20-000160-0072

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10295

OOCL LOGISTICS PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF JUDGMENT BY COMPROMISE AGREEMENT

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

COMMISSIONER OF INTERNAL REVENUE
Thru: Litigation Division
Bureau of Internal Revenue
BIR National Office Building
BIR Road, Diliman, Quezon City

ATTY. WILMER B. DEKIT
ATTY. APRILYN T. POBAR
Bureau of Internal Revenue - Revenue Region No. 8B, South NCR
2nd Floor, Legal Division, BIR Regional Office Building
No. 313 Sen. Gil Puyat Ave., Makati City

CASTILLO LAMAN TAN PANTALEON & SAN JOSE
2nd to 5th and 9th Floors, The Valero Tower
122 Valero Street, Salcedo Village, Makati City

GREETINGS:

You are hereby notified by these presents that on **February 17, 2023,** a Judgment by Compromise Agreement was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **February 21, 2023.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

OOCL LOGISTICS PHILIPPINES, INC., *Petitioner,*	**CTA Case No. 10295** Members:
-versus-	**DEL ROSARIO,** *P.J., Chairperson,* **MANAHAN,** *and* **REYES-FAJARDO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: FEB 17 2023 ; 1:10 p.m.

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JUDGMENT BY COMPROMISE AGREEMENT

MANAHAN, *J.:*

This resolves the parties' **Joint Motion to Render Judgment on Compromise**[1] filed on November 11, 2022 praying that the Judicial Compromise Agreement dated October 18, 2022 be approved and render a judgment in accordance with its terms.

The subject *Judicial Compromise Agreement*[2] reads as follows:

> **JUDICIAL COMPROMISE AGREEMENT**
>
> This Compromise Agreement (the "Agreement") is made at ____________________ this __ day of __________ 2022, by and between:
>
> **OOCL LOGISTICS PHILIPPINES, INC.**, a corporation duly organized and existing under Philippine laws, with principal office address at the 11th Floor, Two E-Com Centre – Tower B, Bayshore Avenue, Mall of Asia Complex, Pasay City, hereinafter referred to as the "**Taxpayer**", represented by its Financial Control Manager,

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[1] Docket, CTA Case No. 10295, Vol. III, pp. 1221-1223.
[2] *Id.*, Annex "A", *Compliance and Joint Motion to Render Judgment on Compromise,* pp. 1224-1228.

Claire S. Pancho, as evidenced by the Secretary's Certificate dated June 30, 2020 attached as **Annex "A**;"

- and -

BUREAU OF INTERNAL REVENUE, hereinafter referred to as "**BIR**," with official station at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City, represented by the **Commissioner of Internal Revenue**, **Hon. Lilia Catris Guillermo**, hereinafter referred to as the "**CIR;**"

The **Taxpayer** and the **BIR** shall be referred to individually as a "**Party**" and collectively as the "**Parties**."

RECITALS

Whereas, the Taxpayer is a domestic corporation engaged in the business of, among others, international and domestic land and ocean freight forwarding and logistics in both domestic and international markets, overland and sea transportation, shipping, distribution, trucking, warehousing, packing, crating, labeling , inventory management and control of all kinds of commodities, with Taxpayer Identification No. 241-579-099.

Whereas, the BIR issued a Final Decision on Disputed Assessment dated June 26, 2019 ("FDDA"), signed by the Regional Director of BIR Revenue Region No. 8, which assessed the Taxpayer deficiency Value-Added Tax ("VAT") for the taxable quarters ended March 31, 2016 and June 30, 2016, inclusive of interest for the applicable period as follows;

TAX TYPE	BASIC TAX	INTEREST	TOTAL
Value-Added Tax	₱11,244,696.49	₱5,354,323.97	₱16,599,020.46
Total	**₱11,244,696.49**	**₱5,354,323.97**	**₱16,599,020.46**

Whereas, the Taxpayer filed with the Honorable Court of Tax Appeals ("CTA") a Petition for Review ("Petition"), entitled *OOCL Logistics Philippines, Inc. v. Commissioner of Internal Revenue*, docketed as CTA Case No. 10295 (the "Case"), and pending before the Honorable CTA's First Division, seeking to nullify and cancel (a) the Warrant of Distraint and/or Levy ("WDL") No. RR8B-2020-02-17-0049 dated March 12, 2020 issued by respondent CIR; and (b) the FDDA dated June 26, 2019 for alleged deficiency VAT in the aggregate amount of Sixteen Million, Five Hundred Ninety-Nine Thousand, Twenty Pesos and Forty-Six Centavos (₱16,599,020.46), inclusive of interest, for taxable quarters ended March 31, 2016 and June 30, 1016.

Whereas, the Taxpayer has submitted to the BIR an application for compromise of the tax assessment subject of the Case in accordance with the applicable rules and regulations;

Whereas, the BIR has evaluated the Taxpayer's application for compromise and believes that a judicial compromise to allow immediate tax collection and to put an end to litigation, as provided in Article 2028 of the Civil Code of the Philippines ("Civil Code"), serves the interest of the Government;

Whereas, the Parties have agreed to enter into an amicable settlement pursuant to the provisions of the Civil Code, the Tax Code, jurisprudence, relevant decisions of the Honorable CTA and the Supreme Court, and relevant rules and regulations;

Whereas, Section 204(A) of the Tax Code gives the CIR power to compromise the payment of taxes when there is "[a] reasonable doubt as to the validity of the claim against the taxpayer exists," and the Honorable CTA has issued rulings allowing judicial compromise similar to the instant case;

Whereas, the Parties, for the purpose of avoiding and putting an end to a protracted, expensive, and mutually prejudicial litigation, have agreed to amicably settle the abovementioned Case, upon terms and conditions hereinafter set forth;

NOW, THEREFORE, for and in consideration of the above premises, the Parties agree as follows:

1. *Compromise Amount* - In order to settle the abovementioned Case, the Taxpayer has offered and the BIR has accepted the total payment of Four Million, Four Hundred Ninety-Seven Thousand, Eight Hundred Seventy-Eight Pesos and Sixty Centavos (Php4,497,878.60), equivalent to 40% of the basic tax assessed VAT stated in the FDDA.

2. *Submission to the Honorable CTA* – This Agreement, duly signed by the Parties, shall be submitted for the approval of the Honorable CTA in CTA Case No. 10295, *OOCL Logistics Philippines, Inc. v. Commissioner of Internal Revenue*. The parties undertake to perform any and all acts and submit any and all documents required by the Honorable CTA to be able to render a Judgment on Compromise Agreement in the said Case.

3. *Effectivity of the Agreement* – This Agreement shall take effect and bind the Parties upon approval by the Honorable Court CTA. This Agreement shall thereafter remain in forcer and effect until completion and fulfilment of the covenants and undertaking of the Parties. *om*

4. *Deliverables of the Parties upon Approval of the Agreement by the Honorable CTA* – Upon approval by the Honorable CA of this Agreement, the BIR undertakes to execute and deliver to the Taxpayer any and all documents as may be required to effectively and fully implement the provisions of this Agreement. The BIR shall withdraw and cancel the WDL dated March 12, 2020, the FDDA dated June 26, 2019 and all other documents issued in relation or pursuant to the said documents.

5. *Authority to Enter into Compromise* – The BIR warrants that CIR Lilia Catris Guillermo has the necessary authority and capacity under the law to enter into, sign, and execute this Agreement, and to comply with the covenants and undertakings therein on behalf of the BIR upon approval by the Honorable CTA

The Taxpayer warrants that Claire S. Pancho is duly authorized by the Board of Directors of the Taxpayer and has full legal capacity to enter into, sign, and execute this Agreement, and to comply with the covenants and undertakings therein on behalf of the Taxpayer upon approval by the Honorable CTA.

6. *Full and Final Settlement* – This Agreement is executed by the Parties for the purpose of amicably settling and ending the case. Upon approval by the Honorable CTA, the BIR recognizes the full satisfaction of the supposed tax liabilities of the Taxpayer in connection with the Case and acknowledges that the Taxpayer No longer has any tax liability whatsoever based upon, arising from, or in connection with the particular subject of the Case.

7. *Disapproval of the Agreement by the Honorable CTA* – In the event that this Agreement is disapproved by the Honorable CTA, the parties agree to any curing period of sixty (60) days from receipt of the Order/Resolution disapproving this Agreement. During such period, the Parties mutually agree to perform any and all acts necessary to rectify or correct the deficiency, defect, or imperfection that caused the disapproval of this Agreement, and re-submit the rectified and corrected Agreement for approval of the Honorable CTA. However, in case the deficiency, defect, or imperfection is not or cannot be rectified or corrected within the said curing period, or if the Agreement is still not approved by the Honorable CTA after it has been rectified or corrected by the Parties:

a. The amount already paid by the Taxpayer to the BIR shall be deemed a tax credit that may be applied against internal revenue taxes for which the Taxpayer may be directly liable, as allowed under existing rules and regulations; and

b. The proceedings of the Case shall continue and the discussions pursuant to the disapproved Agreement cannot be used by the Parties in the said proceedings without the consent of the other Party.

8. *Non-admission of Liability* – The Parties agree that the execution of this Agreement shall not in any way be construed as an admission of liability with respect to the matters raised in the Case.

9. *Entire Agreement* – This Agreement constitutes the entire agreement between the Parties. It shall not be amended or superseded unless in writing duly signed by both Parties.

10. *Good Faith Undertaking* – The Parties undertake to perform all obligations and undertakings in good faith, and shall not willfully take or omit to take any action that would frustrate the spirit and intent underlying this Agreement.

11. *Non-performance* – The Parties agree that the failure of any Party to comply with any of the terms and conditions of this Agreement shall entitle the Aggrieved Party to file an appropriate motion with the Honorable CTA for the immediate implementation and execution of the terms and conditions of this Agreement or the judgment of the Honorable CTA approving the same.

12. *Signatures and Counterparts* – This Agreement may be signed in counterparts, each of which when executed and delivered shall constitute a duplicate original, but all of which shall be taken together as a single instrument. Until and unless each Party has received a counterpart hereof signed by the other Party hereto, this Agreement shall have no effect and no Party shall have any right or obligation hereunder.

IN WITNESS WHEREOF, the Parties have hereunto set their hands at the date and place first above mentioned.

OOCL LOGISTICS PHILIPPINES, INC.

By:

CLAIRE S. PANCHO
Financial Control Manager

Assisted by:

JOSEPH GREGSON A. CASTILLO

AARON JACOB G. TAN
Counsel for OOCL Logistics Philippines, Inc.

BUREAU OF INTERNAL REVENUE

By:

LILIA CATRIS GUILLERMO
Commissioner

Section 204(A) of the 1997 National Internal Revenue Code (NIRC), as amended, provides:

> SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* -
>
> The Commissioner may -
>
> (A) Compromise the payment of any internal revenue tax, when:
>
> (1) A reasonable doubt as to the validity of the claim against the taxpayer exists; or
>
> (2) The financial position of the taxpayer demonstrates a clear inability to pay the assessed tax.
>
> The compromise settlement of any tax liability shall be subject to the following minimum amounts:
>
> For cases of financial incapacity, a minimum compromise rate equivalent to ten percent (10%) of the basic assessed tax; and
>
> For other cases, a minimum compromise rate equivalent to forty percent (40%) of the basic assessed tax.
>
> Where the basic tax involved exceeds One million pesos (P1,000,000) or where the settlement offered is less than the prescribed minimum rates, the compromise shall be subject to the approval of the Evaluation Board which shall be composed of the Commissioner and the four (4) Deputy Commissioners.

As culled from the above-cited provision, the following are the requisites for a valid compromise agreement:

1. The application for compromise is based on either the doubtful validity of respondent's assessment or taxpayer's financial incapacity to pay such assessment;

2. In case the basis of the compromise offer is doubtful validity, the minimum payment of compromise settlement shall be at the rate equivalent to forty percent (40%) of the basic assessed tax, while if the ground is financial incapacity, the minimum payment should be at the rate equivalent to ten percent (10%) of the basic assessed tax; and

3. The approval of the National Evaluation Board (NEB) which is composed of the respondent and his four (4) Deputy Commissioners if the subject assessment exceeds One Million pesos (P1,000,000) or where the settlement offered is less than the prescribed minimum rates.

Implementing the foregoing section of the NIRC, **Revenue Regulations (RR) No. 30-2002** dated December 16, 2002, as amended by **RR No. 8-2004**, or the "**Revenue Regulations Implementing Section 7(c), 204(A) and 290 of the National Internal Revenue Code of 1997 on Compromise Settlement of Internal Revenue Tax Liabilities Superseding Revenue Regulations Nos. 6-2000 and 7-2001**," provides for those cases that can be compromised, to wit:

> SEC. 2. CASES WHICH MAY BE COMPROMISED. - The following cases may, upon taxpayer's compliance with the basis set forth under Section 3 of these Regulations, be the subject matter of compromise settlement, viz:
>
> 1. Delinquent accounts;
>
> 2. Cases under administrative protest after issuance of the Final Assessment Notice to the taxpayer which are still pending in the Regional Offices, Revenue District Offices, Legal Service, Large Taxpayer Service (LTS), Collection Service, Enforcement Service and other offices in the National Office;

3. **Civil tax cases being disputed before the courts**;

xxx xxx xxx (*Emphasis supplied*)

Corollary thereto, CTA *En Banc* Resolution No. 7-2021 dated June 22, 2021 requires the submission of the following documents, aside from the said Compromise Agreement, to wit;

1. Authority of the taxpayer/private parties' duly authorized representatives to sign the Compromise Agreement;

2. BIR Payment Form No. 0605 and proof of payment of the compromise amount; and,

3. Certificate of Availment confirming that the compromise agreement was approved by the Evaluation Board of the Bureau of Internal Revenue as required under Section 204 (A) of the NIRC of 1997, as amended.

In Petitioner's *Partial Compliance* dated June 10, 2022 filed on even date, it submitted the certified true copy of its *Application for Judicial Tax Compromise* dated March 4, 2022[3] and the original printout of *BIR Form No. 605* or Payment Form[4] for the compromise amount of Php4,497,878.60.

Subsequently, on November 11, 2022, petitioner, through its *Compliance* dated November 10, 2022, submitted the original copies of the *Judicial Compromise Agreement* dated October 18, 2022[5] and *Certificate of Availment (Compromise Settlement)* dated October 12, 2022.[6]

In petitioner's Application for Judicial Tax Compromise, it reiterated its argument that it presented sufficient evidence to prove that the alleged unsupported zero-rated receipts are in fact valid zero-rated receipts. Moreover, the alleged undeclared taxable receipts amounting Php19,248,719.92 which represents reimbursements and other destination charges are not subject to value-added tax (VAT) and that it

[3] Docket, pp. 1135-1145.
[4] *Id.* at pp. 1146-1147.
[5] *Id.* at pp. 1224-1228.
[6] *Id.* at p. 1231.

was able to present sufficient evidence to support the disallowed claims for input VAT on purchases in the amount of Php8,415,632.32. Thus, casting doubt as to the accuracy of respondent's tax assessments. The first requisite under Section 204(A) of the 1997 NIRC, as amended, pertaining to the ground of doubtful validity is complied with.

As to the second requisite pertaining to the amount of compromise payment, as shown in the Judicial Compromise Agreement, the Final Decision on Disputed Assessment (FDDA) indicated a deficiency VAT assessment in the total amount of Php16,599,020.46, inclusive of surcharge and interest. However, the basic deficiency VAT amounts only to Php11,244,696.49.

Section 4(2) of RR No. 30-2002 provides that in cases of doubtful validity of assessment, a minimum compromise rate equivalent to forty percent (40%) of the basic assessed tax should be assessed. Hence, the amount of compromise settlement should not be lower than Four Million Four Hundred Ninety-Seven Thousand Eight Hundred Seventy-Eight Pesos and Sixty Centavos (Php4,497,878.60).

In petitioner's original computer printout of BIR Form No. 0605 with attached Filing Reference Number Page, the amount paid for the compromise settlement is Php4,497,878.60. Thus, the compromise amount paid for the alleged deficiency VAT is equal to the minimum compromise rate of 40% and as such, payment by petitioner constitutes compliance with the second requisite.

As to the last requisite, the approval of the NEB was necessary considering that the amount involved in this case was more than one million pesos. Section 6, first paragraph, of RR No. 30-2002 provides:

> **SEC. 6. APPROVAL OF OFFER OF COMPROMISE.** – Except for offers of compromise where the approval is delegated to the REB pursuant to the succeeding paragraph, all compromise settlements within the jurisdiction of the National Office (NO) shall be approved by **a majority of all the members of the NEB** composed of the Commissioner and the four (4) Deputy Commissioners. All decisions of the NEB, **granting the request of the taxpayer or favorable to the taxpayer**, shall have the concurrence of the Commissioner. xxx xxx xxx

In the instant case, the Certificate of Availment dated October 12, 2022 reveals that the compromise settlement has been approved by the NEB. Hence, there was compliance with the third and final requisite.

Having complied with all the above-mentioned requisites, the instant Compromise Agreement is therefore in accordance with Section 204(A) of the 1997 NIRC, as amended. In *Felipe O. Magbanua, et al. v. Rizalino Uy,*[7] the Supreme Court explains the nature of a compromise agreement, to wit:

> "A compromise agreement is a contract whereby the parties make reciprocal concessions in order to resolve their differences and thus avoid or put an end to a lawsuit. They adjust their difficulties in the manner they have agreed upon, disregarding the possible gain in litigation and keeping in mind that such gain is balanced by the danger of losing. Verily, the compromise may be either extrajudicial (to prevent litigation) or judicial (to end a litigation).
>
> A compromise must not be contrary to law, morals, good customs and public policy; and must have been freely and intelligently executed by and between the parties. To have the force of law between the parties, it must comply with the requisites and principles of contracts. Upon the parties, it has the effect and the authority of res judicata, once entered into.
>
> **When a compromise agreement is given judicial approval, it becomes more than a contract binding upon the parties. Having been sanctioned by the court, it is entered as a determination of a controversy and has the force and effect of a judgment**..." (*Emphasis supplied*)

WHEREFORE, in the light of the foregoing, the parties' *Joint Motion to Render Judgment on Compromise* is hereby **GRANTED**.

Accordingly, the **Judicial Compromise Agreement** entered into by the parties relative to the deficiency VAT assessment is hereby **APPROVED**. The parties are hereby enjoined to faithfully comply with all the terms and conditions of the aforesaid Compromise Agreement.

The present case is now deemed **CLOSED** and **TERMINATED**.

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[7] G.R. No. 161003, May 06, 2005.

Petitioner's *Motion to Discharge Cash Bond* filed on November 14, 2022 is now submitted for resolution.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Judgment by Compromise Agreement 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