REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Second Division

PMFTC INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10714

Members:
RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:

JUN 19 2024

3:27 p.m.

x --- x

DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court is a Petition for Review[1] ("Petition") dated and filed on December 22, 2021, pursuant to *Section 228 of the National Internal Revenue Code of 1997, as amended,* ("*Tax Code*"), praying that this Court render a decision declaring respondent's assessment against petitioner for deficiency value-added tax ("VAT") for the second quarter of 2021 (Q2 TY2021) in the aggregate amount of ₱1,964,172,729.83, inclusive of increments, void and/or invalid, and consequently, cancelling the same.

The Parties

Petitioner PMFTC, Inc. ("PMFTC" or "petitioner") is a corporation duly organized and existing under the laws of the Republic of the Philippines with principal office address at Plants C & D Champaca Street, Brgy. Fortune, Marikina City.[2] It is registered with the Bureau of Internal Revenue ("BIR") as a VAT taxpayer with Taxpayer's Identification Number ("TIN") 007-51-588-000, under the jurisdiction of Revenue District Office ("RDO") No. 124 – Large Taxpayers Service.[3]

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1 Docket Vol. 1, pp. 7-383, with annexes.
2 Exhibit "P-3", BIR Certificate of Registration, Docket, Vol. 1, p. 490.
3 Joint Stipulation of Facts and Issues ("JSFI"), Docket, Vol. 2, p. 648.

Petitioner is engaged in the business of, among others, manufacturing, processing, packing, buying, exporting, selling on wholesale, distributing, marketing, leasing, and otherwise dealing in various products including but not limited to, paper, chemicals, cigarettes, and tobacco sticks intended for heating as well as blue tooth and/or wifi enabled aerosol generating electronic devices, software, devices with radio frequency, other communication equipment, and other related equipment and their components and accessories, and the plants, machineries, and equipment used for the same.[4]

On the other hand, respondent is the Commissioner of Internal Revenue ("CIR" or "Respondent") duly appointed and empowered to perform the duties of his office, as the chief of the BIR, the government agency charged with the assessment and collection of all internal revenue taxes, fees and charges, and the enforcement of all forfeitures, penalties and charges therewith. He may be served with summons, notices and other court processes through his legal counsels at Litigation Division, Room 703, BIR National Office Building, Diliman, Quezon City.[5]

The Facts

On April 21, 2021, the Securities and Exchange Commission ("SEC") approved the corporate merger of petitioner and Philip Morris Philippines Manufacturing, Inc. ("PMPMI"), with the latter being the absorbed corporation and petitioner being the surviving corporation.[6]

Prior to the merger, PMPMI was engaged in the business of, among others, manufacturing, processing, packing, buying, exporting, selling on wholesale, distributing, and otherwise dealing in cigarettes and cigarette flavorings, casings, tobacco, packaging, labels, filters, plants, machines, equipment, instruments, and apparatuses.[7] PMPMI is registered with the BIR as a VAT taxpayer with TIN 205-933-884-000, also under the jurisdiction of RDO No. 124 – LTS.[8]

Based on the Articles and Plan of Merger approved by the SEC, the effective date of the merger of PMFTC and PMPMI was on June 1, 2021.

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4 Exhibit "P-2", Certificate of Filing of Amended Articles of Incorporation with attached Amended Articles of Incorporation, Docket, Vol. 1 p. 464.
5 *Supra* note 3.
6 Exhibit "P-4", Certificate of Filing of the Articles of Plan and Merger, Docket, Vol. 1 p. 491.
7 *Id.*, p. 507.
8 Exhibit "P-6", BIR Certificate of Registration, *id.*, pp. 181-183

On June 14, 2021, the BIR LTS issued Letters of Authority ("LOA") Nos. LOA-124-2021-00000052[9] and LOA-124-202100000051,[10] both dated June 2, 2021, to petitioner and PMPMI, respectively, authorizing the examination of the books of accounts and other accounting records of the said entities, for all internal revenue tax liabilities, from January 1, 2020 to May 31, 2021.

Meanwhile, on July 22, 2021, petitioner filed its Q2 2021 VAT return[11] reflecting allowable input tax, excluding current transactions and deductions, in the amount of ₱4,153,414,026.13, broken down as follows:

Field No. (Form 2550-Q)	Particulars	Amount
20A	Input Tax Carried Over from Previous Period	₱ 317,165,144.88
20E	Others	3,836,248,881.25
20F	Total	₱ 4,153,414,026.13

On July 27, 2021 respondent issued a letter ("Assessment Letter")[12] assessing PMFTC for alleged deficiency VAT amounting to ₱1,964,172,729.83, computed as follows:

Input Tax forwarded as a consequence of merger			₱ 3,836,248,881.25
Less:	Excess Input per VAT Return		2,277,421,317.89
			1,558,827,563.36
Add:	Penalties		
	Surcharge	389,706,890.84	
	Interest (July 26, 2021 to August 25, 2021)	15,588,275.63	
	Compromise Penalty	50,000.00	405,345,166.47
Total Deficiency VAT for Return Period June 30, 2021			₱ 1,964,172,729.83

In the said Assessment Letter, the BIR questioned PMFTC's utilization of the excess input VAT declared by PMPMI in its May 2021 monthly VAT declaration, amounting to ₱3,836,248,881.25 (i.e., "Others" in field 20E above), as the surviving corporation in the subject merger. Such utilization resulted in PMFTC having no output VAT payable and an excess input VAT amounting to ₱2,277,421,317.89 for Q2 TY2021, which it then carried over to the succeeding month.

[9] Exhibit "P-7", BIR LOA to PMFTC., *id.*, pp. 184-186.
[10] Exhibit "P-8", BIR LOA to PMPMI., *id.*, pp. 187-189.
[11] Exhibit "P-11", BIR Form 2550-Q for Q2 TY2021, filed by PMFTC on July 22, 2021, *id.*, pp. 194-195.
[12] Exhibit "P-12", *id.*, pp. 196-197.

Conversely, in PMPMI's Q2 TY2021 VAT Return, the amount of ₱3,836,248,881.25 was deducted from PMPMI's available input VAT credits.

However, the BIR advanced in its Assessment Letter that the application of excess input in favor of PMFTC as the surviving corporation is premature, pending the completion of the BIR's audit investigation of both parties to the merger.

On August 11, 2021, petitioner filed a letter ("Protest Letter")[13] to dispute the Assessment Letter.

On August 31, 2021, petitioner received a letter form the BIR LTS dated August 23, 2021 ("Denial of Protest Letter")[14] denying the former's Protest Letter and maintaining the BIR's position in the Assessment Letter.

Citing *Revenue Regulations ("RR") No. 7-12*[15] and *No. 13-2018*,[16] the BIR LTS ruled that PMPMI, as the absorbed corporation, must comply first with these regulations' which provide for procedures for the cessation / cancellation of status of VAT-registered person, whether it chooses to (1) pass on the utilized input taxes or (2) apply for a refund. According to the BIR LTS, both require an application for cancellation of registration. Such cancellation of registration shall be signified by the issuance of tax clearance by the BIR, after full settlement of tax liabilities relative to the cessation of business or change of status of the taxpayer.

On the same day of receipt of the Denial of Protest Letter, the BIR issued a letter dated August 31, 2021 ("Amortization Acceptance Letter")[17] confirming that it interposed no objection to the proposed amortization by PMFTC of the remaining input VAT credits amounting to ₱2,277,421,317.89 in its monthly VAT declarations and quarterly VAT returns for July 2021 to December 2021. Pursuant thereto, petitioner proceeded to amortize the remaining input VAT credits within the said period.

On September 15, 2021, petitioner filed a Request for Reconsideration,[18] signed on even date, with the Office of the Commissioner of Internal Revenue ("Request for Reconsideration Letter"). Petitioner reiterated that PMFTC's use of excess input VAT of PMPMI is in accordance

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[13] Exhibit "P-13", Protest Letter dated August 11, 2021, *id.*, pp. 202-208.
[14] Exhibit "P-14", BIR Letter dated August 23, 2014, *id.*, pp. 209-211.
[15] Amended Consolidated Revenue Regulations on Primary Registration, Updates and Cancellation, dated April 2, 2012.
[16] Regulations Implementing the Value-Added Tax Provisions under the Republic Act (RA) No. 10963, or the "Tax Reform Acceleration and Inclusion (TRAIN)," Further Amending Revenue Regulations (RR) No. 16-2005 (Consolidated Value-Added Tax Regulations of 2005), as Amended, dated March 15, 2018.
[17] Exhibit "P-16", BIR Letter dated August 31, 2021, Docket, Vol. 1, p. 214.
[18] Exhibit "P-17", Request for Reconsideration, *id.*, pp. 215-224.

with prevailing jurisprudence, law and tax regulations and that, contrary to respondent's position, the deferral of utilization of input VAT has no legal basis.

In response to the Request for Reconsideration Letter, CIR issued a letter, dated September 30, 2021 ("Denial of Request for Reconsideration"),[19] which was received by petitioner on November 23, 2021. Respondent denied petitioner's request and affirmed the BIR LTS' position that PMPMI had to obtain a tax clearance prior to the utilization of the excess input tax by petitioner as the surviving corporation.

Aggrieved, petitioner appealed to this Court through the instant Petition (with Urgent Motion to Suspend Collection of Taxes), filed on December 22, 2021.

After being granted an extension of time by the Court,[20] respondent submitted his Answer[21] on May 10, 2022.

On July 20, 2022, the hearing for the Urgent Motion was conducted *via* videoconference. Petitioner presented the testimony of its lone witness, Mr. Charleston Amurao (Amurao), who identified his Judicial Affidavit dated December 22, 2021[22] and the exhibits attached thereto.[23]

On August 5, 2022, petitioner submitted its Formal Offer of Evidence[24] in support of the Urgent Motion, to which respondent filed its Comment on August 10, 2022.[25]

Petitioner then filed its pre-trial brief on August 11, 2022,[26] while respondent submitted his pre-trial brief the following day, August 12, 2022.[27]

During the pre-trial conference held on August 16, 2022, petitioner's counsel manifested that it was adopting the testimony of witness Mr. Amurao, given during the hearing on the Urgent Motion, as its evidence in the main case and that petitioner would not present any Supplemental Judicial Affidavit or any other witness.[28]

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[19] Exhibit "P-18", BIR Letter dated September 30, 2021, *id.*, pp. 225-228.
[20] See Resolution dated April 18, 2022, Docket Vol. 1., p. 416.
[21] Answer, *id.*, pp. 417-430.
[22] Exhibit "P-1", Judicial Affidavit of Charleston Amurao (In Lieu of Direct Examination), *id.*, pp. 41-61.
[23] See Minutes of hearing dated July 20, 2022, *id.*, p. 443.
[24] Formal Offer of Evidence for Petitioner, *id.*, pp. 449-460.
[25] Comment (On Petitioner's Formal Offer of Evidence), *id.* pp. 621-623.
[26] Petitioner's Pre-Trial Brief, *id.*, pp. 625-633.
[27] Respondent's Pre-Trial Brief, *id.*, pp. 638-640.
[28] See Minutes of hearing dated August 16, 2022, *id.*, p. 643.

On September 15, 2022, the parties filed their Joint Stipulation of Facts and Issues[29] which was approved by the Court on September 22, 2022.[30]

Petitioner then filed its Formal Offer of Evidence[31] in support of the instant Petition, on September 30, 2022, while respondent submitted his Comment thereto on October 11, 2022.[32]

Meanwhile, respondent manifested that he would no longer present testimonial evidence considering that the instant case involved a legal issue.[33]

The Court then issued the Pre-Trial Order on October 11, 2022.

Afterwards, the Court ruled on the Urgent Motion, denying petitioner's prayer to issue an order suspending the collection of taxes, on the ground that petitioner failed to show any collection effort instituted by respondent to collect the alleged deficiency VAT assessment.[34]

On May 26, 2023, petitioner submitted its Memorandum,[35] while respondent manifested on May 23, 2023[36] that he adopts the arguments stated in the Answer,[37] filed on May 10, 2022, as his memorandum, considering that it already contains all the arguments subject of this case.

The instant Petition was then submitted for decision on June 19, 2023.[38]

The Issues[39]

The parties submitted the following issues for this Court's resolution:

I.

WHETHER THE COURT HAS JURISDICTION TO ACT ON THE INSTANT PETITION; AND

II.

WHETHER PETITIONER IS LIABLE TO PAY THE ALLEGED DEFICIENCY VAT IN THE AGGREGATE AMOUNT OF ₱1,964,172,729.83, INCLUSIVE OF

[29] Joint Stipulation of Facts and Issues, Docket, Vol. 2 pp. 648-651.
[30] See Resolution dated September 22, 2022, *id.*, p. 653.
[31] Formal Offer of Evidence (In Support of the Petition for Review), *id.*, pp. 654-665.
[32] Comment (On Petitioner's Supplemental Formal Offer of Evidence), *id.*, pp. 678-680.
[33] See Manifestation dated November 25, 2022, filed on November 25, 2022, *id.*, pp. 684-685.
[34] See Resolution dated January 16, 2023, *id.*, pp. 690-693.
[35] Memorandum for Petitioner, *id.*, pp. 695-726.
[36] Manifestation dated May 23, 2023, *id.*, pp. 731-733.
[37] *Supra* note 22.
[38] Resolution dated June 19. 2023, *id.*, p. 736.
[39] See Stipulated Issues in the Pre-Trial Order, Docket, Vol. 3 p. 673.

INCREMENTS AND COMPROMISE PENALTIES, FOR Q2 TY2021.

Arguments of the Parties

Petitioner's Arguments[40]

Petitioner advances that the Assessment Letter must be cancelled by the Court for being void, specifying the these grounds:

a. The Court of Tax Appeals ("CTA") has jurisdiction to take cognizance of the instant Petition;
b. There is an absence of a valid LOA; thus, the Assessment Letter, Denial of Protest Letter, and Denial of Request for Reconsideration Letter have no legal or binding effect;
c. Respondent failed to issue a Notice of Discrepancy ("NOD") and Preliminary Assessment Notice ("PAN");
d. The surviving entity in a merger can, by operation of law, automatically claim the unutilized input VAT credit of the absorbed entity; and
e. The assessment is merely based on the unfounded premise that the absorbed corporation may not have actual excess input VAT to be carried over and utilized by the surviving corporation.

Respondent's Counter-Arguments[41]

On the other hand, respondent insists that the instant Petition must fail due to the following:

a. The Court lacks jurisdiction over the instant Petition as the decision contemplated by law as appealable to the CTA is one rendered on a disputed assessment. Thus, it is primordial that the assessment be disputed first. In this case, there is no assessment yet to begin with since respondent is still on an ongoing investigation as a result of petitioner's merger with PMPMI;
b. Assuming the Court can rule on the instant Petition, petitioner position that there must be a valid LOA lacks merit. The alleged assessment was issued to inform petitioner that it cannot utilize the excess input VAT of PMPMI because it is not yet considered dissolved prior to its obtaining of a tax clearance; and
c. Petitioner and PMPMI must comply with *RR No. 7-2012* which provides for the updated and consolidated procedures relative to primary registration, updates, and cancellation procedures.

[40] Memorandum for Petitioner; Docket, Vol. 2 pp. 695-726.
[41] Answer, Docket, Vol. 1 pp. 418-421.

The Ruling of the Court

The Court has jurisdiction over the instant Petition for Review.

Before delving into the substantive matters raised by the parties, We must first rule on the jurisdictional issue.

Respondent claims that the CTA has no jurisdiction over the instant Petition on the ground that the Denial of Request for Reconsideration Letter issued by the office of the CIR is not a disputed assessment within the jurisdiction of the Court, as provided by *Republic Act* ("*RA*") *No. 1125,*[42] *as amended by RA No. 9282,*[43] which states:

> SEC. 7. Jurisdiction. — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
> (1) *Decisions of the Commissioner of Internal Revenue* in cases involving *disputed assessments*, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> . . . .
>
> (Italics supplied)

To implement the same, *Section 3(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals ("RRCTA")*[44] provides:

> SEC. 3. Cases within the jurisdiction of the Court in Division. — The Court in Division shall exercise:
>
> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
> (1) *Decisions of the Commissioner of Internal Revenue* in cases involving *disputed assessments*, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
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> . . . .
>
> (Italics supplied)

[42] An Act Creating the Court of Tax Appeals, June 16, 1954.
[43] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections or Republic Act No. 1125, As Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes; March 30, 2004.
[44] A.M. No. 05-11-07-CTA, 22 November 2005.

In determining the "decisions of the CIR in cases involving disputed assessments" contemplated by the above rules, guidance may be found on *Section 228 of the Tax Code*, as amended, which prescribes the mandatory requirements of a valid assessment, thus:

> SEC. 228. Protesting of Assessment. — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings:
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> . . . .
>
> *The taxpayers shall be* ***informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.***
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. . . .
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction ***may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision***, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.
> (Emphasis and italics supplied.)

Related thereto, *Section 3.1.3 of RR No. 12-99*,[45] as amended by *RR No. 18-13*,[46] provides that:

> 3.1.3 Formal Letter of Demand and Final Assessment Notice (FLD/FAN). — The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. *The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; otherwise, the assessment shall be void.*
> (Italics supplied)

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[45] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, dated September 6, 1999.

[46] Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, dated November 28, 2013.

Further, the Supreme Court clarified what an assessment must contain in the case of *Commissioner of Internal Revenue v. Fitness by Design, Inc.*,[47] which states:

> A final assessment notice provides ***for the amount of tax due with a demand for payment***. This is to determine the amount of tax due to a taxpayer. However, due process requires that ***taxpayers be informed in writing of the facts and law on which the assessment is based*** in order to aid the taxpayer in making a reasonable protest.
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> . . . .
>
> The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes. *Neither the National Internal Revenue Code nor the revenue regulations provide for a "specific definition or form of an assessment."* However, the National Internal Revenue Code defines its explicit functions and effects. An ***assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed***. Its main purpose is to determine the amount that a taxpayer is liable to pay.
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> . . . .
>
> A final assessment is a notice "*to the effect that the amount therein stated is due as tax and a demand for payment thereof.*" This demand for payment signals the *time "when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies*[.]" Thus, it must be "sent to and received by the taxpayer, and ***must demand payment of the taxes described therein within a specific period.***"
> (Emphasis and italics supplied)

Thus, while the *Tax Code* is silent on the specific form of an assessment, one can be identified based on the functions and effects of the statements and other information which can be found therein. Gleaning from the above, a valid assessment notice has the following: (1) a definite amount of tax due; (2) a categorical demand for payment within a prescribed period; and (3) a statement of factual and legal bases on which the assessment is made.

Upon the Court's examination of the Assessment Letter and the Denial of the Protest, We find all of these requirements present. The Assessment Letter, as quoted below, states:

> An examination of the subject return shows that it bears an excess input tax in the amount of P2,277,421,317.89. It appears that the excess input tax is attributable to the merger between PMFTC and Philip Morris Phils Manufacturing Inc. (PMPMI), with the latter's input tax of P3,836,248,881.25 being absorbed by your company (as a surviving entity), as a consequence of the subject merger.
>
> . . . .

[47] G.R. No. 215957, November 9, 2016.

In view of the pending investigation, the application of excess input in the subject return in favor of PMFTC, Inc. as the surviving company is premature at this stage and should not have been reflected in the subject return unless and until the investigation is completed.

In view thereof and pursuant to Section 106 of the National Internal Revenue Code (NIRC), as amended, you are hereby assessed for unremitted Value Added Tax, as follows:

Input Tax forwarded as a consequence of merger			₱ 3,836,248,881.25
Less:	Excess Input per VAT Return		2,277,421,317.89
			1,558,827,563.36
Add:	Penalties		
	Surcharge	389,706,890.84	
	Interest (July 26, 2021 to August 25, 2021)	15,588,275.63	
	Compromise Penalty	50,000.00	405,345,166.47
Total Deficiency VAT for Return Period June 30, 2021			₱ 1,964,172,729.83

The 25% has been imposed pursuant to the provisions of Section 248(A)(2) of the National Internal Revenue Code (NIRC), as amended. The 12% interest per annum has been imposed pursuant to the Tax Reform for Acceleration and Inclusion (TRAIN) Law.

Pursuant to the provisions of Section 228 of the NIRC and its implementing Revenue regulations, you are hereby given fifteen (15) days from receipt hereof to pay the aforesaid deficiency Value Added Tax Due for the quarter ended June 30, 2021.

Please be guided accordingly.

Very truly yours,

(Signed)
Manuel V. Mapoy
OIC-Assistant

Commissioner

Large Taxpayers Services

Meanwhile, the Denial of Protest Letter substantially reiterated the findings and demand for payment in the Assessment Letter, with a qualifying statement that failure of the petitioner to pay the alleged deficiency VAT within the period provided will result in a final assessment, thus:

In view thereof and pursuant to Section 106 of the National Internal Revenue Code (NIRC), as amended, you are hereby assessed for unremitted Value Added Tax due for the month of July 2021, as follows:

Input Tax forwarded as a consequence of merger		₱ 3,836,248,881.25
Less:	Excess Input per VAT Return	2,277,421,317.89
		1,558,827,563.36

Add:	Penalties		
	Surcharge	389,706,890.84	
	Interest (July 26, 2021 to August 25, 2021)	15,588,275.63	
	Compromise Penalty	50,000.00	405,345,166.47
Total Deficiency VAT for Return Period June 30, 2021			₱ 1,964,172,729.83

Please note that the twenty-five percent (25%) surcharge is being imposed pursuant to the provisions of Section 248 of the National Internal Revenue Code, as amended, Meanwhile, the twelve percent (12%) interest per annum is being assessed pursuant to Republic Act No. 10963 or the TRAIN Law.

In accordance with Section 228 of the NIRC (as amended) and its implementing rules and regulations, you are hereby given fifteen (15) days from receipt hereof to pay the aforesaid deficiency Value Added Tax due for the month ended 31 July 2021. *Otherwise, the assessment shall be considered and deemed as final.*

Henceforth, you are hereby strictly enjoined to refrain from utilizing PMPMI's excess input tax in your favor, until and after the termination of the said mandatory audit investigations.

We trust the foregoing merits your prompt action and/or compliance

Very truly yours,

(Signed)
Manuel V. Mapoy
OIC-Assistant
Commissioner
Large Taxpayers Services

(Italics supplied)

While the Court is not unaware that the Assessment Letter and Denial of Protest Letter are not in the usual form of assessment notices issued by the BIR, We, however, find that all the requirements of a valid assessment are present therein.

First, the amount being demanded is definite (i.e., ₱ 1,964,172,729.83). *Second*, there is a clear demand to pay the alleged deficiency VAT within 15 days from receipt of the BIR's letters. *Third*, both factual and legal bases were narrated by the BIR in the same letters.

Furthermore, the Denial of Protest Letter explicitly states that "*the assessment* shall be considered and deemed as final" if petitioner failed to pay the demanded amount within the period set.

We thus hold respondent in error for arguing that what was appealed to the Court is not a decision on disputed assessments, as contemplated in the law, since the instant Petition allegedly does not involve an assessment to begin with.

Moreover, the BIR cannot deny its intention to assess petitioner when it clearly referred to the Denial of Protest letter as an "***assessment*** *(which) shall be considered and deemed as final*" in case of failure to pay within the prescribed period.

The Court further observes that accepting respondent's position on this matter would effectively deprive petitioner of the opportunity to raise a judicial appeal against the assessment, which We cannot allow. If We agree that letters discussed above do *not* constitute an "actual" assessment, then petitioner should have waited for the BIR to issue such an "actual" assessment, which would presumably come after the pending investigation was finished. However, the Denial of Protest Letter clearly states that petitioner's failure to pay the demanded amount within the period given would result in the assessment becoming *final*, which means it would also become *unappealable*. Given this threat of finality, petitioner would have been unable to judicially protest the assessment even if it had waited for the investigation to conclude and for the BIR to issue the "actual" assessment.

Given the foregoing, respondent's argument would put petitioner in a lose-lose situation, effectively prohibiting it from seeking judicial remedies provided by law. It must thus be rejected, and the Denial of Request for Reconsideration must be considered a decision on a disputed assessment, for the purpose of raising a judicial appeal.

The CIR accepted and acted upon the Request for Reconsideration when petitioner elevated the administrative appeal. Thus, upon receipt of the Denial of Request for Reconsideration issued by the CIR himself, petitioner's next recourse was to file its appeal to the Court through a Petition for Review, also pursuant to *Section 3.1.4 of RR No. 12-99,* as amended by *RR No. 18-13* which states:

> If the protest or administrative appeal, as the case may be, is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision. Otherwise, the assessment shall become final, executory and demandable. A motion for reconsideration of the Commissioner's denial of the protest or administrative appeal, as the case may be, shall not toll the thirty (30)-day period to appeal to the CTA.

It is undisputed that the Denial of Request for Reconsideration was received by petitioner on November 23, 2021. Counting 30 days therefrom, petitioner had until December 23, 2021 within which to appeal. Thus, the instant Petition was timely filed on December 22, 2021, vesting the Court the exclusive appellate jurisdiction to rule thereof.

The assessment is invalid for being violative of petitioner's right to due process

a) *The assessed period is not covered by a valid Letter of Authority.*

In his Answer, respondent posits that a valid LOA is not needed because the letters issued by BIR LTS only seek to inform petitioner that it cannot utilize the excess input VAT of PMPMI since the latter is not yet considered dissolved, for tax purposes, prior to the obtaining of a tax clearance.

We find such contention unmeritorious.

As discussed above, the letters issued to BIR LTS are in the nature of assessment notices due to the categorical demand to pay a definite amount within a specified period of time, on the basis of the factual and legal matters stated therein. It is required, however, under *Section 13,* in relation to *Section 6 of the Tax Code* that an assessment must be conducted pursuant to a valid LOA, to wit:

> SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements or 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 ***mav 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.
>
> . . . .
>
> SEC. 13. Authority of a Revenue Officer. — Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a *Revenue Officer assigned to perform assessment functions in any district may,* ***pursuant to a Letter of Authority*** *issued by the Revenue Regional Director,* examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself.
>
> (Emphasis and italics supplied)

A LOA is the authority given to the revenue officers assigned to perform assessment functions. It empowers and enables the same revenue officers to examine the books of account and other accounting records of a taxpayer. The purpose of a LOA was highlighted by the Supreme Court in the case of *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.* ("*McDonald's Case*"),[48] where it was discussed that:

> Unless authorized by the CIR himself or by his duly authorized representative, an examination of the taxpayer cannot be undertaken. *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.* ***There must be a grant of authority, in the form of a LOA, before any revenue officer can conduct an examination or assessment.*** 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 italics supplied)

In this case, LOAs were issued by respondent authorizing the examination of PMFTC's[49] and PMPMI's[50] books of accounts and other accounting records, for all internal revenue taxes, from January 1, 2020 to May 31, 2021. It should be highlighted, however, that the subject assessment relates to VAT return for the quarter ending June 30, 2021, which is outside the coverage of the issued LOA.

Thus, in the absence of a valid LOA, the Assessment Letter, Denial of Protest Letter, and the Denial of Request for Reconsideration issued to petitioner are all considered void and without legal effect.

b) Respondent failed to comply with the administrative assessment procedures required under Section 3.1.4 of RR 12-99, as amended by RR 18-13, i.e. issuance of Notice of Discrepancy and Preliminary Assessment Notice.

Aside from the lack of LOA, petitioner also argues that respondent's failure to issue a Notice of Discrepancy ("NOD") and Preliminary Assessment Notice ("PAN") constitute a violation of its due process rights, likewise invalidating the issuance of the subject assessment.

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[48] G.R. No. 242670, May 10, 2021.
[49] *Supra* note 9.
[50] *Supra* note 10.

Under *RR No. 12-99*, as amended by *RR No. 22-20*,[51] administrative due process for deficiency tax assessments includes the issuance of NOD and PAN, to wit:

> SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
>
> 3.1.1 ***Notice of Discrepancy.***— *If a taxpayer is found to be liable for deficiency tax or taxes in the course of an investigation conducted by a Revenue Officer,* ***the taxpayer shall be informed through a Notice of Discrepancy*** (Annex A).The Notice of Discrepancy aims to fully afford the taxpayer with an opportunity to present and explain his side on the discrepancies found.
>
> . . . .
>
> If after being afforded the opportunity to present his side through the Discussion of Discrepancy, it is still found that the taxpayer is still liable for deficiency tax or taxes and the taxpayer does not address the discrepancy through payment of the deficiency taxes or the taxpayer does not agree with the findings, the investigating office, *shall endorse the case to the reviewing office and approving official in the National Office or the Revenue Regional Office, for issuance of a deficiency tax assessment in the form of a Preliminary Assessment Notice* within ten (10) days from the conclusion of the Discussion.
>
> 3.1.2 ***Preliminary Assessment Notice (PAN).*** — If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, *it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office* ***shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN)*** for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based. . . .
> (Emphasis and italics supplied)

In the case of *Pilipinas Shell Petroleum Corp vs. Commissioner of Internal Revenue ("Pilipinas Shell case")*,[52] the Supreme Court emphasized the importance of following the procedures prescribed under *RR No. 12-99*, as amended, which includes the issuance of notice of informal conference (now NOD) and PAN. It was held therein that failure to comply therewith renders an assessment void because of violation of due process rights, to wit:

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[51] Amending Certain Sections of Revenue Regulations No. 12-1999, as Amended by Revenue Regulations No. 18-2013 and Revenue Regulations No. 7-2018, Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, dated September 15, 2020.

[52] G.R. No. 172598, December 21, 2007.

> . . . . The procedures delineated in the said statutory provisos and RR 12-99 were not followed by respondent, depriving PSPC of due process in contesting the formal assessment levied against it. ***Respondent ignored RR 12-99 and did not issue PSPC a notice for informal conference and a preliminary assessment notice, as required***. PSPC's November 4, 1999 motion for reconsideration of the purported Center findings and cancellation of the subject TCCs and the TDM was not even acted upon.
>
> *PSPC was merely informed that it is liable for the amount of excise taxes it declared in its excise tax returns for 1992 and 1994 to 1997 covered by the subject TCCs* ***via the formal letter of demand and assessment notice***. *For being formally defective, the November 15, 1999* ***formal letter of demand and assessment notice is void.***
>
> . . . .
>
> In short, respondent merely relied on the findings of the Center which did not give PSPC ample opportunity to air its side. *While PSPC indeed protested the formal assessment, such does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment before it was issued.* Respondent must be more circumspect in the exercise of his functions . . .
> (Emphasis and italics supplied)

Consistent with the doctrine in the *Pilipinas Shell case*, the case Supreme Court highlighted in *Commissioner of Internal Revenue vs. Metro Star Superama Inc.*[53] that the use of the word "*shall*" in *Section 3.1.2 of RR No. 12-99, as amended*, describes the mandatory nature of the service of PAN. Consequently, since there was failure to send the PAN stating the facts and the law on which the assessment against Metro Star was made, the same was declared void.

Here, petitioner claims that no NOD or PAN was served by the BIR prior to the issuance of the Assessment Letter. Respondent, on the other hand, failed to refute such allegation by presenting controverting evidence. Thus, it is inevitable for the Court to conclude that no NOD or PAN was issued at all to petitioner. We consequently find due process violations against the petitioner rendering the assessment void and without legal effect.

At any rate, even if it assumed that the absence of LOA, NOD, and PAN are not fatal, the Court still finds merit in PMFTC's substantive arguments.

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[53] G.R. No. 185371, December 8, 2010.

PMFTC, as the surviving corporation, is entitled to claim the unutilized input VAT of PMPMI, the absorbed company, pending issuance of a tax clearance.

In the case at bar, it is undisputed that the PMFTC and PMPMI mutually executed a plan of merger, duly approved by the Securities and Exchange Commission, whereby it was agreed that PMFTC shall be the surviving corporation, and PMPMI shall effectively be absorbed by the former,[54] consistent with *Section 75 of the Revised Corporation Code ("RCC")*[55] which describes mergers as follows:

> SEC. 75. Plan of Merger or Consolidation. – Two (2) or more corporations may merge into a single corporation which shall be one of the constituent corporations or may consolidate into a new single corporation which shall be the consolidated corporation.

The Tax Code, on the other hand, defines merger under *Section 40(C)(6)(b)* thereof, which states:

> b) The term 'merger' or 'consolidation', when used in this Section, shall be understood to mean: (i) the ordinary merger or consolidation, or (ii) the acquisition by one corporation of all or substantially all the properties of another corporation solely for stock: Provided, That for a transaction to be regarded as a merger or consolidation within the purview of this Section, it must be undertaken for a bona fide business purpose and not solely for the purpose of escaping the burden of taxation: Provided, further, That in determining whether a bona fide business purpose exists, each and every step of the transaction shall be considered and the whole transaction or series of transactions shall be treated as a single unit: Provided, finally, That in determining whether the property transferred constitutes a substantial portion of the property of the transferor, the term 'property' shall be taken to include the cash assets of the transferor.

Here, the legal issue is rooted in the question as to when a surviving corporation can be deemed entitled to the assets of the absorbed entity, particularly the unutilized input tax, and apply the same against future VAT liabilities. For this purpose, primary guidance can be gleaned from *Sections 78 and 79 of RCC* which provides for the effects of statutory merger or consolidation, to wit:

> SEC. 78. ***Effectivity of Merger or Consolidation***. – The articles of merger or of consolidation, signed and certified as required by this Code, shall be submitted to the Commission for its approval: Provided, That in the case of merger or consolidation of banks or banking institutions, loan

[54] See Exhibit "P-4", Certificate of Filing of the Articles and Plan of Merger, *supra* note 6.

[55] Republic Act No. 11232, An Act Providing for the Revised Corporation Code of the Philippines, approved on February 20, 2018.

> associations, trust companies, insurance companies, public utilities, educational institutions, and other special corporations governed by special laws, the favorable recommendation of the appropriate government agency shall first be obtained. If the Commission is satisfied that the merger or consolidation of the corporations concerned is consistent with the provisions of this Code and existing laws, it shall ***issue a certificate approving the articles and plan of merger or of consolidation, at which time the merger or consolidation shall be effective.***
>
> . . . .
>
> SEC. 79. Effects of Merger or Consolidation. – The merger or consolidation shall have the following effects:
>
> . . . .
>
> (c) The *surviving or the consolidated corporation shall* ***possess all the rights, privileges, immunities, and powers*** and shall be subject to all the duties and liabilities of a corporation organized under this Code;
>
> (d) The *surviving or the consolidated corporation shall possess all the rights, privileges, immunities and franchises of each constituent corporation*; and all real or personal property, all receivables due on whatever account, including subscriptions to shares and other choses in action, and every other interest of, belonging to, or due to each constituent corporation, ***shall be deemed transferred to and vested in such surviving or consolidated corporation without further act or deed;*** and
>
> . . . .
>
> (Emphasis and italics supplied)

A clear reading of the foregoing provisions shows that a statutory merger shall be *effective at the time the certificate approving the articles and plan of merger is issued*, and this results in the transfer of all rights, privileges, immunities, franchises, and other assets of the absorbed corporation *without need of any act or deed.*

To give clarification on the effective date of merger, the High Court ruled in the case of *Bank of Commerce vs. Heirs of Rodolfo dela Cruz*[56] that the reckoning point must be the date of approval of the articles of merger through the issuance of a certificate of merger by the Security and Exchange Commission, to wit:

> A merger is the union of two or more existing corporations in which the surviving corporation absorbs the others and continues the combined business. The merger dissolves the non-surviving corporations, and the surviving corporation acquires all the rights, properties and liabilities of the dissolved corporations. Considering that the merger involves fundamental changes in the corporation, as well as in the rights of the stockholders and the creditors, there must be an express provision

[56] G.R. No. 211519, August 14, 2017.

> of law authorizing the merger. *The merger does not become effective upon the mere agreement of the constituent corporations, but* ***upon the approval of the articles of merger by the Securities and Exchange Commission issuing the certificate of merger*** *as required by Section 79 of the Corporation Code.*
> (Emphasis and italics supplied)

As an exception, however, the effective date of the merger shall be other than the date of issuance of the certificate of merger or the so-called "Certificate of Filing of the Articles of Plan of Merger," when the parties provide for a date when the merger shall take effect. In such a case, the effective date shall be the date agreed upon by the constituent corporation, as stated in the Plan of Merger.[57]

Moreover, consistent with *Section 79* above, the Supreme Court has expressly recognized, in various jurisprudence, that while there is a dissolution of the absorbed or merged corporations, there is no winding up of their affairs or liquidation of their assets. Instead, the transfer of all rights and privileges of the constituent corporations occurs *by operation of law*, which is, as stated in *Section 79 of RCC*, an *automatic conveyance* of both assets and liabilities without any act or deed.[58]

It is noteworthy the BIR itself has recognized the foregoing principles on mergers and consolidations, in *RR No. 16-05*[59] which is the consolidated regulations specifically applicable to VAT. *Section 4.106.8(b)(3)* thereof states:

> (3) Merger or consolidation of corporations. The *unused input tax* of the dissolved corporation, ***as of the date of merger or consolidation***, *shall be absorbed by the surviving or new corporation.*
> (Emphasis and italics supplied.)

Also, in an earlier issuance, the BIR had the opportunity to clarify the applicability of the rule on mergers and consolidations prescribed in the then effective *RR No. 7-95*,[60] specifically in *Part III (3) of Revenue Memorandum Ruling No. 01-02*,[61] which states:

> III. Tax Consequences
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> . . . .

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[57] BIR Ruling No. 032-2002, dated August 12, 2002.

[58] Commissioner of Internal Revenue vs. La Tondeña Distillers Inc, G.R. No. 175118, July 15, 2015; Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation, G.R. No. 192398, September 29, 2014; Bank of Commerce vs. Radio Philippines Network Inc., G.R. No. 195615, April 21, 2014.

[59] Consolidated Value-Added Tax Regulations of 2005, September 1, 2005.

[60] Consolidated Value-Added Tax Regulations, December 9, 1995.

[61] Tax Consequences of De Facto Merger Pursuant to Section 40(C)(2) and (6)(b) of the National Internal Revenue Code of 1997, April 25, 2022.

3. Value-added tax.

. . . .

(b) Not subject to output tax.

. . . .

3) Merger or consolidation of corporations. The unused input tax of the dissolved corporation as of the date of merger or consolidation shall be absorbed by the surviving or new corporation.

. . . . The above sentence contemplates only a statutory merger or consolidation that, by operation of law, results in a "dissolved corporation" and a "surviving or new corporation". Furthermore, pursuant to Section 80 of the Corporation Code of the Philippines, *the unused input tax, being an asset, is transferred in statutory merger by operation of law*."
(Italics supplied.)

Applying the foregoing, the CTA *En Banc*, in *Commissioner of Internal Revenue vs. My Solid Technologies & Devices Corporation* ("*My Solid case*")[62] categorically refuted the BIR's argument that there must be compliance with tax regulatory conditions before input tax credits of the absorbed corporation can rightfully be conveyed to and utilized by the surviving corporation. It was clarified therein that the BIR must not confuse the requirement for closure of a business and the legal effects of a statutory merger, thus:

A close reading of the afore-quoted sections cited by petitioner refers to the closure or dissolution of registered entities which would *require these entities to file an application for cancellation of registration with the BIR and* ***do not refer to the conditions to be complied with before the legal effects of a merger may be realized*** under the relevant provisions of the Corporation Code.

. . . .

The conditions before the registration of a closing entity are cancelled under the 1997 NIRC are not the same conditions before the legal effects of a statutory merger may take place. Petitioner failed to make this distinction, hence, resulting to an erroneous application of the provisions of the 1997 NIRC to a statutory merger governed by the Corporation Code.

Accordingly, *we rule against the contention of petitioner that a notice of merger and/or an application of cancellation of registration filed with the BIR are conditions before the effects of a statutory merger may take place* which include, among others, the transfer of the properties, i.e., input tax credits, of the absorbed corporation, Mytel, to the surviving corporation which is the respondent, in this case.

[62] CTA EB Case No. 1767, August 9, 2019.

(Emphasis and italics supplied)

In resolving the Motion for Reconsideration in the *My Solid case*,[63] the Court *En Banc* also addressed the CIR's concern that the issued decision sought to be reconsidered effectively ruled that a merger may be approved without notice of merger having been filed first with the BIR, thus allegedly taking away the opportunity to assess any deficiency tax liabilities. The Court *En Banc* clarified that the BIR is not prevented to conduct an investigation and that any outstanding obligation may collected from the surviving corporation, to wit:

> In resolving such an issue, we find it imperative to distinguish the effects and the regulatory requirements relative to a closure of a corporation from the effects of a statutory merger as provided under the Corporation Code of the Philippines (Corporation Code). We acknowledge that corporations planning to dissolve their corporate existence must strictly comply with the regulatory requirements prescribed under the 1997 NIRC, as amended, and relevant rules and regulations, to ensure that proper taxes are paid before its eventual closure. The BIR has its own safeguards in place to prevent a closing entity to avoid paying its taxes before its certificate of license is withdrawn or its certificate of registration is canceled by the SEC. One such safeguard is the requirement of securing a tax clearance from the BIR. Petitioner finds it alarming that the Court would rule that a merger may be approved without the corresponding notice of merger having been filed (first) with the BIR which would notify them of the closure of the absorbed entity and which would in turn initiate the investigations of the latter's internal revenue tax liabilities, if any.
>
> Such anxiety on the part of the petitioner has no basis.
>
> As enunciated clearly by respondent in its Comment, *the BIR is not prevented from conducting an investigation of the absorbed entity's tax obligations or from issuing an assessment against the latter as a result of its closure*. Furthermore, in the case of a merger, the *absorbed corporation's outstanding obligations, if any, shall be transferred to the surviving corporation* as clearly provided under Section 80 of the Corporation Code . . .
> (Italics supplied)

Applying the above to the instant case, the pending investigation into PMPMI should not bar the transfer of said absorbed corporation's unutilized input VAT to petitioner. If the investigation discovers unresolved tax liabilities on the part of PMPMI, such obligations would logically transfer to petitioner as well.

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[63] Commissioner of Internal Revenue v. MY Solid Technologies & Devices Corp., C.T.A. EB Case No. 1767 (C.T.A. Case No. 8854) (Resolution), February 11, 2020.

We thus find petitioner's position, that a prior tax clearance in favor of an absorbed corporation is unnecessary for the surviving corporation to absorb the former's unutilized input VAT, is not just correct but also free of undesirable side effects.

Meanwhile, in denying petitioner's request for reconsideration, respondent relied heavily on the decision of the Supreme Court in the case of *Axia Power Holdings Philippines Corporation vs. Commissioner of Internal Revenue ("Axia case")*. It was ruled in the *Axia case* that for tax purposes, the corporation to be absorbed as a consequence of a merger cannot be considered as dissolved and, instead, remains in existence prior to the issuance of a tax clearance by the BIR. Thus, anchoring on the foregoing, respondent claims that PMFTC and PMPMI must first comply with procedural requirements for tax purposes before the latter can be considered legally dissolved, entitling the former to utilize any unutilized input tax.

The Court, however, finds the application of the *Axia case* to the instant Petition unmeritorious.

In the *Axia case*, the Supreme Court dealt with the primary issues as to whether an absorbed corporation in a merger has the legal personality to file a claim for refund of excess and unutilized creditable withholding tax ("CWT") and whether the surviving corporation can claim a refund of unutilized CWT if the absorbed entity had previously opted to carryover the same.

By applying the foregoing to the case at hand, it is apparent that the BIR once again elides the difference between the conditions before the registration of a closing entity is cancelled under the Tax Code *vis à vis* the conditions before the legal effects of a statutory merger may take place.

The procedures under *RR No. 13-2018* are required to cancel the registration of a VAT-registered entity. These rules, however, do not refer to the conditions to be complied with before the legal effects of a merger may be realized as the effects of merger and the effectivity thereof are clearly provided under *Sections 78 and 79 of the RCC* and by existing jurisprudence.

Based on the foregoing, We hold that PMFTC, as the surviving corporation, is entitled to claim the unutilized input VAT of PMPMI, the absorbed entity, notwithstanding the ongoing tax investigation and pending the issuance of a tax clearance. Under the Plan of Merger duly approved by the SEC, the effective date of the merger is on June 1, 2021, subject to the approval of the application for merger by the SEC.[64] Thus, by the time that

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[64] Plan of Merger of PMFTC Inc. and Philip Morris Philippines Manufacuring Inc., Docket, Vol. 1, p. 507.

PMFTC applied the excess input tax of PMPMI for purposes of filing its VAT return for the quarter ending June 30, 2021, petitioner has already legally acquired the rights over PMPMI's assets, including unutilized input VAT.

ACCORDINGLY, premises considered, the Petition for Review is hereby **GRANTED**. The BIR's Assessment Letter, dated July 27, 2021, Denial of Protest Letter, dated August 23, 2021, and Denial of Request for Reconsideration, dated September 30, 2021, assessing petitioner for deficiency VAT in the aggregate amount of ₱1,964,172,729.83, inclusive of increments and compromise penalties, for second quarter of 2021, are hereby **CANCELLED** and **SET ASIDE.**

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ON LEAVE
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

A T T E S T A T I O N

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.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Acting 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