REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

SMC STOCK TRANSFER SERVICE CORPORATION,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent,

C.T.A. Case No. 7944

Members:

Bautista, *Chairperson*
Palanca-Enriquez,
Cotangco-Manalastas, *JJ.*

Promulgated: JAN 10 2012
2:38 p.m.

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D E C I S I O N

COTANGCO-MANALASTAS, *J.:*

This is a Petition for Review filed on July 8, 2009, seeking the nullification and cancellation of the Formal Letter of Demand and the two Assessment Notices dated December 22, 2008 issued against petitioner for alleged deficiency income tax and value-added tax (VAT) in the total amount of P3,636,436.79.

STATEMENT OF FACTS

Petitioner SMC Stock Transfer Service Corporation is a domestic corporation, duly organized and existing under and by virtue of the law of the Republic of the Philippines, providing services as a stock transfer agent of companies listed with the Philippine Stock Exchange.[1]

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[1] Par. 1, Stipulation of Facts, Joint Stipulations of Facts and Issues (JSFI); docket, p. 110.

On the other hand, respondent Commissioner of Internal Revenue is the head of the Bureau of Internal Revenue (BIR) and is vested by law with the power to decide, approve and issue assessments of internal revenue taxes. She holds office at the BIR National Office Building, Diliman, Quezon City.

For taxable year 2004, petitioner filed its Annual Income Tax Return on April 12, 2005.[2] Likewise, petitioner filed its Quarterly VAT Returns for taxable year 2004 on the following dates:[3]

Period (2004)	**Date Filed**
1st Quarter	April 19, 2004
2nd Quarter	July 20, 2004
3rd Quarter	October 20, 2004
4th Quarter	January 20, 2005

On September 2, 2005, petitioner received a Letter of Authority (LOA) No. 200000092407 dated August 26, 2005, issued by Revenue District Office (RDO) No. 41 under Revenue Region No. 7 of the BIR, authorizing Revenue Officer Elisa San Juan and Group Supervisor Monica Dimaculangan to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2004 to December 31, 2004.[4]

To accommodate a verbal request made by Ms. Dimaculangan, petitioner executed a Waiver of the Statute of Limitations under the National Internal Revenue Code (NIRC) dated October 26, 2007 (hereafter referred to as the "First Waiver"). The effectivity of the First Waiver was not to go beyond January 31, 2008.[5]

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[2] Exhibit "A".
[3] Par. 2, Stipulation of Facts, JSFI; docket, pp. 110-111; Exhibits "B" to "E".
[4] Exhibits "F" and "1".
[5] Exhibits "G" and "2".

Pursuant to the LOA, RDO No. 41 issued a Notice for Informal Conference (Post Reporting Notice), which was received by petitioner on February 4, 2008; informing petitioner of the purported findings of deficiency taxes.[6]

Similar to the First Waiver, by way of accommodation of the verbal request of Ms. Dimaculangan, petitioner executed another Waiver of the Statute of Limitations dated February 14, 2008 (hereafter referred to as the "Second Waiver"), effective up to May 15, 2008.[7]

In a letter dated February 15, 2008, petitioner replied to the Post Reporting Notice, with comments and explanations to the findings of deficiency assessments.[8]

Due to the insistence and representation of Ms. Dimaculangan that the execution of the First Waiver and the Second Waiver was necessary for the BIR to issue a "no assessment" recommendation regarding their examination of petitioner for taxable year 2004 and subsequently a tax clearance, petitioner executed another Waiver of the Statute of Limitations dated August 4, 2008 (hereafter referred to as the "Third Waiver"). The effectivity of the Third Waiver was not to go beyond December 31, 2008. In addition, the Third Waiver provided:[9]

> "The intent and purpose of this waiver is to afford the Commissioner of Internal Revenue ample time to carefully consider the explanations, reconciliation worksheets and documents that have been submitted and to prepare their **no assessment/payment recommendation** for submission from District office to Regional office. xxx" (*Emphasis supplied*)

On December 16, 2008, petitioner received a Preliminary Assessment Notice (PAN) dated December 5, 2008, informing petitioner that it has deficiency income

[6] Exhibit "H".
[7] Exhibits "I" and "3".
[8] Exhibit "J".
[9] Exhibits "K" and "4".

tax liability amounting to P1,938,395.64 and deficiency VAT liability amounting to P1,644,154.34.[10]

By way of protest to the PAN, petitioner filed with the BIR on December 24, 2008, a letter dated December 17, 2008, objecting to the deficiency assessments and pointing out that the BIR can no longer make a valid assessment since the period within which it may validly do so has already prescribed.[11]

Despite petitioner's protest, respondent issued a Formal Letter of Demand dated December 22, 2008[12] and two Assessment Notices dated December 22, 2008 for deficiency income tax and VAT.[13] The Formal Letter of Demand and the Assessment Notices were received by petitioner on January 5, 2009. Petitioner was not furnished with the copy of Schedule "A" mentioned in the Formal Letter of Demand.[14]

Thereafter, petitioner, through a letter dated January 23, 2009, filed its protest and reiterated its position against the subject tax assessments.[15] The letter was duly received by respondent on January 26, 2009.

On June 9, 2009, petitioner received the denial of the protest by way of a letter captioned "Demand Before Suit" dated May 30, 2009 from respondent's representative demanding payment of the alleged deficiency VAT/income taxes under Assessment Notice No. F-41-039 for taxable year 2004, under threat of criminal action, within ten (10) days from receipt.[16]

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[10] Exhibits "L" and "6".
[11] Exhibit "M".
[12] Exhibits "N" and "9".
[13] Exhibits "O", "P", "7", and "8".
[14] Par. 11, Stipulation of Facts, JSFI; docket, p. 113.
[15] Exhibit "Q".
[16] Exhibit "R".

In response, petitioner sent a letter dated June 15, 2009, resubmitting its position that respondent's right to make the assessment has already prescribed.[17]

Hence, the present Petition for Review filed on July 8, 2009.

Respondent filed her Answer[18] on August 18, 2009, and interposed the following special and affirmative defenses:

> "5. The assessments for calendar year 2004 in the amounts of P1,967,886.29 and P1,668,549.83 as deficiency income and value-added taxes, respectively, were issued in accordance with law and regulations. The factual and legal bases of the assessments are contained in the Final Assessment Notices.
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> 6. Verification disclosed that the income payments per alphalist were greater than the amount in the financial statements, wherein the total difference was considered as an unaccounted source of cash which led to the inference that part of petitioner's income have not been declared as enunciated by the Court in the case of *Perez vs. CTA & CIR, L-10507 dated May 30, 1958.* Therefore, the amount is added in petitioner's reported taxable income pursuant to Section 31 of the 1997 Tax Code, as amended.
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> 7. Verification disclosed that part of petitioner's receipts had not been subjected to value-added tax in violation of the provisions of Sections 106, 107 and 108 of the 1997 Tax Code, as amended.
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> 8. Verification disclosed that some accounts were not accurately reported in the financial statements, wherein the difference is considered as unaccounted income subject to 10% value-added tax pursuant to Sections 106 and 108 of the 1997 Tax Code, as amended.
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> 9. Verification disclosed that petitioner failed to substantiate the amount of input tax with valid documentary evidence, hence, disallowed pursuant to Sections 110, 113 and 237 of the 1997 Tax Code, as amended.
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> 10. Finally, well-settled is the rule that tax assessments by tax examiners are presumed correct and made in good faith (*Cagayan Robina Sugar Milling Co. vs. Court of Appeals, 342 SCRA 671).* It is the taxpayer and not the Bureau of Internal Revenue who has the duty of proving otherwise. Equally settled is the rule that in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. All presumptions are in favor of tax assessments. Dereliction on the part of petitioner to satisfactorily overcome

[17] Exhibit "S".
[18] Docket, pp. 65-69.

> the presumption of regularity and correctness of the assessment will justify the judicial upholding of said assessment notices."

Petitioner filed its Reply[19] to respondent's Answer on September 18, 2009.

Thereafter, the case was set for pre-trial conference on October 22, 2009.[20] Petitioner filed its Pre-trial Brief[21] on October 16, 2009; while respondent filed her Pre-trial Brief[22] on October 21, 2009.

On November 3, 2009, the parties filed with this Court their Joint Stipulations of Facts and Issues[23], which was later approved in a Resolution[24] dated November 6, 2009. In the same Resolution, the pre-trial conference was terminated.

During trial, the parties presented their respective documentary and testimonial evidence.

The case was submitted for decision on September 16, 2011[25] after petitioner submitted its Memorandum [26] on July 27, 2011 and respondent filed her Memorandum[27] on September 2, 2011.

STATEMENT OF ISSUES

The parties submitted the following issues[28] for this Court's disposition:

> "1. As admitted by the Respondent, the Assessment Notices refer to the Final Assessment as containing the 'factual and legal bases of assessment'. In turn, the Final Assessment states that 'the complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying SCHEDULE 'A' of this letter.' However, SMCSTSC was not furnished the supposed Schedule 'A'. In view thereof, was SMCSTSC sufficiently informed of the

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[19] Docket, pp. 72-79.
[20] Docket, p. 80.
[21] Docket, pp. 81-96.
[22] Docket, pp. 97-108.
[23] Docket, pp. 110-116.
[24] Docket, p. 118.
[25] Docket, p. 363.
[26] Docket, pp. 324-344.
[27] Docket, pp. 349-360.
[28] Docket, pp. 115-116.

supposed factual and legal basis of Final Assessment and the Two (2) Assessment Notices?

2. Whether the Final Assessment and the Two (2) Assessment Notices have factual and legal basis?

3. With the filing of SMCSTSC's Annual Income Tax Return on 12 April 2005, has the authority of the Commissioner of Internal Revenue to assess SMCSTSC deficiency income tax for the taxable year 2004 already prescribed?

4. The supposed First Waiver was executed on 26 October 2007. With the filing of SMCSTSC's 1st Quarter VAT Return on 19 April 2004, 2nd Quarter VAT Return on 20 July 2004, and 3rd Quarter VAT Return on 20 October 2004, has the authority of the Commissioner of Internal Revenue to assess SMCSTSC deficiency VAT for the taxable year 2004 already prescribed?

5. With the filing of SMCSTSC's 4th Quarter VAT Return on January 20, 2005, has the authority of the Commissioner of Internal Revenue to assess SMCSTSC deficiency VAT for the taxable year 2004 already prescribed?

6. Do the First Waiver, Second Waiver, and Third Waiver suffer from fatal defects pursuant to the ruling in *Commissioner of Internal Revenue vs. FMF Development Corporation* (556 SCRA 698 [2008])?"

DISCUSSION/RULING

After a close scrutiny of the foregoing stipulated issues, the Court deems it necessary to first resolve the issue pertaining to whether the assessments of deficiency income tax and value-added tax for taxable year 2004 were issued within the prescriptive period provided by law.

The period within which to assess internal revenue taxes is governed by the NIRC of 1997, as amended, the pertinent provision reads:

> "SEC. 203. *Period of Limitation Upon Assessment and Collection.* — Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed

before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."

It is clear from the foregoing that the three (3)-year period to assess internal revenue taxes commences from the date of actual filing of the return; or from the last day prescribed by law for the filing of such return, whichever comes later. In other words, if the return was filed earlier than the last day allowed by law, the period to assess shall still be counted from the last day prescribed for filing of the return. However, if the return was filed beyond the prescribed period, the three-year period shall be counted from the day the return was actually filed.

As for petitioner's income tax, the return is required to be filed and the payment is to be made on or before the fifteenth (15th) day of April following the close of taxable year 2004.[29] The Annual Income Tax Return for taxable year 2004 was filed on April 12, 2005,[30] which is earlier than the last day allowed by law, which is April 15, 2005. Hence, the three-year period shall be counted from April 15, 2005. Accordingly, respondent had until April 15, 2008, within which to assess petitioner for the subject deficiency income tax for taxable year 2004.

On the other hand, the law requires that the VAT Return be filed quarterly within twenty-five (25) days following the close of each taxable quarter.[31] In this regard, records reveal that petitioner filed its Quarterly VAT Returns for taxable year 2004 on April 19, 2004[32], July 20, 2004[33], October 20, 2004[34] and January 20, 2005[35]. Therefore, respondent had until April 25, 2007, July 25, 2007, October 25, 2007 and

[29] In accordance with Section 77(B) of the NIRC of 1997, as amended.
[30] Exhibit "A".
[31] Pursuant to Section 114 of the NIRC of 1997, as amended.
[32] Exhibit "B".
[33] Exhibit "C".
[34] Par. 2, Stipulation of Facts, JSFI; docket, pp. 110-111.
[35] Exhibit "E".

January 25, 2008 within which to assess petitioner for deficiency VAT covering the first, second, third, and fourth quarters of taxable year 2004, respectively.

Based on the foregoing dates, respondent's Formal Letter of Demand and Assessment Notices dated December 22, 2008[36], which were all received by petitioner on January 5, 2009, were issued beyond the 3-year prescriptive period provided by law.

Nevertheless, respondent invokes the Waivers of the Statute of Limitations executed by petitioner under Section 222(b) of the NIRC of 1997. The said provision states as follows:

> "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —
>
> xxx xxx xxx
>
> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon."

In the case of *Commissioner of Internal Revenue vs. Kudos Metal Corporation*[37], the Supreme Court enumerated the procedure for the proper execution of the waiver, in accordance with Revenue Memorandum Order (RMO) No. 20-90 issued on April 4, 1990 and Revenue Delegation Authority Order (RDAO) No. 05-01 issued on August 2, 2001, to wit:

> "1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase 'but not after ______ 19 ___', which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.
> 2. The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the

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[36] Exhibits "7", "8" and "9".
[37] G.R. No. 178087, May 5, 2010.

waiver must be signed by any of its responsible officials. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.

3. The waiver should be duly notarized.

4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.

5. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement."

The Court will now determine whether the subject waivers effectively extended the 3-year period provided under Section 203 of the NIRC of 1997, as amended.

For easy reference, the contents of the First, Second, and Third Waivers are partly reproduced as follows:

First Waiver

"**WAIVER OF THE STATUTE OF LIMITATION UNDER THE NATIONAL INTERNAL REVENUE CODE**

The **SMC Stock Transfer Service Corp.**, with principal office at the **No. 40 San Miguel Avenue, Mandaluyong City**, in consideration for the approval by the Commissioner of Internal Revenue of its request for more time within which to submit explanations, reconciliation worksheets and documents required in connection with the review of the reports of the examination of its books of accounts and other accounting records for **all internal revenue taxes** for the period from **January 1 to December 31, 2004** under Letter of Authority No. **200000092407**, dated **August 26, 2005**, hereby waives the running of the prescriptive period provided for in Sections 203 and 223 and other relevant provisions of the

National Internal Revenue Code, and consent to the assessment and collection of **all internal revenue taxes** which may be found due after examination at any time before or after the lapse of the period of limitations fixed by said Sections 203 and 223, and other relevant provisions of the National Internal Revenue Code, but not later than **January 31, 2008**.

The intent and purpose of this waiver is to afford the Commissioner of Internal Revenue ample time to carefully consider the explanations, reconciliation worksheets and documents that have been submitted and that may be required in the future. It is understood, however, that SMC Stock Transfer Service Corporation does not, by the execution of this waiver, admit in advance the correctness of the assessment which may be made against it for the period above mentioned; nor does it waive its right to use any of the legal remedies afforded by law, particularly the defense of prescription against the right to assess that has already prescribed as of the execution of this waiver, and to secure credit or refund of such tax that may assessed and paid for the same period, pursuant to Sections 204 of the National Internal Revenue Code. The period of suspension agreed upon herein may be extended by an agreement in writing made before the expiration of said period of extension.

Executed this 26th day of October 2007 in Mandaluyong City, Metro Manila, Philippines.

SMC Stock Transfer Service Corporation

By:

(sgd.)
ENRIQUE LL YUSINGCO
Vice President & General Manager

Accepted and agreed to on October 26, 2007

Commissioner of Internal Revenue

By:

(sgd.)
REY ASTERIO L. TAMBIS
Revenue District officer"[38]

Second Waiver

"WAIVER OF THE STATUTE OF LIMITATION UNDER THE NATIONAL INTERNAL REVENUE CODE

The **SMC Stock Transfer Service Corp.**, with principal office at the **No. 40 San Miguel Avenue, Mandaluyong City**, in consideration

[38] Exhibits "G" and "2".

for the approval by the Commissioner of Internal Revenue of its request for more time within which to submit explanations, reconciliation worksheets and documents required in connection with the review of the reports of the examination of its books of accounts and other accounting records for **all internal revenue taxes** for the period from **January 1 to December 31, 2004** under Letter of Authority No. **200000092407**, dated **August 26, 2005**, hereby waives the running of the prescriptive period provided for in Sections 203 and 223 and other relevant provisions of the National Internal Revenue Code, and consent to the assessment and collection of **all internal revenue taxes** which may be found due after examination at any time before or after the lapse of the period of limitations fixed by said Sections 203 and 223, and other relevant provisions of the National Internal Revenue Code, but not later than **May 15, 2008**.

The intent and purpose of this waiver is to afford the Commissioner of Internal Revenue ample time to carefully consider the explanations, reconciliation worksheets and documents that have been submitted and that may be required in the future. It is understood, however, that SMC Stock Transfer Service Corporation does not, by the execution of this waiver, admit in advance the correctness of the assessment which may be made against it for the period above mentioned; nor does it waive its right to use any of the legal remedies afforded by law, particularly the defense of prescription against the right to assess that has already prescribed as of the execution of this waiver, and to secure credit or refund of such tax that may assessed and paid for the same period, pursuant to Sections 204 of the National Internal Revenue Code. The period of suspension agreed upon herein may be extended by an agreement in writing made before the expiration of said period of extension.

Executed this 14th day of February 2008 in Mandaluyong City, Metro Manila, Philippines.

SMC Stock Transfer Service Corporation

By:

(sgd.)
ENRIQUE LL YUSINGCO
Vice President & General Manager

Accepted and agreed to on this 14th day of February, 2008

Commissioner of Internal Revenue

By:

(sgd.)
REY ASTERIO L. TAMBIS
Revenue District officer"[39] L

[39] Exhibits "I" and "3".

Third Waiver

"**WAIVER OF THE STATUTE OF LIMITATION UNDER THE NATIONAL INTERNAL REVENUE CODE**

The **SMC Stock Transfer Service Corp.**, with principal office at the **No. 40 San Miguel Avenue, Mandaluyong City**, in consideration for the approval by the Commissioner of Internal Revenue of its request for more time within which to submit explanations, reconciliation worksheets and documents required in connection with the review of the reports of the examination of its books of accounts and other accounting records for **all internal revenue taxes** for the period from **January 1 to December 31, 2004** under Letter of Authority No. **200000092407**, dated **August 26, 2005**, hereby waives the running of the prescriptive period provided for in Sections 203 and 223 and other relevant provisions of the National Internal Revenue Code, and consent to the assessment and collection of **all internal revenue taxes** which may be found due after examination at any time before or after the lapse of the period of limitations fixed by said Sections 203 and 223, and other relevant provisions of the National Internal Revenue Code, but not later than **Dec 31, 2008**.

The intent and purpose of this waiver is to afford the Commissioner of Internal Revenue ample time to carefully consider the explanations, reconciliation worksheets and documents that have been submitted and to prepare their no assessment/payment recommendation for submission from District office to Regional office. It is understood, however, that SMC Stock Transfer Service Corporation does not, by the execution of this waiver, admit in advance the correctness of the assessment which may be made against it for the period above mentioned; nor does it waive its right to use any of the legal remedies afforded by law, particularly the defense of prescription against the right to assess that has already prescribed as of the execution of this waiver, and to secure credit or refund of such tax that may assessed and paid for the same period, pursuant to Sections 204 of the National Internal Revenue Code. The period of suspension agreed upon herein may be extended by an agreement in writing made before the expiration of said period of extension.

Executed this 4th day of August 2008 in Mandaluyong City, Metro Manila, Philippines.

SMC Stock Transfer Service Corporation

By:

(sgd.)
ENRIQUE LL YUSINGCO
Vice President & General Manager

Accepted and agreed to on this 5th day of August, 2008

Commissioner of Internal Revenue

By:

(sgd.)
REY ASTERIO L. TAMBIS
Revenue District officer"[40]

Bearing in mind the requisites previously stated, the Court noted the following infirmities in the execution of the above-quoted waivers:

1. The original copies of the First, Second, and Third Waivers failed to indicate the fact of receipt by the taxpayer of his/her file copies of the waivers;

2. The First, Second, and Third Waivers failed to indicate the specific kind of tax and the amount of tax due;

3. The Third Waiver was not duly notarized; and

4. Even assuming that the First and Second Waivers were valid, both the acceptance by respondent and the execution by the taxpayer of the Third Waiver were made at the time when the period previously agreed upon, which was not later than May 15, 2008, had already lapsed.

Considering the defects found in the waivers, the period to assess or collect taxes was not extended. Consequently, the assessments were issued by the BIR beyond the three-year period and are considered void.

As to this Court's findings that the First, Second, and Third Waivers failed to indicate the fact of receipt by the taxpayer of his/her file copies of the waivers, paragraph 4 of RMO No. 20-90 specifically provides that the waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer, and the third copy for the office accepting the waiver. It is further provided that the fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy.[41]

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[40] Exhibits "K" and "4".

[41] *United Parcel Service Co.(Philippine Branch) vs. Commissioner of Internal Revenue*, C.T.A. Case No. 7667, August 18, 2010.

There is compliance with the provision of RMO No. 20-90 only after the receipt by the taxpayer of a copy of the waiver accepted by the BIR. The requirement to furnish the taxpayer with a copy of the waiver is not only to give notice of the existence of the document but of the acceptance by the BIR and the perfection of the agreement.[42]

There was nothing in the waivers submitted to this Court which would show that petitioner was furnished with the copy of the approved and accepted waiver.

Even assuming that petitioner received the subject waivers, the Court also observed other defects in the three waivers, particularly, that they failed to state the specific kind of tax and the amount of tax due.

In the case entitled *Scandinavian Motors Corporation vs. The Commissioner of Internal Revenue*[43], citing the case of *Dole Philippines Inc. vs. Commissioner of Internal Revenue*[44], this Court explained the reason behind the requirement that a waiver must specify the type of tax and the amount of tax due, thus:

> "The purpose of stating the specific kind of tax and the amount of tax due is for the petitioner **to pinpoint which among the proposed tax assessments may subsequently be issued without the petitioner invoking the defense of prescription** *(Pfizer, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6135, April 21, 2003)*. **If the amount and kind of tax were not indicated in the said waiver, logically, there was no agreement to speak of** *(Solid Cement Corporation vs. Liwayway Vinzons-Chato, in her capacity as the Commissioner of Internal Revenue, CTA Case No. 5420, May 27, 1999)*. It should be emphasized that RMO No. 20-90 requires specific information. Hence, to substitute the same with general statements is a departure from RMO No. 20-90."

Anent the Third Waiver, respondent averred that although the said waiver was executed on August 4, 2008 or after the lapse of the period provided in the Second Waiver, it was still valid and effectively extended respondent's right to issue the

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[42] *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.
[43] C.T.A. Case No. 7269, March 26, 2008.
[44] C.T.A. Case No. 5705, July 1, 2003.

assessments until December 31, 2008 since petitioner is deemed to have waived its right to invoke prescription against respondent with the voluntary execution of the same.

The Court does not agree.

Contrary to respondent's assertion, there was nothing in the Third Waiver which would show that petitioner absolutely waived its right to invoke prescription against respondent. In fact, it was clearly provided in the Third Waiver that petitioner's execution of the same did not waive its right to invoke the defense of prescription against the right to assess that which has already prescribed as of the execution of the Third Waiver.[45]

It must be emphasized that at the time of the execution and acceptance of the Third Waiver, there was already no more period to extend. Also, while it appears that a notary public signed the Third Waiver, a closer examination of the same would show that the said waiver failed to contain an Acknowledgment stating that the signatory on a single occasion appeared in person before the notary public and presented an integrally complete instrument or document and represented to the notary public that the signature on the instrument or document was voluntarily affixed by him for the purposes stated in the instrument or document. As a result, the Third Waiver failed to validly extend the period provided by law for the assessment of tax.

It is noteworthy that respondent was the one who issued RMO No. 20-90 and RDAO No. 05-01. Having caused the defects in the waivers, the BIR must bear the consequence. It cannot shift the blame to the taxpayer. A waiver of the statute of

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[45] Exhibit "K".

limitations, being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed.[46]

To the Government, its tax officers are obliged to act promptly in the making of assessments so that taxpayers, after the lapse of the period of prescription, would have a feeling of security against unscrupulous tax agents who will always try to find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of a possible opportunity to harass even law-abiding businessmen. Without such legal defense, taxpayers would be open season to harassment by unscrupulous tax agents.[47]

At this juncture, it must be reiterated that a waiver of the statute of limitations under the NIRC, to a certain extent, is a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations and must therefore be carefully and strictly construed. The waiver of the statute of limitations is an agreement between the taxpayer and the BIR that the period to issue an assessment and collect the taxes due is extended to a date certain. The waiver does not mean that the taxpayer relinquishes the right to invoke prescription unequivocally, particularly, where the language of the document is equivocal. For the purpose of safeguarding taxpayers from any unreasonable examination, investigation or assessment, our tax law provides a statute of limitations in the collection of taxes. Thus, the law on prescription, being a remedial measure, should be liberally construed in order to afford such protection. As a corollary, the exceptions to the law on prescription should perforce be strictly construed.[48]

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[46] *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010.
[47] *Commissioner of Internal Revenue vs. FMF Development Corporation*, G.R. No. 167765, June 30, 2008.
[48] *Supra,* note 42.

In view of all the foregoing defects found by this Court in the subject Waivers of Statute of Limitation, it is concluded that the three-year prescriptive period was not tolled or extended but continued to run until April 15, 2008 as to petitioner's income tax for taxable year 2004; and until April 25, 2007, July 25, 2007, October 25, 2007 and January 25, 2008, in case of petitioner's VAT for the first, second, third, and fourth taxable quarters of 2004. Accordingly, respondent's Formal Letter of Demand and Assessment Notices dated December 22, 2008, which were received by petitioner only on January 5, 2009, were made beyond the 3-year prescriptive period provided by law and are considered void. Consequently, the "Demand Before Suit", which petitioner received on June 9, 2009, is also null and void for having been issued pursuant to an invalid assessment.

Since the subject assessments are now deemed null and void for being issued beyond the prescriptive period, the resolution of the remaining stipulated issues is now considered moot.

WHEREFORE, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Formal Letter of Demand and Assessment Notices dated December 22, 2008 are hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

OLGA PALANCA-ENRIQUEZ
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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division 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.

ERNESTO D. ACOSTA
Presiding Justice