REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

ENERGITECH INDUSTRIAL CORPORATION/RONALD PEREZ,
(Suite 213 Chateau Verde Condo, Gate 2 Valle Verde, E. Rodriguez Avenue, Ugong, Pasig City),
Accused.

CTA Crim. Case. O-1052
(NPS Docket No. XVI-INV-18L-01030)
For: Violation of Section 255, in relation to Sections 253(d) and 256 of the NIRC of 1997, as amended

Members:

MANAHAN, ***Chairperson*** **and REYES-FAJARDO** ***JJ.***

Promulgated:

SEP 07 2023
4:20 p.m.

x- -x

RESOLUTION

In the Resolution dated May 26, 2023, the Court directed the prosecution to submit original or certified true copies of the Letter Referral and Joint Complaint Affidavit dated December 13, 2018, and proof of actual receipt of the Final Assessment Notice (FAN) and Formal Letter of Demand (FLD).

Section 4, Rule 9 of the Revised Rules of the Court of Tax Appeals states:

> SEC.4. Warrant of arrest.- Within ten days from the filing of the information, the Division of the Court to which the case was raffled shall evaluate the resolution of the public prosecutor and its supporting evidence. **The Division may immediately dismiss the case if it finds that the evidence on record clearly fails to establish probable cause.** If the Division finds probable cause, it shall issue a warrant of arrest signed by the Chairman of the Division. **In case of doubt on the existence of probable cause, the**

> **Division may order the prosecutor to present additional evidence, ex parte, within five days from notice.** (Emphasis supplied)

The Records Verification dated June 21, 2023 states that the prosecution failed to comply with the Resolution of the Court.

Further, after evaluating the Information together with its supporting documents, the Court finds that there is no probable cause to issue a warrant of arrest.

On April 20, 2023, an Information was filed against accused Energitech Industrial Corporation and Ronald Perez indicting them of violation of Section 255, in relation to Sections 253(d) and 256 of the National Internal Revenue Code of 1997, as amended, the accusatory portion of which states:

> That on June 28, 2018, in Pasig City, and within the jurisdiction of this Honorable Court, accused Ronald Perez, as owner and responsible officer of accused Energitech Industrial Corporation, a registered taxpayer of Revenue District Office No. 043 B-Pasig City of the Bureau of Internal Revenue under Tax Identification No 246-729-316, with obligation under the law to file tax return and pay the corresponding Value-Added Tax for taxable year 2013, did then and there, willfully, unlawfully and feloniously and knowingly fail to pay Value-Added Tax of Eight Million Five Hundred Seventy Thousand Six Hundred Thirty-Three Pesos and Forty Centavos (Php8,570,633.40), exclusive of surcharge and interest, despite final assessment and formal demand to pay, including the services of several prior and post notices and demands, the last being in the nature of Demand Before Suit dated June 28, 2018, to the damage and prejudice of the Government.
>
> **CONTRARY TO LAW.**

In support thereof, the following documents were attached to said Information:

1. Resolution dated November 6, 2019 issued by Assistant State Prosecutor Hjalmar M. Quintana, Jr., recommending that accused Energitech Industrial Corporation and Ronald Perez be charged for violation of Section 255, in relation to Sections 253(d) and 256 of the National Internal Revenue Code of 1997, as amended;

2. A letter dated December 13, 2018 of the then Commissioner of Internal Revenue (CIR) Caesar R. Dulay to the Secretary of the Department of Justice (DOJ) stating the authority and approval for the filing and institution of criminal Complaint against accused; and

3. Joint Complaint-Affidavit (JCA) of Atty. Dayne B. Medina, Susan G. Abesamis, Mosstheollou R. Santos, and Charmaine D. Tomas executed on December 13, 2022 and filed with the DOJ on even date, with the following attachments:

a. General Information Sheet;[1]
b. Letter of Authority dated October 20, 2014;[2]
c. First Notice dated November 18, 2014;[3]
d. Second and Final Notice dated January 7, 2015;[4]
e. Memorandum for the Revenue District Officer dated October 27, 2015;[5]
f. Subpoena Duces Tecum;[6]
g. Memorandum for the Revenue District Officer dated May 23, 2016;[7]
h. Preliminary Assessment Notice dated November 22, 2016;[8]
i. Affidavit of Service of Preliminary Assessment Notice/Final Assessment Notice dated November 22, 2016;[9]
j. Registry Receipt No. RD 685 205 383 ZZ;[10]
k. Assessment Notice for Income Tax dated December 14, 2016;[11]
l. Assessment Notice for Value-Added Tax dated December 14, 2016;[12]
m. Assessment Notice for EWT dated December 14, 2016;[13]

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[1] Annex "A," JCA.
[2] Annex "B," JCA.
[3] Annex "C," JCA.
[4] Annex "D," JCA.
[5] Annex "E," JCA.
[6] Annex "F," JCA.
[7] Annex "G," JCA.
[8] Annex "H," JCA.
[9] Annex "H-1," JCA.
[10] Annex "H-2," JCA.
[11] Annex "I"," JCA.
[12] Annex "I-1," JCA.
[13] Annex "I-2," JCA.

n. Assessment Notice for DST dated December 14, 2016;[14]
o. Formal Letter of Demand dated December 14, 2016;[15]
p. Registry Receipt No. RD 685 391 076 ZZ;[16]
q. Affidavit of Service of Preliminary Assessment Notice/Final Assessment Notice dated December 15, 2016;[17]
r. Preliminary Collection Letter dated April 3, 2017;[18]
s. Registry Receipt No. RD 736 901 368 ZZ;[19]
t. Final Notice Before Seizure dated April 18, 2017;[20]
u. Warrant of Distraint and/or Levy dated August 28, 2017;[21]
v. Warrants of Garnishment;[22]
w. Demands Before Suit dated June 18, 2018.[23]

In the case of *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals*,[24] the crime of failure to pay tax was committed only after receipt of the final notice and demand for payment was coupled with the willful refusal to pay the taxes due within the allotted period. The Supreme Court ruled as follows:

> Inasmuch as the final notice and demand for payment of the deficiency taxes was served on petitioners on July 3, 1968, it was only then that the cause of action on the part of the BIR accrued. This is so because **prior to the receipt of the letter-assessment, no violation has yet been committed by the taxpayers. The offense was committed only after receipt was coupled with the willful refusal to pay the taxes due within the alloted period.** The two criminal informations, having been filed on June 23, 1970, are well-within the five-year prescriptive period and are not time-barred. (Boldfacing supplied)

[14] Annex "I-3," JCA.
[15] Annex "I-4," JCA.
[16] Annex "I-5," JCA.
[17] Annex "I-6," JCA.
[18] Annex "J," JCA.
[19] Annex "J-1," JCA.
[20] Annex "K," JCA.
[21] Annex "L-4," JCA.
[22] Annexes "M" to "M-9," JCA.
[23] Annex "N" to "N-2," JCA.
[24] G.R. Nos. 48134-37, October 18, 1990.

Therefore, absent any proof that the final notice and demand for payment was received by the taxpayer, it cannot be said that an offense has been committed because prior to the receipt of the letter-assessment, no violation has yet been committed.

In the instant case, the prosecution claimed that the Assessment Notices with attached Details of Discrepancies were duly served to accused. However, the records of the case will show that there was no evidence that the FAN and FLD both dated December 14, 2016 were received by the accused.

Absent proof of receipt, these assessments could not have attained finality, there is no willful failure to pay tax and there is insufficiency to show that the accused sought to be arrested probably committed the crime charged.

WHEREFORE, this case is hereby **DISMISSED** for clear failure of the evidence on record to establish probable cause and prosecution's failure to comply with this Court's Resolution dated May 26, 2023.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

Marian Ivy F Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice