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

***EN BANC***

**COMMISSIONER OF INTERNAL REVENUE,**
Petitioner,

- versus -

**XYLEM WATER SYSTEMS INTERNATIONAL, INC. (formerly GOULDS PUMPS [N.Y.], INC.),**
Respondent.

**CTA EB No. 2120**
(CTA Case No. 8901)

*Present*:

**DEL ROSARIO,** ***P.J.*****,**
**CASTAÑEDA, JR.,**
**UY,**
**RINGPIS-LIBAN,**
**MANAHAN,**
**BACORRO-VILLENA,**
**MODESTO-SAN PEDRO,** *and*
**REYES-FAJARDO,** ***JJ.***

Promulgated:
NOV 0 3 2021 1:20 p.m.

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# RESOLUTION

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

Before the Court *En Banc* is petitioner Commissioner of Internal Revenue's (**petitioner**'s/**CIR**'s) "Motion for Reconsideration (Re: Decision promulgated 12 March 2021)"[1] (**MR**) filed on 26 March 2021[2], without comment[3] from respondent Xylem Water Systems International, Inc. (formerly Goulds Pumps [N.Y.], Inc.) (**respondent/Xylem**).

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[1] *Rollo*, pp. 122-137.
[2] Received on 21 May 2021.
[3] *Per* Records Verification dated 16 July 2021.

The MR seeks the reversal of the Court *En Banc*'s Decision promulgated on 12 March 2021[4] (**assailed Decision**). The dispositive portion of the assailed Decision reads:

> ...
>
> **WHEREFORE**, with the foregoing, the instant Petition for Review filed by petitioner Commissioner of Internal Revenue is hereby **DENIED** for lack of merit. Accordingly, the Decision dated 31 January 2019 and the Resolution dated 25 July 2019, respectively, of the Special Third Division in CTA Case No. 8901, entitled *Xylem Water Systems International, Inc. (formerly Goulds Pumps [N.Y.], Inc.) v. Commissioner of Internal Revenue*, are hereby **AFFIRMED**.
>
> Further, petitioner Commissioner of Internal Revenue or any person duly acting on his behalf is **ENJOINED** from proceeding with the collection of the taxes assessed against respondent Xylem Water Systems International, Inc., based on the Warrant of Distraint and/or Levy dated 09 September 2014 in the amounts of ₱1,370,725.90, ₱41,261,378.35 and ₱1,391,660.67 representing deficiency expanded withholding tax, final withholding tax and fringe benefits tax for taxable year 2004.
>
> **SO ORDERED.**
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> ...

In his MR, petitioner reiterates his arguments in his Answer[5], MR[6] (on the assailed 31 January 2019 Decision[7]) before the Special Third Division, as well as in his Petition for Review[8] before the Court *En Banc*.

According to petitioner, since respondent received on 06 January 2011 a copy of the letter dated 21 December 2010[9] denying its protest on the assessment dated 22 January 2008, it had thus belatedly filed its prior Petition for Review on 03 October 2014. Consequently, the assessment had long become final and executory.

Petitioner further argues that no less than Postmaster Mary Antonette S. Parfan (**Parfan**) authenticated the registry return card

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4 *Rollo*, pp. 100-117.
5 Division Docket, Volume I, pp. 378-393.
6 Id., Volume III, pp. 1323-1338.
7 Id., pp. 1295-1312.
8 *Rollo*, pp. 6-24.
9 Exhibit "P-9", Division Docket, Volume I, pp. 307-311; Exhibit "R-19", BIR Records, Folder 2, p. 495.

proving actual mailing and receipt by respondent of the Final Assessment Notice (**FAN**) and Formal Letter of Demand (**FLD**).

Petitioner also finds error in the application of the principle laid down in *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*[10] (**Barcelon**) as the same is a collection case where he (the CIR) is the petitioner and as such, had the initial burden to prove the fact of receipt in view of the denial of taxpayer's receipt of the assessment. According to petitioner, if the registry return card was produced, the same is sufficient to prove actual mailing and the burden has already shifted to respondent to rebut the disputable presumption. However, respondent merely presented self-serving evidence and pleaded convenient denials which have no probative value.

Finally, petitioner implores the Court *En Banc* not to lose sight of the fact that this is a civil case; as such, the quantum of evidence of preponderance of evidence should prevail over technicalities.

**We resolve.**

After considering the arguments of petitioner, the Court *En Banc* is constrained to deny his MR.

It must be emphasized that petitioner failed to raise any new argument or present novel matter which the Court, either in Division and *En Banc,* has not previously scrutinized, studied and discussed.

A simple reading of the instant MR would reveal that the same contains the very identical arguments he earlier raised in his Answer[11] and MR[12] which he both filed before the Special Third Division, as well as in his Petition for Review[13] before the Court *En Banc.*

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[10] G.R. No. 157064, 07 August 2006.
[11] Supra at note 5.
[12] Supra at note 6.
[13] Supra at note 8.

In *Licomcen Incorporated v. Foundation Specialists, Inc.*[14], the Supreme Court, citing *Ortigas and Company Limited Partnership v. Judge Tirso Velasco, et al.*[15], held that:

> ...
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> The filing of a motion for reconsideration, authorized by Rule 52 of the Rules of Court, does not impose on the Court the obligation to deal individually and specifically with the grounds relied upon therefor, in much the same way that the Court does in its judgment or final order as regards the issues raised and submitted for decision. This would be a useless formality or ritual invariably involving merely a reiteration of the reasons already set forth in the judgment or final order for rejecting the arguments advanced by the movant; and it would be a needless act, too, with respect to issues raised for the first time, these being, x x x deemed waived because not asserted at the first opportunity. It suffices for the Court to deal generally and summarily with the motion for reconsideration, and merely state a legal ground for its denial (Sec. 14, Art. VIII, Constitution); i.e., the motion contains merely a reiteration or rehash of arguments already submitted to and pronounced without merit by the Court in its judgment, or the basic issues have already been passed upon, or the motion discloses no substantial argument or cogent reason to warrant reconsideration or modification of the judgment or final order; or the arguments in the motion are too unsubstantial to require consideration, etc.
>
> ...

Furthermore, assuming for the sake of argument that the requirements of the law (that the taxpayer be informed of the law and the facts upon which the assessment is made) may be deemed fulfilled when respondent subsequently secured copies of the FAN and FLD (which gave it the opportunity to file an intelligent protest), passing upon the validity and merits of the assessment would still not change the outcome of the case as the government's right to collect on the subject assessment had already prescribed.

In *Bank of the Philippine Islands v. Commissioner of Internal Revenue*[16], the Supreme Court ruled as follows:

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14 G.R. Nos. 167022 and 169678, 31 August 2007.

15 G.R. Nos. 109645 and 112564, 04 March 1996.

16 G.R. No. 139736, 17 October 2005; Citations omitted and emphasis, italics and underscoring in the original text and supplied.

...

**...When the BIR validly issues an assessment, within either the three-year or ten-year period, whichever is appropriate, then the BIR has another three years after the assessment within which to collect the national internal revenue tax due thereon by distraint, levy, and/or court proceeding. The assessment of the tax is deemed made and the three-year period for collection of the assessed tax begins to run on the date the assessment notice had been released, mailed or sent by the BIR to the taxpayer.**

In the present Petition, there is no controversy on the timeliness of the issuance of the Assessment, only on the prescription of the period to collect the deficiency DST following its Assessment. **While Assessment No. FAS-5-85-89-002054 and its corresponding Assessment Notice were both dated 10 October 1989 and were received by petitioner BPI on 20 October 1989, there was no showing as to when the said Assessment and Assessment Notice were released, mailed or sent by the BIR. Still, it can be granted that the latest date the BIR could have released, mailed or sent the Assessment and Assessment Notice to petitioner BPI was on the same date they were received by the latter, on 20 October 1989.** Counting the three-year prescriptive period, for a total of 1,095 days, from 20 October 1989, then the BIR only had until 19 October 1992 within which to collect the assessed deficiency DST.

The earliest attempt of the BIR to collect on Assessment No. FAS-5-85-89-002054 was its issuance and service of a Warrant of Distraint and/or Levy on petitioner BPI. Although the Warrant was issued on 15 October 1992, previous to the expiration of the period for collection on 19 October 1992, the same was served on petitioner BPI only on 23 October 1992.

Under Section 223(c) of the Tax Code of 1977, as amended, it is not essential that the Warrant of Distraint and/or Levy be fully executed so that it can suspend the running of the statute of limitations on the collection of the tax. It is enough that the proceedings have validly began or commenced and that their execution has not been suspended by reason of the voluntary desistance of the respondent BIR Commissioner. **Existing jurisprudence establishes that distraint and levy proceedings are validly begun or commenced by the issuance of the Warrant *<u>and</u>* service thereof on the taxpayer. It is only logical to require that the Warrant of Distraint and/or Levy be, at the very least, served upon the taxpayer in order to suspend the running of the prescriptive period for collection of an assessed tax, because it may only be upon the service of the Warrant that the taxpayer is informed of the denial by the BIR of any**

> **pending protest of the said taxpayer, and the resolute intention of the BIR to collect the tax assessed.**
>
> ...

Thus, even if We lend credence to petitioner's claim that respondent received the subject FAN and FLD on 05 February 2008[17] and consider the same as the date when the assessment was deemed made (since the records do not show when the subject FAN and FLD were released, mailed or sent by the Bureau of Internal Revenue [**BIR**] to respondent), the government's right to collect thereon had already prescribed when respondent received the Warrant of Distraint and/or Levy[18] (**WDL**) on 09 September 2014.[19]

In sum, as petitioner merely recycled his previous submissions and arguments, the Court *En Banc* finds no cogent reason to disturb the assailed Decision.

**WHEREFORE**, with the foregoing premises, petitioner Commissioner of Internal Revenue's Motion for Reconsideration (Re: Decision promulgated 12 March 2021) filed on 26 March 2021 is **DENIED** for lack of merit.

**SO ORDERED.**

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

**WE CONCUR:**

**ROMAN G. DEL ROSARIO**
Presiding Justice

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17 Question and Answer No. 22, Judicial Affidavit of Dolores O. Zaporteza (Exhibit "R-21"), Division Docket, Volume I, p. 431.

18 Exhibit "P-14-SO", id., p. 318.

19 Paragraph 17, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), id., Volume II, p. 600.

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**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**ERLINDA P. UY**
Associate Justice

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

*(With due respect, I maintain my Concurring and Dissenting Opinion dated March 12, 2021)*
**CATHERINE T. MANAHAN**
Associate Justice

**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice

**MARIAN IVY F. REYES-FAJARDO**
Associate Justice