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

***EN BANC***
*********

| | |
|---|---|
| **COMMISSIONER OF INTERNAL REVENUE,** Petitioner, | **CTA EB No. 1330** (CTA Case No. 8147) |
| | ***Present:*** |
| **- versus -** | **DEL ROSARIO,** P.J., **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA,** and **RINGPIS-LIBAN,** JJ. |
| **3M PHILIPPINES, INC.,** Respondent. | ***Promulgated:*** NOV 21 2016 3:20 p.m. |

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# DECISION

**UY, J.:**

Before the Court *En Banc* is a Petition for Review[1] filed by petitioner Commissioner of Internal Revenue (CIR) on July 23, 2015 against respondent 3M Philippines, Inc., praying for the reversal and setting aside of the Decision dated October 22, 2014[2] and the Amended Decision dated June 15, 2015[3], both rendered by the Third Division of this Court (Court in Division) in CTA Case No. 8147 entitled *"3M Philippines, Inc., Petitioner, vs. Commissioner of Internal*

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[1] EB Docket, pp. 12 to 34.
[2] EB Docket, pp. 38 to 66; Ponencia of Associate Justice Ma. Belen M. Ringpis-Liban, and concurred by Associate Justice Lovell R. Bautista and Associate Justice Esperanza R. Fabon-Victorino.
[3] EB Docket, pp. 67 to 78; *Supra.*

*Revenue, Respondent"*, the dispositive portions of which respectively read:

**Decision dated October 22, 2014:**

"**WHEREFORE,** premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, let a tax refund or a tax credit certificate be issued in favor of petitioner in the amount of ₱5,554,067.05 and ₱1,626,241.85 representing its erroneous payment of its deficiency Income Tax and deficiency VAT for taxable year 2002, or total amount of ₱7,180,308.90.

**SO ORDERED.**"

**Amended Decision dated June 15, 2015:**

"**WHEREFORE,** premises considered, petitioner's Motion for Partial Reconsideration is hereby **PARTIALLY GRANTED,** while respondent's Motion for Partial Reconsideration is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision promulgated on October 22, 2014 is hereby **MODIFIED** as follows:

'**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, let a tax refund or a tax credit certificate be issued in favor of petitioner in the amount of:

| Tax Type | Amount to be Refunded |
|---|---|
| Income Tax | ₱ 5,554,067.05 |
| Withholding Tax – Expanded | 5,583,637.95 |
| Withholding Tax – Compensation | 25,000.00 |
| Withholding Tax – Final | 272.30 |
| Fringe Benefit Tax | 228,232.20 |
| Value-added Tax | 1,626,241.85 |
| **TOTAL** | **₱ 13,017,451.35** |

representing its erroneously paid taxes relative to Income Tax, Withholding Tax – Expanded, Withholding Tax – Compensation, Withholding Tax – Final, Fringe Benefit Tax and Value-added Tax for taxable year 2002, or total amount of ₱13,017,451.35.

**SO ORDERED.**'

**SO ORDERED.**"

## THE FACTS

Petitioner CIR is vested by law in general to implement and enforce the provisions of the Tax Code, as amended, and other tax laws, and in particular decide claims for refund of internal revenue taxes.

Respondent 3M Philippines, Inc. is a corporation duly organized and existing under Philippine laws with principal office and business address at the 9th Floor, Three World Square Building, No. 22 Upper McKinley Hill Park, Fort Bonifacio, Taguig City, Philippines.

On the following dates, respondent filed its Annual Income Tax Return (AITR) and Quarterly Value-Added Tax (VAT) Returns for taxable year 2002:

| Type of Return | Date of Filing |
|---|---|
| AITR | April 15, 2003 |
| 1st Quarterly VAT Return | April 10, 2002 |
| 2nd Quarterly VAT Return | July 24, 2002 |
| 3rd Quarterly VAT Return | October 25, 2002 |
| 4th Quarterly VAT Return | January 20, 2003 |

Pursuant to Letter of Authority (LOA) No. 200000002637 dated October 8, 2003, petitioner examined respondent's books of accounts and other accounting records for the period January 1, 2002 to December 31, 2002. The said LOA was received by respondent on October 9, 2003.

On the following dates, respondent executed and petitioner received, the former's *"Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code"*:

| WAIVER | Date Executed | Date Received |
|---|---|---|
| 1st | April 4, 2005 | July 15, 2005 |
| 2nd | April 10, 2006 | (Undated) |
| 3rd | April 4, 2007 | April 11, 2007 |

| | | |
|---|---|---|
| 4th | December 10, 2007 | December 28, 2007 |

On July 14, 2008, the Notice of Informal Conference dated June 23, 2008 was received by respondent.

On August 4, 2008, the Large Taxpayer's Audit and Investigation Division (LTAID) of the Bureau of Internal Revenue (BIR) issued a Preliminary Assessment Notice (PAN) finding respondent liable for deficiency income tax, withholding tax on compensation, expanded withholding tax, final withholding tax and VAT in the aggregate amount of ₱13,250,152.55, inclusive of interest and compromise penalties. The details of the assessment are as follows:

| Kind of Tax | Basic | Interest | Compromise | Total |
|---|---|---|---|---|
| | | | | |
| Income Tax | 2,675,355.02 | 2,853,712.03 | 25,000.00 | 5,554,067.05 |
| Withholding Tax | - | - | 25,000.00 | 25,000.00 |
| Expanded Withholding Tax | 2,600,468.38 | 2,958,169.57 | 25,000.00 | 5,583,637.95 |
| Final Tax- Royalties | 34.10 | 38.20 | 200.00 | 272.30 |
| Final Tax – Withholding Tax on VAT | - | 216,701.20 | 16,000.00 | 232,701.20 |
| Fringe Benefit Tax | 100,137.52 | 112,094.68 | 16,000.00 | 228,232.20 |
| VAT | 760,906.26 | 845,335.59 | 20,000.00 | 1,626,241.85 |
| **TOTAL** | **6,136,901.28** | **6,986,051.27** | **127,200.00** | **13,250,152.55** |

Respondent received an advanced copy of the PAN through fax on August 14, 2008. The hard copy thereof was received by respondent on September 24, 2008.

In order to stop the continuous accrual of interest charges, respondent paid the alleged deficiency tax stated in the PAN on August 14, 2008, as evidenced by BIR-Electronic Filing and Payment System (EFPS) confirmation receipts.

The following day, in the letter dated August 15, 2008, respondent informed petitioner that the payment made on August 14, 2008 was made without prejudice to respondent's right to file a formal administrative protest upon receipt of the Formal Letter Demand (FLD)/ Final Assessment Notice (FAN).

On October 9, 2008, petitioner received a letter-request from respondent dated October 8, 2008, seeking for additional time of thirty (30) days from receipt or until November 8, 2008 within which to file its reply to the PAN. The LTAID-BIR granted the said request through the letter dated October 13, 2008 which was received by respondent on October 21, 2008.

On November 10, 2008, petitioner received another letter-request from respondent requesting for additional ten (10) days from November 8, 2008 or until November 18, 2008 within which to file a reply.

Respondent filed its reply to the PAN on November 18, 2008.

On February 1, 2010, respondent received a Letter-Reply from petitioner stating that respondent's right to submit additional documents in support of its reply to PAN had already lapsed pursuant to Section 228 of the Tax Code. As a result, respondent was directed to settle all outstanding liabilities with the BIR.

The BIR neither acted on the reply to PAN nor did they issue a FAN. Respondent then filed its administrative claim for refund on June 25, 2010 in the amount of ₱13,250,152.55 representing the amount previously paid by respondent on August 14, 2008 for the alleged deficiency tax assessments for taxable year 2002 stated in the PAN.

In addition, respondent raised the following grounds in support of its claim for refund:

A. The period for assessment had already prescribed and therefore the subject taxes were erroneously or illegally collected;

B. Respondent submitted a reply to the PAN issued by the BIR on August 4, 2008. However, the PAN is invalid and defective for its non-compliance with Revenue Regulation (RR) No. 12-99;

C. The BIR failed to issue a FAN within the prescriptive period; and

D. Respondent filed its claim for refund with the BIR within the two-year prescriptive period.

Alleging failure of petitioner to act on respondent's administrative claim for refund or issuance of tax credit certificate and in order to comply with the two-year prescriptive period within which to file such claim pursuant to Section 229 of the Tax Code, as amended, respondent filed with the Court in Division its judicial claim for refund on August 13, 2010.

In his Answer filed on September 20, 2010, petitioner interposed special and affirmative defenses, alleging, among others, that the taxes were assessed within the period allowed by law in accordance with Section 203 of the Tax Code of 1997, which states that internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return; that the validity of the four (4) waivers executed by respondent cannot be impugned as they were executed in compliance with Revenue Memorandum Order (RMO) No. 20-90 as amended by Revenue Delegation Authority Order (RDAO) Nos. 05-01 and 04-2007; that the waivers were executed prior to the lapse of the prescriptive period provided for under the law and effectively extended respondent's right to assess respondent; that petitioner issued the PAN on August 4, 2008, informing respondent of her finding for deficiency taxes for taxable year 2002 well within the period to assess pursuant to the valid and duly executed fourth waiver; that the persons who signed the four (4) waivers in behalf of respondent were duly authorized corporate officials; that petitioner faithfully complied with the due process procedures for assessments outlined in Revenue Regulation (RR) No. 12-99; that respondent failed to validly reply to the PAN; that respondent did not timely invoke the defense of prescription and should be considered waived; that the PAN dated August 4, 2008 had already been admitted as valid and discharged with respondent's voluntary payment of the same; that such payment in response to the PAN dispensed with the need for petitioner to issue a FAN; that respondent's actions after the issuance of the PAN support the view that it recognized and treated the August 4, 2008 PAN as a FAN; that respondent did not properly protest the assessment made by petitioner in the manner required by Section 228 of the Tax Code of 1997; that the petition for review was filed out of time; that respondent should not be permitted to use a petition for refund under Section 229 when it clearly lost the right to contest the assessment; that respondent is estopped from questioning the validity of the waivers; and that taxes are the lifeblood of the government and should not be collected without unnecessary hindrance.

During trial, both parties presented and formally offered their respective testimonial and documentary evidence.

After respondent filed its Memorandum on September 16, 2013 and petitioner his Memorandum on November 4, 2013, the case was submitted for decision by the Court in Division.

On December 2, 2013, respondent filed its *Motion for Leave to File and Admit Attached Reply-Memorandum*. The Court in Division granted respondent's motion in the Resolution dated December 10, 2013 and admitted the attached *Reply-Memorandum*.

In the assailed Decision,[4] the Court in Division partially granted the Petition for Review, and ordered the tax refund or the issuance of tax credit certificate in favor of respondent in the amounts of ₱5,554,067.05 and ₱1,626,241.85 or the total amount of ₱7,180,308.90, representing its erroneous payment of its deficiency income tax and deficiency VAT for taxable year 2002.

Both petitioner and respondent moved for the partial reconsideration of the said Decision. Respondent filed his motion on November 11, 2014;[5] while respondent filed its motion on November 12, 2014.[6]

In the assailed Amended Decision,[7] the Court in Division denied petitioner's Motion for Partial Reconsideration, but partially granted respondent's Motion for Partial Reconsideration, thereby amending the assailed Decision to the effect of increasing the total amount to be refunded by petitioner to ₱13,017,451.35.

On July 7, 2015, petitioner filed a *Motion For Extension of Time To File Petition for Review* before the Court *En Banc*,[8] praying for an additional period of fifteen (15) days from July 8, 2015 or until July 23, 2015 within which to file a Petition for Review. The Court *En Banc* granted petitioner a final and non-extendible period of fifteen (15) days from July 8, 2015 or until July 23, 2015 within which to file the Petition for Review.[9]

Petitioner filed the instant Petition for Review on July 23, 2015.[10]

In the Resolution dated August 20, 2015,[11] the Court *En Banc* ordered respondent to file its comment to the instant Petition for

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[4] EB Docket, pp. 38 to 66; Division Docket (CTA Case No. 8147) – Vol. II, pp. 1208 to 1236.
[5] Division Docket (CTA Case No. 8147) – Vol. II, pp. 1267 to 1285.
[6] Division Docket (CTA Case No. 8147) – Vol. II, pp. 1287 to 1293.
[7] EB Docket, pp. 67 to 78.
[8] EB Docket, pp. 1 to 4.
[9] Minute Resolution dated July 9, 2015, EB Docket, p. 6.
[10] EB Docket, pp. 12 to 36.
[11] EB Docket, pp. 84 to 85.

Review.

Respondent, however, filed a *Motion For Extension of Time To File Comment to Petition for Review* on September 17, 2015,[12] praying for an additional period of five (5) days from September 17, 2015 or until September 22, 2015 within which to finalize and file its comment. The Court *En Banc* granted the said *Motion.*[13]

On September 22, 2015, respondent filed its Comment.[14]

In the Resolution dated October 7, 2015,[15] the Court *En Banc*, after giving due course to the Petition for Review, required both parties to file their respective memorandum.

Petitioner filed his *Manifestation* on November 27, 2015,[16] which states that he is adopting the arguments raised in his Petition for Review dated July 23, 2015; while respondent filed its *Memorandum* on December 11, 2015.[17]

The instant case is deemed submitted for decision on January 29, 2016.[18]

Hence, this Decision.

## ASSIGNMENT OF ERRORS

In the instant Petition for Review, petitioner assigns the following errors supposedly committed by the Court in Division, to wit:

> "The Honorable Third Division erred in ruling that respondent made an erroneous payment when it partially granted the refund in the amount of Php13,017,451.35.
>
> The Honorable Third Division erred in ruling that there is a need to issue Final Assessment Notice even if respondent voluntarily paid its deficiency taxes.

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[12] EB Docket, pp. 86 to 88.
[13] Minute Resolution dated September 18, 2015, EB Docket, p. 90.
[14] EB Docket, pp. 91 to 141.
[15] EB Docket, pp. 453 to 454.
[16] EB Docket, pp. 455 to 457.
[17] EB Docket, pp. 459 to 509.
[18] Resolution dated January 29, 2016, EB Docket, pp. 513 to 514.

The Honorable Third Division erred in ruling that the waivers issued and submitted by respondent are defective."[19]

***Petitioner's arguments:***

Petitioner argues that respondent's claim for refund did not proceed from, or is a consequence of tax erroneously or illegally collected. He maintains that his initial assessment was valid and correct and that upon receipt of the PAN, respondent knowingly, wittingly and deliberately paid its deficiency taxes. Petitioner also stresses that the only logical conclusion that can be derived from respondent's action of voluntary paying the tax, is that it wanted to extinguish its tax liability.

Furthermore, petitioner argues that there is no need to issue the FAN since respondent voluntarily paid ₱13,250,152.55, representing all the deficiency taxes due as assessed by petitioner. He claims that the function of issuing a FAN is to compel payment of deficiency taxes and the corresponding penalties, surcharges and interests thereon. Hence, according to petitioner, there is no more right to compel since the obligation to pay was extinguished when respondent chose to settle its tax deficiencies. Petitioner likewise posits that there is no legal significance of requiring the issuance of the FAN to apprise the taxpayer of deficiency taxes when there is no longer tax deficiency to speak of.

Moreover, anent the waivers, respondent claims that the Court in Division's examination of the validity thereof is irrelevant. He argues that the opportune time to scrutinize the waiver of statute of limitation occurs when the bone of contention is the examination as to whether an assessment is issued within the prescriptive period. Petitioner submits that in this case, there is no assessment as respondent voluntarily paid and settled its deficiency taxes even before an assessment was issued. Nonetheless, petitioner contends that the four waivers executed were valid and binding.

Finally, petitioner is of the view that respondent is not entitled to a claim for refund, and that in claims for refund, the law mandates the court to observe a higher standard of caution in appreciating and evaluating evidence.

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[19] EB Docket, p. 22.

***Respondent's counter-arguments:***

Respondent points out that it paid the amount of ₱13,250,152.55, and that the said payment did not "extinguish" its tax liabilities for 2002.

According to respondent, a FAN was still required to be issued by petitioner before deficiency taxes may be assessed and collected from taxpayers.

Furthermore, respondent contends that the right of petitioner to assess respondent deficiency internal revenue taxes for the year 2002 has already prescribed; and that the four (4) waivers executed in relation to this case are fatally defective, and did not extend the three-year period of the BIR to assess respondent the 2002 deficiency internal revenue taxes.

Lastly, respondent avers that it actually paid ₱13,250,152.55, after which the BIR failed to validly serve a copy of the PAN and did not issue a FAN.

**THE COURT *EN BANC*'S RULING**

The Petition for Review lacks merit.

***The Court in Division did not err in ruling that respondent made an erroneous payment.***

Section 229 of the National Internal Revenue Code (NIRC) of 1997 provides as follows:

> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* — **No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected,** until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." *(Emphases supplied)*

The foregoing provision allows the recovery of taxes erroneously or illegally collected. An *"erroneous or illegal tax"* is defined as one levied without statutory authority, or upon property *not subject to taxation* or by some officer having no authority to levy the tax, or one which is some other similar respect is illegal.[20] Erroneously paid taxes may come in the form of amounts that should not have been paid.[21]

From the plain text of Section 229, it is clear that what can be refunded or credited is a tax that is "erroneously, x x x illegally, x x x excessively or in any manner wrongfully collected." In short, there must be a wrongful payment because what is paid, or part of it, is not legally due.[22]

In this case, it was not shown that what respondent paid was legally due. Specifically, there is no showing that respondent is legally bound to pay the aggregate amount of ₱13,017,451.35, consisting of the following:

| Tax Type | Amount |
|---|---|
| Income Tax | ₱ 5,554,067.05 |
| Withholding Tax – Expanded | 5,583,637.95 |
| Withholding Tax – Compensation | 25,000.00 |
| Withholding Tax – Final | 272.30 |
| Fringe Benefit Tax | 228,232.20 |
| Value-added Tax | 1,626,241.85 |
| **TOTAL** | **₱ 13,017,451.35** |

[20] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012.
[21] *SMI-ED Philippines Technology, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 175410, November 12, 2014.
[22] *Commissioner of Internal Revenue vs. San Roque Power Corporation, etseq.*, G.R. Nos. 187485, 196113 and 197156, February 12, 2013.

Thus, the Court in Division is correct in ruling that the said amount was erroneously collected.

There was no assessment to speak of in this case which may create a liability to pay tax on the part of respondent or may call for the payment of respondent's tax deficiencies, if any. Tax deficiencies should be subject to assessment procedures and the rules of prescription.[23]

In the context in which it is used in the NIRC, an assessment is **a written notice and demand** by the BIR on the taxpayer for the settlement of a due tax liability **that is there definitely set and fixed**.[24] In other words, an assessment contains not only a computation of tax liabilities, but also **a demand for payment <u>within the prescribed period</u>**.[25] As a corollary, a taxpayer's liability to pay an assessed tax arises only upon a notice and demand from the Commissioner of Internal Revenue or from his duly authorized representative.[26]

Contrary to petitioner's assertion, the PAN dated August 4, 2008[27] issued against respondent cannot be considered as an assessment in the context of the NIRC. For easy reference, the contents of the said PAN are reproduced as follows:

"August 04, 2008

**PRELIMINARY ASSESSMENT NOTICE**

**3M PHILIPPINES, INC.**
18F PCIBank Tower II, Makati Avenue,
Makati City

Gentlemen:

Please be informed that after investigation, there has been found due from you deficiency Income, Withholding on Compensation, Expanded Withholding, Final Withholding and Value Added taxes for the taxable year 2002, as shown hereunder:

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[23] *SMI-ED Philippines Technology, Inc. vs. Commissioner of Internal Revenue,* supra.

[24] *Adamson, et al. vs. Court of Appeals, et al.*, G.R. Nos. 120935 and 124557, May 21, 2009.

[25] *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation, et al.*, G.R. No. 128315, June 29, 1999.

[26] Refer to Section 6(A) of the NIRC of 1997, which states in part: *"The tax or any deficiency tax so assessed shall be paid* ***upon notice and demand*** *from the Commissioner or from his duly authorized representative."*

[27] Exhibit "I", Division Docket (CTA Case No. 8147) – Vol. II, pp. 745 to 746; Exhibit "13", BIR Records, pp. 1058 to 1059.

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| Kind of Tax | Basic | Interest | Compromise | Total |
|---|---|---|---|---|
| | | | | |
| Income Tax | 2,675,355.02 | 2,853,712.03 | 25,000.00 | 5,554,067.05 |
| | | | | |
| Withholding Tax | | | 25,000.00 | 25,000.00 |
| – Compensation | | | | |
| Expanded WTx | 2,600,468.38 | 2,958,169.57 | 25,000.00 | 5,583,637.95 |
| | | | | |
| Final Tax | 34.10 | 38.20 | 200.00 | 272.30 |
| | | | | |
| FT – W/Tx on VAT | | 216,701.20 | 16,000.00 | 232,701.20 |
| | | | | |
| Fringe Benefit Tax | 100,137.52 | 112,094.68 | 16,000.00 | 228,232.20 |
| | | | | |
| Value Added Tax | 760,906.26 | 845,335.59 | 20,000.00 | 1,626,241.85 |
| | | | | |
| GRANT TOTAL | 6,136,901.28 | 6,986,051.27 | 127,200.00 | 13,250,152.55 |

The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in accompanying Annex A-1 of this PAN.

The 20% interest per annum has been imposed pursuant to the provisions of Section 249(B) of the said Code.

Pursuant to the provisions of 228 of the National Internal Revenue Code of 1997, as Amended, and its implementing Revenue Regulations, you are hereby given the opportunity to present in writing your side of the case within fifteen (15) days from receipt thereof.

If we fail to hear from you within the said period, a formal letter of demand and assessment notice shall be issued by this Office calling for payment of your aforesaid deficiency income tax, inclusive of the aforementioned civil penalty and interest.

We hope that you will give this matter your preferential attention.

Very truly yours,

*(signed)*
**ROMULO L. AGUILAR, JR.**
OIC, Head Revenue Executive Assistant
Large Taxpayers Service – Regular"

A cursory reading of the foregoing reveals that while there is computation of the supposed tax liabilities of respondent, there is no demand for the payment thereof. In fact, it is clear that the said demand has yet to be made, *i.e.*, only after the BIR fails to hear from respondent within the given period. Thus, it is clear that no assessment has been made in this case. Correspondingly, no

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amount of tax deficiency is legally due from respondent, and thus, a tax refund in favor of respondent is warranted, since it is proved that it paid a certain amount.

***The Court in Division did not err in ruling that there is a need to issue a FAN even if respondent voluntarily paid its supposed deficiency taxes.***

As already intimated, an assessment in the context of the NIRC or a FAN is necessary. This is so because as soon as it is served, an obligation arises on the part of the taxpayer concerned to pay the amount assessed and demanded.[28] Simply put, for the tax liability to arise, an assessment has to be issued and served to the taxpayer.

In addition, the issuance of a valid formal assessment is a substantive prerequisite to tax collection.[29] Due process requires that it must be served on and received by the taxpayer,[30] to enable the taxpayer to determine the remedies thereon.[31]

Thus, petitioner's non-issuance of a FAN against respondent is fatal.

In the same vein, it is error for petitioner to suppose that the only logical conclusion that can be derived from respondent's action of voluntary paying the tax is that it wanted to extinguish its tax liability.

This reasoning is specious.

Apart from the BIR's legal mandate to issue a FAN, the facts clearly show that the subject payment was not intended to extinguish respondent's supposed tax liability. This is manifest in the letter dated August 15, 2008[32] of respondent's counsel wherein the following statements can be found, to wit:

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[28] *Callanta, et al. vs. Office of the Ombudsman, et al.*, G.R. Nos. 115253-74, January 30, 1998.

[29] *Commissioner of Internal Revenue vs. Menguito*, G.R. No. 167560, September 17, 2008.

[30] *Ibid.*

[31] *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation, et al.*, supra.

[32] Exhibit "Q", Division Docket (CTA Case No. 8147) – Vol. II, p. 776; Exhibit "14", BIR Records, p. 1093.

> "On 14 August 2008, our client, 3M Philippines, received notice that its alleged deficiency taxes for the taxable year 2002 amounted to ***PESOS: THIRTEEN MILLION TWO HUNDRED FIFTY THOUSAND ONE HUNDRED FIFTY-TWO PESOS AND 60/100 Centavos (PhP13,250,152.60)***. In order to stop accrual of interest charges, our client paid the above-alleged deficiency taxes on August 14, 2008, as evidenced by the attached BIR-EFPS confirmation receipts, copies of which are attached as Annexes 'A', 'B', 'C', 'D', 'E', 'F' and 'G' hereof.
>
> Please be informed that the above-payments were made **without** prejudice to 3M's right to file a formal protest on the said assessment upon receipt of the final assessment notice/formal demand letter from your Office." *(Underscoring supplied)*

Based on the foregoing correspondence, the real intention of respondent, in voluntarily paying the tax, is not to extinguish its tax liability, but *"to stop* [the] *accrual of interest charges"*, *"without prejudice to* [its] *right to file a formal protest on the said assessment upon receipt of the final assessment notice/formal demand letter"*.

Furthermore, the alleged intention of respondent to extinguish its tax liability is even belied by the subsequent filing of a protest to the PAN, accompanied by a claim for refund of the amount paid.[33]

Thus, there can be no merit in petitioner's allegation that respondent's action of voluntary paying the alleged tax deficiencies is that it wanted to extinguish its tax liability.

Our findings that respondent made an erroneous payment and that there is a need to issue a FAN are already sufficient grounds to deny the instant Petition for Review. To our mind, whether or not the subject waivers are defective, the denial of the said Petition for Review is already certain. Nevertheless, for clarity, the Court *En Banc* shall state its ruling on the matter.

***The first and second waivers executed are defective. However,***

[33] Exhibits "R" and "S", Division Docket (CTA Case No. 8147) – Vol. II, pp. 777 to 784, and 785 to 793, respectively.

***respondent is estopped from questioning the same.***

Records show that respondent executed four (4) waivers.[34]

Indeed, the first[35] and second[36] waivers are defective for its failure to comply with the requirements under RMO No. 20-90 and RDAO No. 05-01. We note the following flaws in the said waivers: (1) they were executed without a notarized board authority; (2) the date of acceptance by the BIR of the first waiver was not indicated; and (3) the acceptance of the second waiver by the BIR was made beyond the period of extension agreed upon in the first waiver.

However, respondent is estopped from questioning the validity of the said waivers, in view of its payment of the supposed tax liabilities.

In *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*,[37] the Supreme Court ruled:

> "*Petitioner is estopped from questioning the validity of the waivers.*
>
> RCBC assails the validity of the waivers of the statute of limitations on the ground that the said waivers were merely attested to by Sixto Esquivias, then Coordinator for the CIR, and that he failed to indicate acceptance or agreement of the CIR, as required under Section 223 (b) of the 1977 Tax Code. RCBC further argues that the principle of estoppel cannot be applied against it because its payment of the other tax assessments does not signify a clear intention on its part to give up its right to question the validity of the waivers.
>
> The Court disagrees.
>
> Under Article 1431 of the Civil Code, the doctrine of estoppel is anchored on the rule that an admission or representation is rendered conclusive upon the person

[34] Exhibits "7", "8", "9", and "10", BIR Records, pp. 867 to 874.
[35] Exhibit "Z", Division Docket (CTA Case No. 8147) – Vol. II, pp. 824 to 825; Exhibit "7", BIR Records, pp. 867 to 868.
[36] Exhibit "8", BIR Records, pp. 869 to 870.
[37] G.R. No. 170257, September 7, 2011.

making it, and cannot be denied or disproved as against the person relying thereon.' A party is precluded from denying his own acts, admissions or representations to the prejudice of the other party in order to prevent fraud and falsehood.

**Estoppel is clearly applicable to the case at bench. RCBC, through its partial payment of the revised assessments issued within the extended period as provided for in the questioned waivers, impliedly admitted the validity of those waivers. <u>Had petitioner truly believed that the waivers were invalid and that the assessments were issued beyond the prescriptive period, then it should not have paid the reduced amount of taxes in the revised assessment. RCBC's subsequent action effectively belies its insistence that the waivers are invalid.</u>** The records show that on December 6, 2000, upon receipt of the revised assessment, RCBC immediately made payment on the uncontested taxes. Thus, RCBC is estopped from questioning the validity of the waivers. **To hold otherwise and allow a party to gainsay its own act or deny rights which it had previously recognized would run counter to the principle of equity which this institution holds dear.**" *(Emphasis and underscoring supplied)*

In the same line of reasoning, if respondent truly believed that the waivers are invalid, then it should not have paid that amount indicated in the subject PAN. The fact that it had done so is an indication that respondent recognized their validity.

**WHEREFORE**, all of the foregoing considered, the Petition for Review is **DENIED** for lack of merit. Accordingly, the Decision dated October 22, 2014 and Amended Decision dated June 15, 2015 of the Court in Division in CTA Case No. 8147, are hereby **AFFIRMED**.

**SO ORDERED.**

**ERLINDA P. UY**
Associate Justice

WE CONCUR:

**ROMAN G. DEL ROSARIO**
Presiding Justice

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

**LOVELL R. BAUTISTA**
Associate Justice

**CAESAR A. CASANOVA**
Associate Justice

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

**CIELITO N. MINDARO-GRULLA**
Associate Justice

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

## CERTIFICATION

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

**ROMAN G. DEL ROSARIO**
Presiding Justice