dated 14 February 2020[28] and the pertinent provisions of RA 11032[29] or the Ease of Doing Business Law.

On 09 June 2020, petitioner, through GM Salvallon, sent another letter captioned "Final Request for [Notice of Issuance of Authority to Cancel Assessment (**NIATCA**)]-Issuance" dated 06 June 2020[30], reiterating that its tax amnesty application is deemed approved and that it is ministerial on the part of respondent to sign and release the requested *pro-forma* CTD and APF and issue NIATCA.

On 28 July 2020, petitioner, through GM Salvallon, further sent a letter captioned "Request for CTD-Release/APF-Signature"[31] of even date, emphasizing yet again that respondent is duty-bound to sign and release the requested *pro-forma* CTD and APF.

On 04 August 2020, petitioner, through GM Salvallon, once more sent a letter captioned "Very Last Opportunity Before Suits (CTD &

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22 Exhibit "P-9", id., p. 78.
23 Exhibit "P-10", id., p. 79.
24 Exhibit "P-11", id., pp. 80-81.
25 Supra at note 11.
26 Supra at note 10.
27 Exhibit "P-12", Division Docket, pp. 82-87, with Annex "A".
28 ISSUANCE OF ORDER OF AUTOMATIC APPROVAL OR AUTOMATIC EXTENSION FOR PENDING TRANSACTIONS BEYOND THE PRESCRIBED PROCESSING TIME OF 3-7-20 WORKING DAYS.
29 AN ACT PROMOTING EASE OF DOING BUSINESS AND EFFICIENT DELIVERY OF GOVERNMENT SERVICES, AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 9485, OTHERWISE KNOWN AS THE ANTI-RED TAPE ACT OF 2007, AND FOR OTHER PURPOSES.
30 Exhibit "P-13", Division Docket, pp. 88-91.
31 Exhibit "P-14", id., pp. 92-96.

APF)"[32] of even date, reminding respondent of its alleged ministerial duty to sign and release the requested *pro-forma* CTD and APF.

Lastly, on 24 September 2020, petitioner, through GM Salvallon, filed *via* email and registered mail[33] a "Motion for Speedy Resolution" dated 23 September 2020[34], urging respondent to rule in its favor.

## PROCEEDINGS BEFORE THE COURT

There being no response to petitioner's requests since receiving respondent's Second Denial Letter[35], it filed a Petition for Review[36] before the Second Division[37] on 21 December 2020, docketed as CTA Case No. 10426.

On 04 January 2021, the Court issued Summons[38] ordering respondent to submit an Answer within thirty (30) days from service. Respondent received the said Summons on 06 January 2021.[39]

After being granted two (2) extensions of time by the Second Division[40], respondent filed its Answer[41] on 22 March 2021. There, respondent cited the following special and affirmative defenses: (1) this Court has no jurisdiction over the instant petition since the denial of petitioner's application for tax amnesty is not a "disputed decision" as contemplated under RA 1125[42], as amended by RA 9282[43]; (2) the instant petition constitutes a prohibited collateral attack on a presumably valid issuance (referring to RMC No. 57-2019[44]); and, (3) the approval of

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32 Exhibit "P-15", id., pp. 97-100.
33 Exhibit "P-17", id., p. 106.
34 Exhibit "P-16", id., pp. 101-105.
35 Supra at note 24.
36 Supra at note 1.
37 The Second Division is composed of Associate Justice Juanito C. Castañeda (Ret.), as Chairperson, and Associate Justice Jean Marie A. Bacorro-Villena, as Member.
38 Division Docket, p. 108.
39 *See* Notification dated 05 February 2021, id., p. 109.
40 *See* Orders dated 09 February 2021 and 18 March 2021, id., pp. 115 and 122, respectively.
41 Id., pp. 123-137.
42 AN ACT CREATING THE COURT OF TAX APPEALS.
43 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.
44 Supra at note 18.

petitioner's application for tax amnesty should be in accordance with the RA 11213 or the TAA and thus, *mandamus* is not tenable.

On 24 May 2021, the Second Division issued a Notice of Pre-Trial Conference[45] and set the case for pre-trial on 23 June 2021. In compliance with the Court's order, respondent filed its Pre-Trial Brief[46] on 21 June 2021, while petitioner filed its Pre-Trial Brief[47] on 23 June 2021.

On 24 May 2021, the Second Division received petitioner's "Motion 1. To Declare Respondent in Default 2. For Judgment on the Pleadings"[48] filed *via* registered mail on 20 April 2021. The Court denied the same for lack of merit since respondent's Answer[49] was filed within the allowed period.[50] Further, in the interest of justice, the Court granted petitioner's subsequent "Motion to Admit"[51] the Secretary's Certificate dated 24 September 2019[52] and the Judicial Affidavit of GM Salvallon dated 05 April 2021[53] as part of the records.[54]

During the 23 June 2021 Hearing, the Second Division ordered the parties to appear before the Philippine Mediation Center-Court of Tax Appeals (**PMC-CTA**) for mediation proceedings on 04 August 2021.[55] The Court also noted the manifestation of petitioner's counsel that she will submit her Special Power of Attorney (**SPA**) within fifteen (15) days therefrom and that only legal issues are involved in this case.[56] In compliance therewith, petitioner's counsel filed her duly notarized SPA[57] on 19 July 2021.

On 21 October 2021, the Second Division received the PMC-CTA's "Back to Court" report[58], stating that petitioner refused mediation. In

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45 Division Docket, pp. 139-140.
46 Id., pp. 166-168.
47 Id., pp. 196-203.
48 Id., pp. 141-145.
49 Supra at note 41.
50 *See* Resolution dated 21 June 2021, Division Docket, pp. 171-174.
51 Id., pp. 150-151.
52 Id., pp. 163-164.
53 Exhibit "P-19", id., pp. 152-160.
54 Supra at note 50.
55 *See* Minutes of the Hearing, Order and Resolution, all dated 23 June 2021, Division Docket, pp. 188, 189 and 191, respectively.
56 Id.
57 Id., pp. 209-210.
58 Id., pp. 211-212, with attached copy of petitioner's email-request that the case be remanded to the Court for continuation of the proceedings.

the Resolution dated 26 November 2021[59], the Court noted the same and set the case anew for pre-trial conference on 09 February 2022.

During the 09 February 2022 Hearing, petitioner's counsel manifested that the only issue in this case involves a question of law and requested that the parties be allowed to submit their respective memoranda instead of proceeding with trial on the merits.[60] The Court thus ordered petitioner to file a written motion therefor within 15 days therefrom and respondent was given the same period to comment thereon.[61]

In compliance with the Court's order, petitioner filed on 21 February 2022 a "Motion to Submit Memorandum" dated 16 February 2022[62], without respondent's comment despite due notice.[63] The Second Division granted the same and gave the parties a period of 30 days from notice within which to file their respective memoranda.[64]

On 17 June 2022, petitioner filed a "Motion to Admit Memorandum"[65], begging the indulgence of the Second Division to admit the attached Memorandum[66] notwithstanding the delayed filing thereof due to alleged honest mistake on the part of petitioner's counsel. Respondent, on the other hand, failed to file its memorandum despite due notice.[67]

In the Resolution dated 21 June 2022[68], the Second Division admitted petitioner's Memorandum in the interest of justice. Furthermore, considering that respondent failed to file a memorandum within the prescribed period, it deemed the case submitted for decision.[69]

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59 Id., pp. 214-215.
60 See Order dated 09 February 2022, id., p. 216.
61 Id.
62 Id., pp. 217-219.
63 *Per* Records Verification dated 01 April 2022, id., p. 220.
64 See Resolution dated 27 April 2022, id., pp. 222-224.
65 Id., pp. 226-228.
66 Id., pp. 229-255.
67 *Per* Records Verification dated 16 June 2022, id., p. 225.
68 Id., p. 256.
69 Id.

## ISSUES

The following are the issues raised for this Court's resolution:

I.
WHETHER A PETITION FOR *CERTIORARI* OR *MANDAMUS* UNDER RULE 65 OF THE RULES OF COURT, AS AMENDED, FILED WITH THE COURT OF TAX APPEALS (CTA) IS THE CORRECT REMEDY.

II.
WHETHER RESPONDENT BUREAU OF INTERNAL REVENUE (BIR) HAS THE MINISTERIAL DUTY TO ISSUE A CERTIFICATE OF TAX DELINQUENCY (CTD) AND ACCEPTANCE PAYMENT FORM (APF) IN FAVOR OF PETITIONER J. MARKETING CORPORATION FOR THE TAXABLE YEAR (TY) 2016 EVEN IF THE ASSESSMENT NOTICES OR SIMILAR DOCUMENTS ARE ISSUED AFTER THE EFFECTIVITY OF THE IMPLEMENTING RULES AND REGULATIONS (IRR).

III.
WHETHER PETITIONER J. MARKETING CORPORATION IS ENTITLED TO AVAIL OF THE BENEFITS OF THE TAX AMNESTY LAW, EVEN IF RESPONDENT BUREAU OF INTERNAL REVENUE (BIR) REFUSED TO SIGN THE REQUESTED CERTIFICATE OF TAX DELINQUENCY (CTD) AND ACCEPTANCE PAYMENT FORM (APF) GIVEN THAT IT IS THE LATTER'S MINISTERIAL DUTY TO ISSUE A NOTICE OF ISSUANCE OF AUTHORITY TO CANCEL ASSESSMENT (NIATCA) IN THE FORMER'S FAVOR AFTER IT FILED ITS TAX AMNESTY RETURN (TAR) AND APF AS WELL AS PAID THE AMNESTY TAXES.

IV.
WHETHER PETITIONER J. MARKETING CORPORATION HAS NO OTHER PLAIN, SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW.

Although the instant petition is captioned as "Petition for Review" and instituted pursuant to Section 3(a)(1)[70], Rule 4[71] and Section 4(a)[72], Rule 8[73] of the RRCTA, petitioner essentially asks this Court to rule on whether respondent may be compelled by *mandamus* to issue in its favor the requested CTD and APF under RA 11213 or the TAA.

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70 Supra at note 2.
71 Supra at note 3.
72 Supra at note 4.
73 Supra at note 5.

## ARGUMENTS

Petitioner argues that it is a ministerial duty on the part of respondent to issue a CTD and sign an APF in its favor for TY 2016, even if the assessment notices or similar documents are issued after the effectivity of RR No. 4-2019[74] (or the TAA's IRR). According to petitioner, it is entitled to avail of the benefits of the TAA, although respondent refused to issue the CTD and sign the APF, given that it is respondent's ministerial duty to issue a NIATCA in its favor after it filed the TAR and APF and paid the amnesty taxes.

Petitioner then alleges, for the first time in its Memorandum[75], that a petition for *certiorari* under Rule 65 of the Rules of Court, as amended, is the correct remedy. According to it, respondent's denial of and inaction on its request for the issuance and release of a CTD and a signed APF is a "decision" of the Commissioner of Internal Revenue (**CIR**) arising under the NIRC of 1997, as amended, and its related laws; hence, the Court of Tax Appeals (**CTA**) is the proper court for the filing of the instant petition.

Petitioner cites the case of *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.*[76], wherein the Supreme Court held that the CTA's jurisdiction is not limited to cases that involve decisions of the CIR on matters involving assessments or refunds but also covers other cases arising from the NIRC of 1997, as amended[77], "where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility." It also contends that the CTA's judicial power to determine whether there is grave abuse of discretion amounting to lack or excess of jurisdiction on the part of respondent is enshrined in the Constitution, as enunciated in *Department of Transportation (DOTR), et al. v. Philippine Petroleum Sea Transport Association, et al.*[78] Further, "(a) petition for *certiorari* is proper where the impugned dispositions, as

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[74] Supra at note 10.
[75] Supra at note 66.
[76] G.R. No. 169225, 17 November 2010, cited in *Commissioner of Internal Revenue v. Philippine Aluminum Wheels, Inc.*, CTA EB No. 994 (CTA Case No. 7817), 19 May 2014.
[77] *WPP Marketing Communications, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 9704, 05 June 2020.
[78] G.R. No. 230107, 24 July 2018.

in this case, are tainted with grave abuse of discretion amounting to lack or excess of jurisdiction".[79]

Petitioner firmly insists that it is qualified to apply for tax amnesty under Section 17(d)[80] of the TAA. It then invokes Section 19[81] of the TAA, which provides that a taxpayer who wishes to avail of the tax amnesty on delinquencies shall file a sworn "Tax Amnesty on Delinquencies Return" with a "Certification of Delinquency" and pay the amnesty tax, after which respondent shall issue the APF. Section 5(A)[82] of RR No. 4-2019[83] (or the TAA's IRR) further provides that the taxpayer who wishes to avail of the tax amnesty on delinquencies shall file a TAR, an APF and a CTD issued by respondent. On these bases, petitioner argues

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79 *Bureau of Internal Revenue (BIR), as herein respondent by its Commissioner Kim S. Jacinto-Henares, et al. v. First E-Bank Tower Condominium*, G.R. No. 215801, 15 January 2020, citing *Rural Bank of Calinog (Iloilo), Inc. v. Court of Appeals, et al.*, G.R. No. 146519, 08 August 2005.

80 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.

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

...

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

81 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**[.] (Emphasis supplied)

82 **SEC. 5. MANNER OF AVAILMENT OF TAX AMNESTY ON TAX DELINQUENCIES.** — Any person, whether natural or juridical, who wishes to avail of the Tax Amnesty on Delinquencies shall file, within one (1) year from the effectivity of these Regulations, an application therefor in accordance with the procedures set forth below.

A. **DOCUMENTARY REQUIREMENTS** — The taxpayer shall submit the following:

1. Tax Amnesty Return (TAR) (BIR Form No. 2118-DA, Annex "A"), completely and accurately accomplished and made under oath;
2. Acceptance Payment Form (APF) (BIR Form No. 0621-DA, Annex "B") duly validated by the Authorized Agent Banks (AABs) or APF duly stamped "received" with accompanying bank deposit slip duly validated by the concerned AABs or Revenue Official Receipt (ROR) issued by the Revenue Collection Officers (RCOs);
3. Certificate of Tax Delinquencies/Tax Liabilities issued by concerned BIR offices (Annex "C"); and
4. In case of applications under Section 3(A)(2) of these Regulations, a copy of the assessment found in the FAN/FDDA: *Provided that,* in cases of applications under Section 3(D), either delinquent account or not, with or without FAN/FDDA, the Preliminary Assessment Notice (PAN)/Notice for Informal Conference or equivalent document is sufficient.

83 Supra at note 10.

that respondent is mandated and obligated to issue the requested CTD and APF, necessary to complete the documentary requirements under the TAA and ultimately avail of the tax amnesty on delinquencies.

Citing the Supreme Court's ruling in *CS Garment, Inc. v. Commissioner of Internal Revenue*[84], which declared that a taxpayer may immediately enjoy the privileges and immunities under a tax amnesty law as soon as it has complied with the requirements thereunder, petitioner thus claims that there is nothing more left to do under the circumstances but for respondent to issue the CTD and APF in its favor since it has already complied with the provisions of the TAA.

Petitioner also posits that, when respondent issued RMC No. 57-2019[85] (which provides that the TAA, as implemented by RR No. 4-2019[86], does not cover tax delinquencies with assessment notices or similar documents issued after the effectivity date of RR No. 4-2019, *i.e.*, on 24 April 2019), it, in effect, imposed additional conditions for availing of the tax amnesty. On this note, petitioner asserts that the TAA does not impose a cut-off date of 24 April 2019 or such condition that the assessment notices must have become final and executory on or before 24 April 2019.

Since RA 11213 or the TAA explicitly includes delinquent taxes for TY 2017 and prior years and the restriction on the coverage or scope thereof to those with assessments notices or similar documents issue on or before the effectivity of RR No. 4-2019[87] can only be found in RMC No. 57-2019[88], petitioner avers that such restriction should be declared null and void and should not be allowed to prevent it from exercising its legal right to avail of a tax amnesty. In this regard, petitioner underscores that the law cannot be amended by a mere regulation since an administrative agency may not enlarge, alter or restrict the provisions of the statute being administered[89], even on the pretext of clarifying specific issues by imposing other conditions not found in the law itself.

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84 G.R. No. 182399, 12 March 2014.
85 Supra at note 18.
86 Supra at note 10.
87 Supra at note 10.
88 Supra at note 18.
89 *Pilipinas Kao, Inc. v. Honorable Court of Appeals and Board of Investments*, G.R. No. 105014, 18 December 2001.

Petitioner further submits that it is clear from Section 20[90] of the TAA that respondent shall issue the NIATCA to a taxpayer availing of the tax amnesty on delinquencies within fifteen (15) calendar days from submission of the APF and the TAR.

Lastly, petitioner argues that it has no other plain, speedy, and adequate remedy in the ordinary course of law considering that it only has until 31 December 2020 to avail of the tax amnesty under the TAA, as provided for in RR No. 15-2020[91] and RMC No. 61-2020.[92]

In its Memorandum[93], petitioner stresses that it may lose the right to avail of tax amnesty on delinquencies unless it can seek a judicial determination by way of *certiorari/mandamus* as to whether respondent's actions constitute grave abuse of discretion amounting to lack or excess of jurisdiction.

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90 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.** 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: *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. (Emphasis supplied)

91 **Further Amendments to Revenue Regulations No. 4-2019, as amended, on Tax Amnesty on Delinquencies.**

92 Further Extension of Deadline on Availment of Tax Amnesty on Delinquencies under Revenue Regulations (RR) No. 4-2019 as Amended by RR No. 5-2020 in Relation with Revenue Memorandum Circular (RMC) No. 33-2020 dated March 24, 2020, RMC No. 38-2020 dated April 7, 2020 and RR No. 11-2020 dated April 29, 2020.

93 Supra at note 66.

On the other hand, respondent, in its Answer[94], maintains that this Court has no jurisdiction over the instant petition since (1) the denial of petitioner's application for tax amnesty is not a "disputed decision" as contemplated under RA 1125, as amended by RA 9282; (2) it constitutes a prohibited collateral attack on a presumably valid issuance (*i.e.*, RMC No. 57-2019); and, (3) *mandamus* does not lie to compel the approval of petitioner's application for tax amnesty under the TAA.

Respondent contends further that RMC No. 57-2019 was issued in accordance with its rule-making power or quasi-legislative power. It is a circular issued under its power to interpret, clarify, or explain tax laws and to decide tax cases under Section 4 of the NIRC of 1997, as amended. RMC No. 57-2019 provides the reckoning date of the finality of tax assessment or delinquent accounts for purposes of availing tax amnesty in accordance with the TAA. Respondent adds that, since RMC No. 57-2019 was issued in the exercise of its quasi-legislative function, the regular courts and not this Court has jurisdiction to declare the said RMC null and void.

Citing the cases of *Dasmariñas Water District v. Monterey Foods Corporation*[95], *Andrea Tan, et al. v. Bausch & Lomb, Inc.*[96], and *San Miguel Brewery, Inc. v. Francisco Magno*[97], respondent likewise argues that the nullification of a provision of RMC No. 57-2019 that petitioner prays for is a collateral attack on a presumably valid administrative issuance, which is not allowed.

Respondent asserts that Section 19[98] of the TAA expressly provides the reckoning date for the filing of the application for tax amnesty. The TAA also requires that the tax liability should have become final and executory or delinquent on or before the effectivity of the TAA's IRR. Thus, since RR No. 4-2019 (or the TAA's IRR) took effect on 24 April 2019, the same should be the reckoning date of the finality or delinquency of the tax liability sought to be applied for amnesty.

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94 Supra at note 41.
95 G.R. No. 175550, 17 September 2008.
96 G.R. No. 148420, 15 December 2005, citing *Walter E. Olsen & Co., Inc. v. Vicente Aldanese, et al.*, G.R. No. L-18740, 28 April 1922.
97 G.R. No. L-21879, 29 September 1967.
98 Supra at note 81.

Additionally, respondent points out that, based on the records, the relevant tax assessment against petitioner is not yet delinquent or has not yet attained finality as of 24 April 2019. The pertinent NIC[99] was issued and received on 03 September 2019; hence, as of 24 April 2019, there is still no final and executory assessment against petitioner. Consequently, petitioner is not qualified to avail of the tax amnesty on delinquencies under the TAA.

Respondent concludes that petitioner failed to establish (1) that there exists a positive duty on its part to automatically approve the subject application for tax amnesty on delinquencies and (2) that it gravely abused its power in denying the same.

## RULING OF THE COURT

Before going into the merits of the case, We shall first resolve whether this Court has jurisdiction over the instant petition.

THE COURT HAS SUBJECT-MATTER JURISDICTION OVER THE INSTANT PETITION FOR REVIEW WITH A PRAYER FOR THE ISSUANCE OF A WRIT OF *MANDAMUS*.

Respondent argues that the Court, as a court of special jurisdiction, does not have the authority to review respondent's decision of denying petitioner's application for tax amnesty on delinquencies as such denial is not a "disputed decision" as contemplated under RA 1125[100], as amended by RA 9282.[101]

We disagree.

Section 7(a)(1) of RA 1125, as amended by RA 9282, provides:[102]

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[99] Supra at note 11.
[100] Supra at note 42.
[101] Supra at note 43.
[102] Emphasis and underscoring supplied.

...

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

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

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

...

Likewise, Section 3(a)(1), Rule 4 of the RRCTA provides:[103]

...

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

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

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

...

The subject matter of the instant petition involves a special tax law, *i.e.*, RA 11213 or the TAA, which is administered by respondent, as can be gleaned from the following provisions of the said law:

...

TITLE II
*Estate Tax Amnesty*

...

SECTION 6. *Availment of the Estate Tax Amnesty; When and Where to File and Pay.* — The executor or administrator of the estate, or if there is no executor or administrator appointed, the legal heirs, transferees or beneficiaries, who wish to avail of the Estate Tax Amnesty shall,

103 Emphasis and underscoring supplied.

within two (2) years from the effectivity of the Implementing Rules and Regulations of this Act, file with the Revenue District Office of the **Bureau of Internal Revenue**, which has jurisdiction over the last residence of the decedent, a sworn Estate Tax Amnesty Return, in such forms as may be prescribed in the Implementing Rules and Regulations...[.]

...

TITLE III
*General Tax Amnesty*

...

SECTION 12. *Availment of the General Tax Amnesty; When and Where to File and Pay.* — Any person, natural or juridical, who wishes to avail of the General Tax Amnesty shall, within one (1) year from the effectivity of the Implementing Rules and Regulations, file with the appropriate office of the **Bureau of Internal Revenue**, which has jurisdiction over the taxpayer, a sworn General Tax Amnesty Return accompanied by a notarized Statement of Total Assets or notarized Statement of Assets, Liabilities, and Networth, as the case may be, as of December 31, 2017. The payment of the amnesty tax shall be made at the time the Return is filed[.]

...

TITLE IV
*Tax Amnesty on Delinquencies*

...

SECTION 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[.][104]

...

Clearly from the foregoing, the Court has jurisdiction over the instant petition since the subject matter thereof involves a special tax law, *i.e.*, RA 11213 or the TAA, which is administered by respondent.

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104 Emphasis supplied.

Incidentally, in view of the allegations in paragraph 4 of the instant Petition for Review[105], this case likewise partakes of the nature of a special civil action of *mandamus* under Section 3[106], Rule 65[107] of the Rules of Court, as amended. And since there also an allegation of grave abuse of discretion against respondent, in its Memorandum[108], it appears that petitioner would also have this case be treated as a special civil action of *certiorari* under Section 1[109], Rule 65[110] of the Rules of Court, as amended. At any rate, petitioner may avail of either or both remedies in this case as this Court has the power to issue auxiliary writs such as *certiorari* and *mandamus*, as provided under Section 6[111], Rule 135[112] of the Rules of Court.

In fact, in the case of *Golden Donuts, Inc. v. Commissioner of Internal Revenue*[113] (**Golden Donuts**), the Supreme Court, citing *City of Manila v. Grecia-Cuerdo (City of Manila)*[114] (**Grecia-Cuerdo**), ruled that the CTA, having exclusive jurisdiction to resolve all tax problems, may take cognizance of a petition for *certiorari* to determine whether there is grave abuse of discretion amounting to lack or excess of jurisdiction committed by the BIR in issuing a Letter of Authority (**LOA**) against therein taxpayer as well as the subpoena *duces tecum*, to wit:

> ...
>
> In the case of *City of Manila v. Grecia-Cuerdo (City of Manila)*, this Court for the first time recognized the CTA's jurisdiction over petitions for *certiorari* under Rule 65 of the Rules of Court over interlocutory orders issued by the Regional Trial [C]ourt in a local tax case. Thus:

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105 Par. 4, Nature of the Petition, Petition for Review, supra at note 1, p. 7.

106 Supra at note 2.

107 Supra at note 3.

108 Supra at note 66.

109 Sec. 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 the 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.

110 Supra at note 3.

111 Sec. 6. *Means to carry jurisdiction into effect.* — When by law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these rules, any suitable process or mode of proceeding may be adopted which appears conformable to the spirit of said law or rules.

112 Powers and Duties of Courts and Judicial Officers.

113 G.R. No. 252816, 03 February 2021 (Resolution); Citations omitted, italics in the original text, and emphasis and underscoring supplied.

114 726 Phil. 9 (2014).

...

... [W]hile there is no express grant of such power, with respect to the CTA, Section 1, Article VIII of the 1987 Constitution provides, nonetheless, that **judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law** and that **judicial power includes the duty of the courts of justice** to settle actual controversies involving rights which are legally demandable and enforceable, and **to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government**.

...

**Indeed, in order for any appellate court to effectively exercise its appellate jurisdiction, it must have the authority to issue, among others, a writ of *certiorari*. In transferring exclusive jurisdiction over appealed tax cases to the CTA, it can reasonably be assumed that the law intended to transfer also such power as is deemed necessary, if not indispensable, in aid of such appellate jurisdiction.** There is no perceivable reason why the transfer should only be considered as partial, not total.

...

Furthermore, **Section 6, Rule 135** of the present Rules of Court **provides that when by law, jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court** or officer.

...

Under Section 7 of R.A. 9282 which expanded the jurisdiction of the CTA, the latter is given exclusive appellate jurisdiction over "Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue." **Following the ruling of the Court in *City of Manila*, the CTA may take cognizance of a petition for *certiorari* to determine whether there is grave abuse of discretion amounting to lack or excess of jurisdiction committed by the BIR in issuing the 2017 LOA against GDI as well as the subpoena *duces tecum* considering that a previous investigation of the same taxable year 2007 was already conducted pursuant to the 2008 LOA and GDI has already settled its tax liabilities arising out of said investigation.**

...

Similarly, in the case of *Banco de Oro, et al. v. Republic of the Philippines, et al.*[115] (BDO), the Supreme Court echoed its pronouncement in *Grecia-Cuerdo*, where it declared in no uncertain terms that petitions for *certiorari* against the acts and omissions of quasi-judicial agencies, including the CIR, should be filed with the CTA, *viz*:

> ...
>
> Section 7 of Republic Act No. 1125, as amended, is explicit that, except for local taxes, **appeals from the decisions of quasi-judicial agencies (Commissioner of Internal Revenue**, Commissioner of Customs, Secretary of Finance, Central Board of Assessment Appeals, Secretary of Trade and Industry) **on tax-related problems must be brought *exclusively* to the Court of Tax Appeals.**
>
> In other words, within the judicial system, **the law intends the Court of Tax Appeals to have exclusive jurisdiction to resolve all tax problems. Petitions for writs of *certiorari* against the acts and omissions of the said quasi-judicial agencies should, thus, be filed before the Court of Tax Appeals.**
>
> ...

Moreover, while an ordinary appeal or petition for review and a petition for *mandamus* are distinct legal remedies with different requirements and purposes, a petition for review may be treated as a petition for *mandamus* if it appears from an examination of the allegations and the relief sought therein that it is a petition for *mandamus*. What determines the nature of the action and which court has jurisdiction over it are the allegations of the complaint and the character of the relief sought.[116] The cause of action in a complaint is not what the designation of the complaint states, but what the allegations in the body of the complaint define or describe.[117]

Here, petitioner alleges in its Memorandum that a Petition for *Certiorari* under Rule 65 is the correct remedy[118] but maintains the same

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115 G.R. No. 198756, 16 August 2016 (Resolution); Citations omitted, italics in the original text, and emphasis supplied.

116 *Patricio A. Villena v. Patricio S. Payoyo*, G.R. No. 163021, 27 April 2007.

117 *Ake Hernudd, et al. v. Lars E. Lofgrenm, et al.*, G.R. No. 140337, 27 September 2007, citing *Esperanza P. Sumulong, represented by Mario P. Sumulong v. Court of Appeals and Inland Trailways, Inc.*, G.R. No. 108817, 10 May 1994.

118 Part I, Arguments/Discussions, Memorandum, supra at note 66, pp. 237-241.

specifically to mandate the issuance of the requested CTD and APF under RA 11213 or the TAA. Hence, there is basis to treat the instant Petition for Review as a Petition for *Mandamus*.

We shall now determine the timeliness of the instant petition.

THERE IS NO SHOWING THAT THE INSTANT PETITION FOR REVIEW (TREATED AS A PETITION FOR *MANDAMUS*) WAS TIMELY FILED.

Since the instant Petition for Review is treated as a Petition for *Mandamus* involving a special tax law, *i.e.*, RA 11213 or the TAA, which falls under the "other matters" jurisdiction of the CTA, its timeliness is governed by Section 4, Rule 65[121] of the Rules of Court, as amended, to wit:

> ...
> Sec. 4. *When and where to file the petition*. -The petition shall be filed not later than **sixty (60) days from notice of the judgment, order or resolution**. In case a motion for reconsideration or new trial is timely filed, 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.[122]
> ...

Based on the foregoing provision, all Rule 65 petitions must be filed not later than sixty (60) days from notice of judgment, order or resolution.

Pertinently, in the case of *Blue Eagle Management, Inc., et al. v. Jocelyn L. Naval*[123], citing *Isabelita C. Vinuya, et al. v. The Honorable Executive Secretary Alberto G. Romulo, et al.*[124], the Supreme Court emphasized that to establish the timeliness of a Rule 65 petition, the date of receipt of the assailed judgment, final order, or resolution must be stated in the petition; otherwise, the petition must be dismissed, *viz*:

---

[121] Supra at note 3.
[122] Emphasis supplied.
[123] G.R. No. 192488, 19 April 2016; Citation omitted, italics and emphasis in the original text, and underscoring supplied.
[124] G.R. No. 162230, 12 August 2014.

...

The Court, in *Vinuya v. Romulo*, expounded on the importance of stating the material dates in a petition for *certiorari*:

> As the rule indicates, the 60-day period starts to run from the date petitioner receives the assailed judgment, final order or resolution, or the denial of the motion for reconsideration or new trial timely filed, whether such motion is required or not. <u>To establish the timeliness of the petition for *certiorari*, the date of receipt of the assailed judgment, final order or resolution or the denial of the motion for reconsideration or new trial must be stated in the petition; otherwise, the petition for *certiorari* must be dismissed.</u> The importance of the dates cannot be understated, for such dates determine the timeliness of the filing of the petition for *certiorari*. As the Court has emphasized in *Tambong v. R. Jorge Development Corporation*:
>
>> There are three essential dates that must be stated in a petition for *certiorari* brought under Rule 65. First, the date when notice of the judgment or final order or resolution was received; *second*, when a motion for new trial or reconsideration was filed; and *third*, when notice of the denial thereof was received. **Failure of petitioner to comply with this requirement shall be sufficient ground for the dismissal of the petition. Substantial compliance will not suffice in a matter involving strict observance with the Rules.**

...

Clearly, failure to state the material dates in a petition for *mandamus* or *certiorari* is sufficient ground for the dismissal thereof under Section 3[125], Rule 46[126], in relation to Rule 65[127], of the Rules of Court, as amended.

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[125] Sec. 3. *Contents and filing of petition; effect of non-compliance with requirements.* — ...

...

In actions filed under Rule 65, the petition shall further indicate the **material dates** showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed when notice of the denial thereof was received.

...

The failure of the petitioner to comply with any of the foregoing requirements shall be **sufficient ground for the dismissal of the petition**. (Emphasis supplied)

[126] **ORIGINAL CASES.**

[127] Supra at note 3.

Here, petitioner failed to demonstrate that the instant Petition for Review[128] (which is treated as a Petition for *Mandamus*) was filed within the prescribed 60-day period. Considering that the petition was filed on 21 December 2020, the 60-day period must have commenced on 22 October 2020. However, there is no proper allegation on the relevant act or omission, or the judgment, order or resolution and the date of receipt thereof from which to determine whether it was filed within the said 60-day period.

Even assuming that the act or omission, or the judgment, order or resolution of respondent being assailed pertains to the Second Denial Letter[129], which is the last letter petitioner received from respondent on **07 February 2020**, the instant Petition for Review (which was filed only on **21 December 2020**) was clearly filed beyond the 60-day reglementary period under Section 4[130], Rule 65 of the Rules of Court, as amended. Accordingly, the instant Petition for Review is dismissible for being filed out of time.

*Nevertheless*, even if the instant petition was timely filed, it must still be dismissed for lack of merit on the grounds essayed below.

PETITIONER HAS NO CLEAR LEGAL RIGHT TO THE ISSUANCE OF CERTIFICATE OF TAX DELINQUENCIES/TAX LIABILITIES (CTD) AND ACCEPTANCE PAYMENT FORM (APF).

Petitioner insists that it has a legal right to be issued the CTD and APF because it is qualified to avail of the tax amnesty under Section 17(d) of the TAA, which reads as follows:

> ...
>
> 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

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128 Supra at note 1.
129 Supra at note 24.
130 Supra at p. 20

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.

For purposes of [RA 11213 or the TAA], the Tax Amnesty on Delinquencies may be availed of in the following instances:

(a) Delinquencies and assessments, which have become final and executory... **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.**[131]

...

Section 3 of RR No. 4-2019[132], which implements the above provision of the TAA, states:

...

**SEC. 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 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:

1. Delinquent Accounts with application for compromise settlement...;
2. **Delinquent Withholding Tax liabilities arising from non-withholding of tax**; and

...

[131] Emphasis supplied.
[132] Supra at note 10.

D. **Withholding tax liabilities of withholding agents arising from their failure to remit withheld taxes.**[133]

...

RMC No. 57-2019[134] clarifies the reckoning date for availment and defines who is qualified to avail of the tax amnesty on delinquencies, to wit:

...

**Q1. Who are qualified to avail of the Tax Amnesty on Delinquencies?**

**A1.** All persons, whether natural or juridical, with delinquent internal revenue tax liabilities covering taxable year 2017 and prior years, **on or before April 24, 2019**, may avail of Tax Amnesty on Delinquencies within one year from the effectivity of RR No. 4-2019, under any of the following instances:

A. Delinquent accounts:
1. Delinquent Accounts, whether without or with application for compromise settlement...
2. **Delinquent withholding tax liabilities arising from non-withholding of tax**; and

...

D. **Withholding tax liabilities of withholding agents arising from their failure to remit withheld taxes.** (Section 3, RR No. 4-2019)

...

**Q3. If the assessment notices pertain to penalties only (i.e., without basic tax assessed), can the taxpayer avail of the tax amnesty?**

**A3.** The taxpayer can avail of the tax amnesty if the penalties pertain to taxable year 2017 and prior years and the assessment notices have **become final and executory on or before April 24, 2019.**

The taxpayer shall follow the prescribed manner of availment under Section 5 of RR No. 4-2019. However, since the required tax amnesty amount is based on the basic tax assessed, there shall be no amount due for payment.

...

133 Emphasis supplied.
134 Supra at note 18.

Q7. **Can a taxpayer avail of the tax amnesty for 2017 tax liabilities which are <u>currently under investigation pursuant to a Letter of Authority (LOA)</u>?**

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 tax amnesty on delinquencies.**
The requirement that tax liabilities must be delinquent accounts prior to 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 of tax amnesty on delinquencies at any stage/time of investigation for as long the amount of tax liabilities are properly determined by the BIR.**

Q8. **If the taxpayer is amenable to the deficiency tax resulting from the audit conducted pertaining to taxable year 2017 and prior years, as presented during the informal conference, can the tax liabilities be settled through availment of tax amnesty on delinquencies?**
A8. **The tax liabilities as informed during the informal conference are not yet considered delinquent** and cannot be the subject of tax amnesty on delinquencies except when the tax liability pertains to unremitted withheld taxes.

Q9. **Can tax amnesty on delinquencies be availed of even if there is no Final Assessment Notice (FAN)/Formal Letter of Demand (FLD)/Final Decision on Disputed Assessment (FDDA) that has become final and executory on or before April 24, 2019?**
A9. Tax amnesty on delinquencies can be availed of even if there is **no FAN/FLD/FDDA that has become final and executory** if the tax liabilities fall under any of the following instances:

(1) The tax liabilities are related to the pending criminal cases with the DOJ/Prosecutor's Office or the courts for tax evasion and other criminal offenses under Chapter II of Title X and Section 275 of the Tax Code as amended; and
(2) **The tax liabilities pertain to unremitted tax withheld by withholding agents.**[135]

...

[135] Emphasis in the original text, underscoring and supplied.

Respondent, on the other hand, asserts that the tax liability subject of tax amnesty on delinquencies should already be final and executory or delinquent at the time of RR No. 4-2019[136] (or the TAA's IRR)'s effectivity. Thus, since the said IRR took effect on 24 April 2019, the same should be the reckoning date of the finality or delinquency of the tax liability sought to be applied for amnesty.

Respondent further argues that petitioner is not qualified to avail of the tax amnesty on delinquencies since the subject tax assessment against petitioner is not yet delinquent or has not yet attained finality as of 24 April 2019.

We agree with respondent.

As can be gleaned from the TAA, its IRR[137] and RMC No. 57-2019[138], only tax delinquencies and assessments that have become final and executory on or before RR No. 4-2019 took effect, *i.e.*, on 24 April 2019, can be the subject of tax amnesty on delinquencies. Such requirement, however, does not apply to: (1) the tax liabilities are related to the pending criminal cases with the Department of Justice (**DOJ**) or the Prosecutor's Office or the courts for tax evasion and other criminal offenses under Chapter II of Title X and Section 275 of the NIRC of 1997, as amended; and, (2) the tax liabilities that pertain to unremitted taxes withheld by withholding agents.

In this case, it is undisputed that petitioner only received the NIC[139] on 03 September 2019. This means that, as of that date, the tax investigation has yet to progress to the assessment stage with the issuance of an assessment notice. Since respondent has yet to issue any assessment notice against petitioner, no assessment notice could have had become final and executory against it and, as such, no tax could have had been due from it. Certainly, the tax liabilities for TY 2016 in the aggregate amount of ₱316,752,601.28 referred to in the NIC are not yet delinquent (as of the abovementioned effectivity date of 24 April 2019) and thus, cannot be the subject of tax amnesty on delinquencies under the TAA.

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136 Supra at note 10.
137 Supra at note 10.
138 Supra at note 18.
139 Supra at note 11.

Moreover, there is no showing that the aforesaid tax liabilities fall under any of the exceptions mentioned in RMC No. 57-2019[140] such as (1) those related to pending criminal cases with the DOJ or the Prosecutor's Office for tax evasion and other criminal offenses and (2) those that pertain to unremitted taxes withheld. The procedure performed by respondent, *i.e.*, comparing the amounts claimed as expense *vis-à-vis* income payments subjected to withholding taxes[141], would only result in determining which expenses were not properly subjected to withholding taxes. It does not establish whether petitioner has any unremitted withholding taxes. Stated otherwise, respondent's finding of deficiency withholding taxes does not automatically lead to the conclusion or even suggest that petitioner initially withheld taxes and that those withheld taxes remained unremitted. In fact, respondent noted the same in its Second Denial Letter dated 07 February 2020[142], to wit:

> ...
>
> Interestingly, a perusal of the Amended Notice of Internal Conference dated October 11, 2019 issued by this Office in connection with the tax investigation for taxable year 2016 which was received by your corporation on the same date disclosed that the findings as regards to Withholding Tax on compensation and Expanded Withholding Tax, **both pertains to deficiencies in the payment of the said withholding taxes** and not to unremitted withholding taxes. As such your corporation is without a doubt **NOT QUALIFIED** to avail of tax amnesty on unremitted withholding taxes.[143]
>
> ...

With the foregoing, the Court finds that petitioner failed to establish a clear legal right to the issuance of a CTD and an APF since there yet no tax delinquency or liability that could be the subject of tax amnesty on delinquencies under the TAA.

THE ISSUANCE OF A CERTIFICATE OF TAX DELINQUENCIES/ TAX LIABILITIES (CTD) AND AN ACCEPTANCE PAYMENT FORM (APF) IS A *DISCRETIONARY* FUNCTION OF RESPONDENT, NOT A MINISTERIAL ONE.

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140 Supra at note 18.
141 Supra at note 11, p. 29.
142 Supra at note 24.
143 Emphasis in the original text.

It is a well-recognized rule that *mandamus* only lies to enforce the performance of a ministerial act or duty and not to control the performance of a *discretionary* power. Similarly, settled is the rule that purely administrative and discretionary functions may not be interfered with by the court.[144] A purely ministerial act or duty in contradiction to a discretional act 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 exercise of his own judgment upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial.[145]

RR No. 4-2019[146], as amended by RR No. 15-2020[147], which implements the TAA and has the force and effect of a law, lays down the guidelines for the issuance of a CTD, an APF and a NIATCA, to wit:

> ...
>
> **SECTION 5. MANNER OF AVAILMENT OF TAX AMNESTY ON TAX DELINQUENCIES.** ...
>
> A. **DOCUMENTARY REQUIREMENTS** — The taxpayer shall submit the following:
>
> 1. Tax Amnesty Return (TAR) (BIR Form No. 2118-DA, Annex "A"), completely and accurately accomplished and made under oath;
> 2. Acceptance Payment Form (APF) (BIR Form No. 0621-DA, Annex "B") duly validated by the Authorized Agent Banks (AABs) or APF duly stamped "received" with accompanying bank deposit slip duly validated by the concerned AABs or Revenue Official Receipt (ROR) issued by the Revenue Collection Officers (RCOs);
> 3. **Certificate of Tax Delinquencies/Tax Liabilities** issued by concerned BIR offices (Annex "C"); and
> 4. In case of applications under Section 3(A)(2) of these Regulations, a copy of the assessment found in the FAN/FDDA: *Provided that*, in cases of applications under Section 3(D), either delinquent account or not, with or without

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144 *Meralco Securities Corporation (now First Philippine Holdings Corporation) v. Hon. Victorino Savellano, et al.*, G.R. No. L-36181, 23 October 1982.

145 *Serafin Sanson v. Conrardo Barrios, et al.*, G.R. No. L-45086, 20 July 1936; *Eliseo B. Lemi v. Brigudo Valencia, et al.*, G.R. No. L-20768, 29 November 1968.

146 Supra at note 10.

147 Supra at note 91.

FAN/FDDA, the Preliminary Assessment Notice (PAN)/Notice for Informal Conference or equivalent document is sufficient.

...

C. **PROCEDURES** — The taxpayer-applicant shall:

**Step 1.** Secure the Certificate of Delinquencies/Tax Liabilities from the concerned BIR Office as specified below:

| Nature of Tax Liabilities | Large Taxpayer | Non-Large Taxpayer |
|---|---|---|
| Delinquent tax cases, including withholding tax liabilities of withholding agents arising from failure to remit withheld taxes and those with pending or denied application for compromise settlement. | Large Taxpayers Division (Cebu or Davao)/Large Taxpayers Collection Enforcement Division (LTCED) | a. Regional Collection Division — For taxpayer-applicants under the jurisdiction of Revenue Region (RR) Nos. 5, 6, 7 and 8 (Caloocan, Manila, Quezon City and Makati, respectively);<br><br>b. Revenue District Office (RDO) where the taxpayer-applicant is registered — For other taxpayer-applicants including RDO No. 36 (Puerto Princesa). |

...

<u>The concerned BIR Office receiving the request for Certificate of Delinquencies/Tax Liabilities shall issue said Certificate of Delinquencies/Tax Liabilities to the taxpayer within three (3) working days from the date of the request.</u> <u>**Should the concerned BIR Office find that said Certificate of Delinquencies/Tax Liabilities cannot be issued, said BIR Office must state in writing the legal and factual basis for its denial.**</u>

**Step 2.** Present the duly accomplished TAR made under oath and APF, together with the other required documents, to the concerned RDO/LTD/LTCED for endorsement of the APF and pay the tax amnesty amount with the AABs or RCOs, whichever is applicable, by presenting the RDO/LTD/LTCED-endorsed or approved APF: *Provided*, that if no payment is required as in the case when assessment consists only of unpaid penalties due to

either late filing or payment, the phrase "no payment required" shall be indicated in the APF. *Provided, further,* that the concerned RDO/LTD/LTCED shall endorse said duly accomplished TAR and APF within one (1) working day from receipt of complete documents.

**Step 3.** Submit/file immediately to the RDO/LTD/LTCED where the taxpayer is registered, in triplicate copies, the duly accomplished TAR, made under oath, together with the complete documentary requirements and proof of payment, which in no case shall be beyond the availment period set forth under Section 3 of these Regulations. The taxpayer/applicant shall be furnished with a copy, stamped as "received", of said TAR and APF.

Availment of Tax Amnesty on Delinquencies shall be considered fully complied with upon completion of the above-enumerated steps within the period set forth under Section 3 of these Regulations.

**SECTION 6. ISSUANCE OF AUTHORITY TO CANCEL ASSESSMENT (ATCA) AND LIFTING OF THE VALIDITY OF THE ISSUED NOTICES AND WARRANTS.** — The Notice of Issuance of Authority to Cancel Assessment (NIATCA) shall be issued by the BIR to the taxpayer availing of the Tax Amnesty on Delinquencies within fifteen (15) calendar days from submission of the APF and TAR. Otherwise, the stamped-"received" duplicate copies of the APF and TAR shall be deemed as sufficient proof of availment.

Insofar as the tax delinquencies covered by the TAR is concerned, any notice, attachment and/or warrant of garnishment issued against the taxpayer by the concerned BIR office shall be set aside pursuant to the lifting of the said notices and warrants issued by the concerned BIR Office.[148]

...

Moreover, Revenue Memorandum Order (**RMO**) No. 23-2019[149] provides:

...

**II. POLICIES AND GUIDELINES**

...

[148] Emphasis supplied and underscoring in the original text.

[149] Policies, Guidelines and Procedures in the Processing of Applications for Tax Amnesty on Delinquencies Pursuant to Republic Act (RA) No. 11213 Otherwise Known as the "Tax Amnesty Act".

> 3. The endorsement and **approval of the Acceptance Payment Form (APF) by the RDOs/LTDs/LTCED** shall be made within the day of **<u>presentation of the complete and duly accomplished documentary requirements</u>**, provided that the same is presented before the daily cut-off time of 12:00 noon. Otherwise, the endorsement and approval shall be made on the next working day.[150]
>
> ...

Based on the foregoing provisions, the law imposes a duty upon the concerned BIR officers to evaluate whether a CTD and an APF may be issued. Such duty includes determining who is qualified to avail of the tax amnesty under the TAA, which is a discretionary function and not merely a ministerial one.

As held in *Danilo A. Lihaylihay v. The Treasurer of the Philippines Roberto C. Tan, et al.*[151], a determination that requires a review of evidentiary matters and an application of the law and administrative guidelines is considered a discretionary, quasi-judicial function, demanding an exercise of independent judgment on the part of certain public officers, and which cannot be the subject of *mandamus*, *viz*:

> ...
>
> A writ of mandamus may issue in either of two (2) situations: first, "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"; second, "when any tribunal, corporation, board, officer or person . . . unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled."
>
> The first situation demands a 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.
>
> **Petitioner's legal right must have already been clearly established.** It cannot be a prospective entitlement that is yet to be settled. In *Lim Tay v. Court of Appeals*, this Court emphasized that "[m]andamus will not issue to establish a right, but only to enforce one that is already established." In *Pefianco v. Moral*, this Court underscored that a writ of *mandamus* "never issues in doubtful cases."

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150 Emphasis and underscoring supplied.

151 G.R. No. 192223, 23 July 2018; Citations omitted, italics in the original text, and emphasis supplied.

Respondents must also be shown to have *actually* neglected to perform the act mandated by law. Clear in the text of Rule 65, Section 3 is the requirement that respondents "unlawfully *neglect*" the performance of a duty. The mere existence of a legally mandated duty or the pendency of its performance does not suffice.

**The duty subject of mandamus must be ministerial rather than discretionary.** A court cannot subvert legally vested authority for a body or officer to exercise discretion. In *Sy Ha v. Galang*:

> [M]andamus will not issue to control the exercise of discretion of a public officer where the law imposes upon him the duty to exercise his judgment in reference to any matter in which he is required to act, because it is his judgment that is to be exercised and not that of the court.

This Court distinguished discretionary functions from ministerial duties, and related the exercise of discretion to judicial and quasi-judicial powers. In *Sanson v. Barrios*:

> **Discretion, when applied to public functionaries, means a power or right conferred upon them by law of acting officially, under certain circumstances, according to the dictates of their own judgments and consciences, uncontrolled by the judgments or consciences of others.** A purely ministerial act or duty, in contradistinction to a discretional act, is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or the exercise of his own judgment, upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer, and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion nor judgment. . . . Mandamus will not lie to control the exercise of discretion of an inferior tribunal . . ., when the act complained of is either judicial or quasi-judicial. . . . It is the proper remedy when the case presented is outside of the exercise of judicial discretion.

***Mandamus*, too, will not issue unless it, is shown that "there is no other plain, speedy and adequate remedy in the ordinary course of law." This is a requirement basic to all remedies under Rule 65, *i.e.*, *certiorari*, prohibition, and mandamus.**

...

Petitioner's entitlement to an informer's reward is not a ministerial matter. Quite the contrary, **its determination requires a review of evidentiary matters and an application of statutory**

> **principles and administrative guidelines. Its determination is a discretionary, quasi-judicial function, demanding an exercise of independent judgment on the part of certain public officers.**
>
> ...

Since the determination of who are qualified to avail of the tax amnesty involves respondent's discretionary duties, *mandamus* may not lie to compel respondent to issue the CTD and sign the APF in favor of petitioner for that would be tantamount to a usurpation of executive functions.

It is the policy of the courts not to interfere with the *discretionary* executive acts of the executive branch unless there is a clear showing of grave abuse of discretion amounting to lack or excess of jurisdiction. *Mandamus* does not lie against the legislative and executive branches or their members acting in the exercise of their official discretionary functions. This emanates from the respect accorded by the judiciary to said branches as co-equal entities under the principle of separation of powers.[152]

It bears stressing that the grant of a tax amnesty, similar to a tax exemption, must be construed strictly against the taxpayer and liberally in favor of the taxing authority. It is never favored nor presumed in law. This is because a tax amnesty is a general pardon or the intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of violation of a tax law. It partakes of an absolute waiver by the government of its right to collect what is due it and to give tax evaders who wish to relent a chance to start with a clean slate.[153]

In sum, the Court finds that respondent cannot be compelled by *mandamus* to issue in favor of petitioner the requested CTD and APF, since the determination of the latter's entitlement to avail of the tax amnesty on delinquencies under the TAA is a discretionary function. And needless to say, respondent did not commit grave abuse of discretion in refusing to issue the same as, indeed, petitioner is not qualified to avail of the said tax amnesty on delinquencies.

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152 *Knights of Rizal v. DMCI Homes, Inc., et al.*, G.R. No. 213948, 25 April 2017.

153 *Philippine Banking Corporation (Now: Global Business Bank, Inc.) v. Commissioner of Internal Revenue,* G.R. No. 170574, 30 January 2009.

**WHEREFORE**, in light of the foregoing considerations, the present Petition for Review filed by petitioner J. Marketing Corporation on 21 December 2020 is hereby **DISMISSED** for being time-barred and for lack of merit.

**SO ORDERED.**

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

**I CONCUR:**

**LANEE S. CUI-DAVID**
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.

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice
Special 2nd Division Acting Chairperson

## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Special 2nd Division Acting 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's Division.

**ROMAN G. DEL ROSARIO**
Presiding Justice