**REPUBLIC OF THE PHILIPPINES**
*Court of Tax Appeals*
**QUEZON CITY**

*Third Division*

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|---|---|
| **FORMULA SPORTS, INC.,** *Petitioner,* | **CTA CASE NO. 9625** |
| | Members: |
| *-versus-* | **UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** *Respondent.* | Promulgated: MAR 0 2 2022 4:20 p.m. |

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**DECISION**

***MODESTO-SAN PEDRO, J.:***

**The Case**

This is a Petition for Review,[1] filed by petitioner Formula Sports, Inc., ("FSI") on 28 June 2017 pursuant to ***Section 3(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals ("RRCTA")***.[2] It prays for the Court to declare null and void the Final Decision on Disputed Assessments ("FDDA") for taxable years 2010, 2011, and 2012, assessing it for deficiency taxes in the amount of ₱141,144,586.10, inclusive of interest and penalties, for lack of factual and/or legal basis.

**The Parties**

Petitioner FSI is a domestic corporation, with office address at 32nd Street corner 4th Avenue, Crescent Park West, Bonifacio Global City, Taguig City.

It is registered with the Securities and Exchange Commission ("SEC") under SEC Reg. No. A1997-18420. Its primary purpose is "[t]o sell, on wholesale or retail basis, distribute, export, exchange, pledge, dispose, trade, and generally to deal or engage in any business relating to automobiles, utility

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[1] Petition for Review; Division Docket Vol. 1, pp. 10-195 with annexes.
[2] A.M. No. 05-11-07-CTA; 10 February 2009.

vehicles, trucks, any and all kinds of motor vehicles, automobile products, motor vehicles parts, accessories, materials, instrument tools, supplies, machinery, equipment and product related to automobiles; to assemble manufacture, fabricate, install, repair, purchase import any and all kinds of motor vehicles; and to construct, build, erect, install, buy, lease or hold or own factories, buildings, plants shops, and other facilities, whatever kind and character, necessary, convenient or suitable thereto; and in general to do and perform any and all acts of work which may be necessary or advisable for, or related incidentally or directly with, and above business or object of this Corporation". In line with its primary purpose, FSI is the exclusive importer and distributor of the Meserati cars in the Philippines.

Respondent Commissioner of Internal Revenue ("CIR") is the Commissioner of the Bureau of Internal Revenue ("BIR"), the government agency tasked to, among others, collect all national internal revenue taxes. He also has the power to decide on disputed assessments, refund of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code, as amended, ("Tax Code") or other laws or portion thereof administered by the BIR.

## The Facts

On 22 October 2014, Mr. Nestor S. Valeroso, the Officer-in-Charge Assistant Commissioner of the Large Taxpayers Service, issued Mission Order No. 00110055 ("Mission Order") addressed to Revenue Officers ("RO") Marianne P. Pascual and Emmanuel G. Viardo thru Group Supervisor Emilie C. Peig. The said Order directed them "[t]o validate/verify Importer's Sworn Statement and inspect books of accounts pertaining to importation/sales of automobiles pursuant to Sec. 13 of RR 25-2003" for the period 2010 to 2012.[3]

On 27 October 2014, the BIR issued a Request for Presentation of Records, asking petitioner to produce its accounting records in relation to its importation and sale of automobiles for the period 2010 to 2012.[4]

Both the Mission Order and the Request for Presentation of Records were received by petitioner on 27 October 2014.[5]

On 17 November 2014, the BIR issued the Second and Final Notice for Presentation of Records/Documents reiterating its request for petitioner to submit its accounting records. The same was received by petitioner on 24 November 2014.[6] R

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[3] Exhibits "R-1" and "P-4" Mission Order; BIR Folder, p. 568.
[4] Exhibits "R-2" and "P-5" Request for Presentation of Records; *id.*, p. 569.
[5] *Ibid.*; Petition for Review; p. 3; Division Docket Vol. 1, p. 12.
[6] Exhibits "R-3" and "P-6" Second and Final Notice for Presentation of Records/Documents; BIR Folder, pp. 570-571.

On 26 January 2015, the BIR issued the Preliminary Assessment Notice ("PAN") which was received by petitioner on 9 March 2015. In the PAN, petitioner was found liable for deficiency excise tax and value-added tax ("VAT") in the aggregate amount of ₱122,275,296.90, inclusive of surcharge, interest, and compromise penalty.[7] Aggrieved, petitioner filed its reply to the PAN on 23 March 2015.[8]

Thereafter, the BIR, through Ms. Teresita M. Angeles, Officer-in-Charge Assistant Commissioner of Large Taxpayers Services ("ACIR"), issued the Formal Letter of Demand ("FLD") on 10 October 2016, which was received by petitioner on 24 November 2016.[9] In the said issuance, the BIR reiterated its findings in the PAN finding petitioner liable for deficiency excise tax and VAT in the total amount of ₱141,144,586.10, broken down as follows:

**I. Excise Tax**

| | **2010** | **2011** | **2012** | **Total** |
|---|---|---|---|---|
| Deficiency Excise Tax | ₱ 15,152,749.25 | ₱ 14,590,595.97 | ₱10,253,247.18 | ₱ 39,996,592.40 |
| Add: Increments | | | | |
| 20% Interest p.a. from (4/19/2010 to 10/31/2016) | 19,393,113.42 | 15,757,438.36 | 11,642,898.93 | 46,793,450.71 |
| 50% Surcharge | 7,576,374.62 | 7,295,297.98 | 5,126,623.59 | 19,998,296.19 |
| Compromise Penalty | 50,000.00 | 50,000.00 | 50,000.00 | 150,000.00 |
| Total Penalties | 27,019,488.04 | 23,102,736.34 | 16,819,522.52 | 66,941,746.90 |
| **TOTAL EXCISE TAX PAYABLE** | **₱ 42,172,237.29** | **₱ 37,693,332.31** | **₱27,072,769.70** | **₱ 106,938,339.30** |

**II. VAT**

| | **2010** | **2011** | **2012** | **Total** |
|---|---|---|---|---|
| Deficiency VAT | ₱ 4,998,479.76 | ₱ 4,818,590.73 | ₱ 3,281,039.09 | ₱ 13,098,109.58 |
| Add: Increments | | | | |
| 20% Interest p.a. from (4/19/2010 to 10/31/2016) | 6,404,006.05 | 5,212,555.42 | 2,822,520.95 | 14,439,082.42 |
| 50% Surcharge | 2,499,239.88 | 2,409,295.37 | 1,640,519.55 | 6,549,054.80 |
| Compromise Penalty | 40,000.00 | 40,000.00 | 40,000.00 | 120,000.00 |
| Total Penalties | 8,943,245.93 | 7,661,850.79 | 4,503,040.50 | 21,108,137.22 |
| **TOTAL VAT PAYABLE** | **₱ 13,941,725.69** | **₱ 12,480,441.52** | **₱ 7,784,079.59** | **₱ 34,206,246.80** |
| **TOTAL DEFICIENCY TAX PAYABLE** | **₱ 56,113,962.98** | **₱ 50,173,773.83** | **₱34,856,849.29** | **₱ 141,144,586.10** |

[7] Exhibits "R-5" and "P-7" Preliminary Assessment Notice; *id.*, pp. 578-581.
[8] Exhibit "P-8" Reply to PAN; *id.*, pp. 595-597.
[9] Exhibits "R-7" and "P-9" Formal Letter of Demand; *id.*, pp. 603-606.

The BIR explained that the deficiency excise tax and VAT arose from the difference per (a) the result of its reconciliation of petitioner's Authority to Release Imported Goods ("ATRIG") with the invoices gathered from petitioner's suppliers as furnished by the International Tax Affair Division ("ITAD") of the BIR vis à vis (b) the purchase price of the imported vehicles declared by petitioner in its Importer's Sworn Statement.[10]

The BIR found that the purchase price of the imported vehicles declared in the Importer's Sworn Statement, which in turn was the basis of the excise tax and VAT paid by petitioner, was lower than the purchase price per its invoice and ATRIG.[11]

Petitioner filed its Protest to the FLD on 22 December 2016.[12]

On 20 February 2017, the BIR, through ACIR Angeles, issued the Final Decision on Disputed Assessment ("FDDA"), denying petitioner's Protest to the FLD. The FDDA was received by petitioner on 14 March 2017.[13]

Undeterred, petitioner filed its Request for Reconsideration of the FDDA on 11 April 2017 to respondent.[14] The same was denied by respondent in a letter on 11 May 2017, which was received by petitioner on 29 May 2017 (hereinafter referred to as "Denial Letter").[15]

This prompted petitioner to file the instant Petition for Review on 28 June 2017 or within 30 days from its receipt of respondent's Denial Letter.[16] Respondent then filed his Answer (To the Petition for Review dated June 27, 2017)[17] on 12 October 2017, which was within the extended period granted by the Court.[18] He then elevated the BIR Records on 4 December 2017.[19]

Petitioner and respondent filed their Pre-Trial Briefs on 15 February 2018[20] and 12 February 2018,[21] respectively. The Pre-Trial Conference took place on 20 February 2018.[22]

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[10] *Ibid.*
[11] *Ibid.*
[12] Exhibit "P-10" Protest to the FLD; Division Docket Vol. 2, pp. 737-752.
[13] Exhibits "R-9" Final Decision on Disputed Assessment; BIR Folder, pp. 644-645; Exhibit "P-11" Final Decision on Disputed Assessment; Division Docket Vol. 1, pp. 77-78.
[14] Exhibit "P-12" Request for Reconsideration; Division Docket Vol. 2, pp. 753-779.
[15] Exhibits "R-11" Final Decision; BIR Folder, p. 677; Exhibit "P-13" Final Decision; Division Docket Vol. 1, p. 106.
[16] Petition for Review; *id.*, pp. 10-195 with annexes.
[17] Answer (To the Petition for Review dated June 27, 2017); *id.*, pp. 222-228.
[18] Resolution dated 8 August 2017; *id.*, p. 202; Resolution dated 15 September 2017; *id.*, pp. 212-214; Resolution dated 12 October 2017; *id.*, pp. 220-221.
[19] Compliance; *id.*, pp. 235-237.
[20] Pre-Trial Brief for Petitioner; Division Docket Vol. 2, pp. 552-561.
[21] Respondent's Pre-Trial Brief; Division Docket Vol. 1, pp. 239-242.
[22] Minutes of the Hearing; Division Docket Vol. 2, p. 562; Order; *id.*, pp. 564-565.

Afterwards, the parties filed their Joint Stipulation of Facts & Issues on 8 March 2018.[23] This prompted the Court to issue the Pre-Trial Order on 10 April 2018.[24]

Thereafter, trial ensued. Petitioner presented the following witnesses:

a. Mr. Severino E. Santillan, the Finance Director of petitioner. He testified on the events that had transpired from the time petitioner received the Mission Order up to the Denial Letter of respondent assessing it for excise tax and VAT. He also identified the documents petitioner received from and letters it filed to the BIR.

   He pointed out that the assessment is void based on the following grounds: (a) the FLD was issued beyond the three (3) year prescriptive period; (b) the audit and assessment was conducted without a valid Letter of Authority ("LOA"); and (c) that the assessment has no factual and legal bases;[25] and

b. Mr. Severino Esplana, a consultant of Jestine Customs Brokerage Inc., the brokerage firm of petitioner. He was also a former employee of the Bureau of Customs ("BOC") from 16 November 1978 to 10 November 2010, his last position being Chief of the Valuation and Classification Division and Concurrent Chief of the Payment Certification Unit.

   He testified that he assisted petitioner in the preparation and filing of its customs tariff documentation and in the release of its imported vehicles from the BOC. As such, in order to build its case, petitioner requested him to secure certified copies of its Single Administrative Documents ("SADs") and the Import Entry and Internal Revenue Declarations ("IERDs"). However, he explained that the BOC only provided him with print-outs of the SADs and photocopies of the IERDs.

   He pointed out that the SAD and IERD contain the same information, specifically, the amount of duties and taxes assessed on each of petitioner's imported vehicles. Meanwhile, the ATRIG serves as the importer's proof that all the duties assessed had already been paid and that the imported goods were already allowed to be released from the BOC's custody.

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23 Joint Stipulation of Facts & Issues; *id.*, pp. 566-574.
24 Pre-Trial Order; *id.*, pp. 576-581.
25 Exhibits "P-22" and "P-22-a" Judicial Affidavit of Mr. Severino E. Santillan; Division Docket Vol. 1, pp. 247-415; Minutes of Hearing; Division Docket Vol. 2, p. 596; Order dated 21 May 2018; *id.*, p. 597.

He explained that only photocopies of petitioner's IERDs and ATRIGs are available since the original copies of the said documents are in the custody of the BOC.

In addition to the foregoing documents, he testified that he was able to belatedly secure a Certification from the BOC listing down petitioner's payments of duties in relation to its imported vehicles and certifying that these have all been collected and remitted to the Bureau of Treasury (BTr).[26]

Petitioner filed its Formal Offer of Evidence on 4 October 2018.[27] Respondent did not file his Comment.

On 21 February 2019, the Court issued a Resolution[28] on petitioner's Formal Offer of Evidence admitting all pieces of evidence offered except for Exhibits "P-3" to "P-3-X", "P-14" to "P-14-W", and "P-15" to "P-15-X", which corresponds to petitioner's IERDs, SADs, and ATRIGs, respectively. The documents were denied for petitioner's failure to comply with the requisites for admissibility as secondary evidence.

On 12 March 2019, petitioner filed its Motion for Reconsideration (RE: Resolution dated February 21, 2019) asking the Court to reconsider the admission of the denied exhibits.[29] Respondent filed his Comment/Opposition (on Petitioner's Motion for Reconsideration dated March 12, 2019) on 18 March 2019.[30] Then, petitioner filed its Motion for Leave to File the Attached Reply to Comment/Opposition (to the Motion for Reconsideration Re: Resolution dated February 21, 2019) with attached Reply to Comment/Opposition (to the Motion for Reconsideration RE: Resolution dated February 21, 2019) (hereinafter referred to as "Reply to Comment") on 2 April 2019.[31] The Court admitted the Reply to Comment on 8 April 2019.[32]

On 13 June 2019, the Court issued a Resolution partially granting petitioner's Motion for Reconsideration (RE: Resolution dated February 21, 2019) and admitting the SADs marked as Exhibits "P-14" to "P-14-W".[33]

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26 Exhibit "P-23" and "P-23-a" Judicial Affidavit of Mr. Severino Esplana; Division Docket Vols. 1-2, pp. 416-551; Exhibit "P-24" and "P-24-a" Supplemental Judicial Affidavit of Mr. Severino Esplana; Division Docket Vol. 2, pp. 613-620; Minutes of Hearing; *id.*, p. 625; Order dated 17 September 2018; *id.*, p. 626.

27 Formal Offer of Evidence; *id.*, pp. 632-805.

28 Resolution dated 21 February 2019; *id.*, pp. 810-811.

29 Motion for Reconsideration (RE: Resolution dated February 21, 2019); *id.*, pp. 826-836.

30 Comment/Opposition (on Petitioner's Motion for Reconsideration dated March 12, 2019); *id.*, pp. 839-843.

31 Motion for Leave to File the Attached Reply to Comment/Opposition (to the Motion for Reconsideration Re: Resolution dated February 21, 2019) with attached Reply to Comment/Opposition (to the Motion for Reconsideration Re: Resolution dated February 21, 2019); *id.*, pp. 846-852.

32 Resolution dated 8 April 2019; *id.*, p. 854.

33 Resolution dated 13 June 2019; *id.*, pp. 856-862.

Hence, petitioner filed its Tender of Excluded Evidence. It asked for the denied exhibits to be considered part of the case records, specifically, Exhibits "P-3" to "P-3-X" (petitioner's IERDs), and "P-15" to "P-15-X" (petitioner's ATRIGs).[34] Respondent filed his Comment/Opposition (Re: Petitioner's Tender of Excluded Evidence) on 26 July 2019.[35] The Court granted petitioner's Tender of Excluded Evidence on 5 September 2019.[36]

Subsequently, respondent presented his witness RO Viardo. He testified on the events that transpired during the audit and assessment of petitioner and identified the relevant documents the BIR issued during the said period.[37]

Respondent filed his Formal Offer of Evidence on 27 February 2020.[38] Thereafter, petitioner filed its Comment and/or Opposition (To Respondent's Formal Offer of Evidence) on 12 March 2020.[39]

On 8 July 2020, the Court issued a Resolution admitting respondent's offered pieces of evidence except for Exhibit "R-12," which corresponds to the entire BIR Records, for his failure to have the same marked.[40]

Respondent posted his Omnibus Motion (a) Motion for Partial Reconsideration [Re: Resolution dated July 08, 2020]; and (b) Motion to Set Commissioner's Hearing ("Omnibus Motion") on 20 August 2020. In the said Omnibus Motion, respondent asked the Court in Division to set the case for Commissioner's Hearing in order to have the denied exhibit marked and to be allowed to refile his FOE.[41] Petitioner filed its Comment-Opposition (to Respondent's Omnibus Motion dated August 14, 2020) on 15 September 2020.[42] The Court granted the Omnibus Motion through its Resolution dated 4 November 2020.[43]

Respondent filed his Supplemental Formal Offer of Evidence on 15 December 2020.[44] Petitioner filed its Comment and/or Opposition (to Respondent's Supplemental Formal Offer of Evidence) on 21 December 2020.[45] The Court granted the Supplemental Formal Offer of Evidence and

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34 Tender of Excluded Evidence; *id.*, pp. 863-868.
35 Comment/Opposition (Re: Petitioner's Tender of Excluded Evidence); *id.*, pp. 870-873.
36 Resolution dated 5 September 2019; *id.*, p. 877.
37 Exhibit "R-13" Judicial Affidavit of Revenue Officer Emmanuel G. Viardo; *id.*, pp. 816-824; Minutes of Hearing; *id.*, p. 913; Order dated 12 February 2020; *id.*, pp 914-915.
38 Respondent's Formal Offer of Evidence; *id.*, pp. 916-923.
39 Comment and/or Opposition (To Respondent's Formal Offer of Evidence); *id.*, pp. 925-929.
40 Resolution dated 8 July 2020; *id.*, pp. 934-935.
41 Omnibus Motion (a) Motion for Partial Reconsideration [Re: Resolution dated July 08, 2020]; and (b) Motion to Set Commissioner's Hearing; *id.*, pp. 980-985.
42 Comment-Opposition (to Respondent's Omnibus Motion dated August 14, 2020); *id.*, pp. 986-990.
43 Resolution dated 4 November 2020; *id.* pp. 997-1000.
44 Supplemental Formal Offer of Evidence; *id.*, pp. 1003-1010.
45 Comment and/or Opposition (to Respondent's Supplemental Formal Offer of Evidence); *id.*, pp. 1012-1017.

admitted respondent's Exhibit "R-12" through its Resolution dated 25 January 2021.[46]

Petitioner and respondent filed their respective Memoranda on 20 August 2020[47] and 1 March 2021.[48] With the filing of both Memoranda, the case was submitted for decision on 3 March 2021. Hence, this Decision.[49]

## The Issue[50]

WHETHER PETITIONER IS LIABLE TO PAY DEFICIENCY EXCISE TAX AND VAT FOR TAXABLE YEARS 2010, 2011, AND 2012 IN THE TOTAL AMOUNT OF ₱141,144,586.10, INCLUSIVE OF INTEREST AND PENALTIES.

## Arguments of the Parties

### Petitioner's Arguments[51]

Petitioner argues that the deficiency tax assessment issued against it suffers from legal infirmities rendering the same null and void.

First, no LOA was issued to petitioner. It contends that the BIR only issued a Mission Order authorizing its audit and assessment. It explains that the Mission Order cannot supplant an LOA. It insists that both Tax Regulations and jurisprudence are clear that an LOA is an indispensable requirement before the BIR can audit and assess a taxpayer. Hence, without such issuance, the assessment is considered void.

Second, the BIR's right to assess petitioner has prescribed. It opines that it received the FLD only on 24 November 2016 or more than three (3) years after it filed its tax returns and paid the relevant taxes. It argues that the ten (10) year period under ***Section 222 of the Tax Code*** does not apply in this case since the BIR failed to establish the existence of fraud in the filing of its tax returns or that it had any intention to evade its payment.

Third, the assessment failed to state a definite amount of liability. Petitioner cites the following sentence from the FLD: "Please Note that the interest and the total amount due will have to be adjusted if paid beyond

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46 Resolution dated 25 January 2021; *id.*, pp. 1021-1022.
47 Petitioner's Memorandum; *id.*, pp. 936-978.
48 Respondent's Memorandum; *id.*, pp. 1026-1041.
49 Resolution dated 3 March 2021; *id.*, p. 1043.
50 *See* Issues in Pre-Trial Order, p. 2; *id.*, p. 577.
51 Petitioner's Memorandum; *id.*, pp. 936-978.

10/31/2016", which renders the same indefinite. It explains that the FLD, in order to be valid, must provide a definite, set, and fixed tax liability.

Fourth, the assessment has no factual and/or legal basis. It points out that the assessment only states that the discrepancy is based on alleged third-party documents without indicating where the information was sourced.

Finally, petitioner explains that even assuming the assessment does not suffer from any legal infirmities, it stresses that it had already paid all the necessary taxes for taxable years 2010 to 2012. Hence, it argues that the assessment issued against it is erroneous.

**Respondents' Counter-Arguments**[52]

Respondent counters that an LOA is not a requirement when the audit investigation is conducted by the Office of the CIR considering that the duty to assess a taxpayer is organic to his office. He asserts that an LOA is not the only document which can give the necessary authority to an RO to audit and assess a taxpayer. He insists that the authority can be given through a Mission Order pursuant to ***Section 13 of Revenue Regulation No. 25-2003***.[53]

He raises that the BIR's right to assess petitioner has not yet prescribed. He insists that since petitioner committed fraud in the filing of its tax returns and payment of taxes, the prescriptive period of ten (10) years should apply in this case.

Respondent also argues that petitioner's rights to due process were not violated considering that it was given all the opportunity to intelligently file its protest against the assessment.

Finally, he contends that the assessment, in the absence of proof of any irregularities, is considered valid, correct, and made in good faith which this Court is bound to uphold.

## The Ruling of the Court

After a careful review of the arguments made by both parties, the Court deems it proper to grant the Petition.

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[52] Respondent's Memorandum; *id.*, pp. 1026-1041.

[53] Amended Revenue Regulations Governing the Imposition of Excise Tax on Automobiles Pursuant to the Provisions of Republic Act No. 9224, An Act Rationalizing the Excise Tax on Automobiles, Amending for the Purpose the National Internal Revenue Code of 1997, and for Other Purposes, 16 September 2003.

**The absence of an LOA rendered the assessment issued against petitioner void.**

***Section 6(A) of the Tax Code*** grants the CIR or his duly authorized representative the power to authorize the examination and assessment of a taxpayer in order to determine whether it had paid the correct amount of taxes, to wit:

> "SEC. 6. **Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. -**
>
> (A) Examination of Return and Determination of Tax Due. After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax:** Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer."
> (Emphasis and underscoring supplied.)

Concomitantly, a valid grant of authority from the CIR or his duly authorized representative is required before an RO can conduct his/her examination and issue an assessment against a taxpayer. As clearly provided above, this is regardless of whether the authority emanated directly from the CIR or his authorized representative.

In ***Commissioner of Internal Revenue v. Sony Philippines, Inc., (hereinafter referred to as "Sony Case")***,[54] the Supreme Court identified the LOA as the authority given by the CIR or his duly authorized representative to an RO to examine and assess a taxpayer, to wit:

> "Based on Section 13 of the Tax Code, **a Letter of Authority or LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.** The very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer.
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> xxx xxx xxx
>
> **Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment**. Equally important is that the revenue officer so authorized must not go beyond the authority given. **In the absence of such an authority, the assessment or examination is a nullity**."
> (Emphasis and underscoring supplied.)

[54] G.R. No. 178697, 17 November 2010.

In this case, respondent does not dispute that no LOA was issued authorizing petitioner's audit and assessment. This fact was affirmed by his witness, RO Viardo,[55] during trial, to wit:

> "Justice San Pedro: Okay. **<u>You admit that there is no LOA</u>**?
>
> RO Viardo: **<u>Yes, your Honors</u>**.
>
> Justice San Pedro: **<u>It's just a mission order</u>**?
>
> RO Viardo: **<u>Yes, your Honors</u>**."
> (Emphasis and underscoring supplied.)

Instead, he argues that an LOA is not needed in this case. He explains that the ROs herein were not tasked to conduct a full-blown audit but to only validate and verify the Importer's Sworn Statement and inspect petitioner's books of accounts pertaining to its importation and sales of automobiles. He states that although no LOA was issued authorizing petitioner's audit examination and assessment, a Mission Order was issued in its stead.

The Court finds respondent's contentions bereft of merit.

The use of a Mission Order is different from an LOA. A Mission Order is issued to authorize the surveillance, not the audit and assessment, of the taxpayer. The allowable acts covered by a Mission Order include the RO's observation of the taxpayer's business operations and his/her determination of whether the taxpayer complies with the pertinent Tax Laws and Regulations without conducting a full-blown audit.

Meanwhile, ***Revenue Memorandum Order ("RMO") No. 003-09***[56] provides that if the result of the surveillance made indicates that the taxpayer has not been reporting its correct income for tax purposes, and/or the veracity of its accounting records is not reliable, an LOA must still be issued in order to cause the audit and assessment of the taxpayer, to wit:

> "V. GUIDELINES AND PROCEDURES
>
> A. Surveillance Activities
>
> xxx xxx xxx
>
> 4. Action on Surveillance Results
>
> If after the conclusion of the surveillance, there is a sufficient ground for the closure of the establishment as provided for under Section 115 of the NIRC, as amended, a recommendation shall be made to effect such closure.

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[55] Transcript of Stenographic Notes taken on 12 February 2020, TSN Folder, p. 9.

[56] Amendment and Consolidation of the Guidelines in the Conduct of Surveillance and Stock-Taking Activities, and the Implementation of the Administrative Sanction of Suspension and Temporary Closure of Business, 15 January 2009.

**If the result of the surveillance made likewise indicates that the taxpayer had not been, in fact, correctly reporting income for tax purposes, and that the veracity of his accounting records is not reliable, the Commissioner or Regional Director concerned shall issue a Letter of Authority (LA) for the investigation of the taxpayer. The Revenue Officer named in the LA shall proceed with the audit and cause the assessment of the taxpayer's internal revenue tax liabilities, based either on: (1) surveillance, pursuant to Section 6 [C]; (2) best evidence rule, as provided under Section 6 [B], NIRC as amended; and/or (3) the result of the tax audit.**"
(Emphasis and underscoring supplied.)

Clearly, when the ROs, in this case, found discrepancies in petitioner's Importer's Sworn Statement, they should have first secured an LOA from respondent or his duly authorized representative before proceeding with petitioner's audit and assessment.

The Mission Order cannot replace, supplant, or be converted to an LOA, considering that the functions of both issuances are different from each other. The Court finds the discussions in ***Medicard Philippines, Inc. v. CIR (hereinafter referred to as "Medicard Case")***[57] applicable in this case, to wit:

"Based on the afore-quoted provision, **it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken**. **The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority**.

xxx xxx xxx

**The Court cannot convert the LN into the LOA required under the law even if the same was issued by the CIR himself.** Under RR No. 12-2002, LN is issued to a person found to have underreported sales/receipts per data generated under the RELIEF system. Upon receipt of the LN, a taxpayer may avail of the BIR's Voluntary Assessment and Abatement Program. If a taxpayer fails or refuses to avail of the said program, the BIR may avail of administrative and criminal remedies, particularly closure, criminal action, or audit and investigation. **Since the law specifically requires an LOA and RMO No. 32-2005 requires the conversion of the previously issued LN to an LOA, the absence thereof cannot be simply swept under the rug, as the CIR would have it. In fact Revenue Memorandum Circular No. 40-2003 considers an LN as a notice of audit or investigation only for the purpose of disqualifying the taxpayer from amending his returns.**

[57] G.R. No. 222743, 5 April 2017.

**The following differences between an LOA and LN are crucial. First, an LOA addressed to a revenue officer is specifically required under the NIRC before an examination of a taxpayer may be had while an LN is not found in the NIRC and is only for the purpose of notifying the taxpayer that a discrepancy is found based on the BIR's RELIEF System. Second, an LOA is valid only for 30 days from date of issue while an LN has no such limitation. Third, an LOA gives the revenue officer only a period of 120 days from receipt of LOA to conduct his examination of the taxpayer whereas an LN does not contain such a limitation. Simply put, LN is entirely different and serves a different purpose than an LOA. <u>Due process demands, as recognized under RMO No. 32-2005, that after an LN has serve its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner. Unfortunately, this was not done in this case</u>.**

Contrary to the ruling of the CTA en banc, an LOA cannot be dispensed with just because none of the financial books or records being physically kept by MEDICARD was examined. **<u>To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination "of a taxpayer" may be made.</u>** The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination.

The BIR's RELIEF System has admittedly made the BIR's assessment and collection efforts much easier and faster. The ease by which the BIR's revenue generating objectives is achieved is no excuse however for its non-compliance with the statutory requirement under Section 6 and with its own administrative issuance. **In fact, apart from being a statutory requirement, an LOA is equally needed even under the BIR's RELIEF System because the rationale of requirement is the same whether or not the CIR conducts a physical examination of the taxpayer's records: to prevent undue harassment of a taxpayer and level the playing field between the government's vast resources for tax assessment, collection and enforcement, on one hand, and the solitary taxpayer's dual need to prosecute its business while at the same time responding to the BIR exercise of its statutory powers. The balance between these is achieved by ensuring that any examination of the taxpayer by the BIR's revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute.**

**That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void."**
(Emphasis and underscoring supplied.)

In the ***Medicard Case***, the Supreme Court stressed that a Letter Notice ("LN") cannot stand as a substitute of an LOA, even if an LN was issued by the CIR himself, considering that both issuances have different uses. The LN is merely "a notice of audit or investigation only for the purpose of disqualifying the taxpayer from amending his returns". It does not contain the material information sufficient to confer authority to an RO to audit and assess a taxpayer, as those stated in an LOA.

Applying the foregoing in this case, a close reading of the Mission Order states that the ROs were only authorized "[t]o validate/verify Importer's Sworn Statement and inspect books of accounts pertaining to importation/sales of automobiles pursuant to Sec. 13 of RR 25-2003". Evidently, nothing on the Mission Order gave the ROs the power to conduct petitioner's audit and assessment.

Considering that the ROs in this case do not have the requisite authority to audit and assess petitioner, the Court has no option but to strike down the assessment for being null and void.

Having found the assessment issued against petitioner void, the Court will no longer discuss the other issues raised in the present Petition.

**WHEREFORE,** premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, the Final Decision on Disputed Assessment, dated 20 February 2017, assessing petitioner for deficiency excise tax and VAT in the aggregate amount of ₱141,144,586.10, inclusive of interests and penalties, for taxable years 2010, 2011, and 2012 is hereby **CANCELLED** and **SET ASIDE.**

The CIR, his representatives, agents, or any person acting on his behalf are **ENJOINED** from collecting or taking any further action on the subject deficiency taxes.

**SO ORDERED.**

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

**WE CONCUR:**

**ERLINDA P. UY**
Associate Justice

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

**ERLINDA P. UY**
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.

**ROMAN G. DEL ROSARIO**
Presiding Justice