REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

VANESSA M. VELASCO and **KRYSTAL MULTISALES CORPORATION,**
(No. 621 Bagumbong Taas, Bagumbong Road, 601 Artex Bldg., No. 453 J. Luna Street, Binondo, Manila)
(At-Large),
Accused.

CTA CRIM. CASE NO. O-1006
For: Violation of Section 255, in relation to Sections 253(d) and 256, of the NIRC of 1997, as amended

Members:

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

Promulgated:

JUL 05 2023

4:20 p.m.

x - x

RESOLUTION

To recall, on April 4, 2023, the Court directed the prosecution to amend the *Information* reflecting the correct name of the accused corporation, that is, KRYSTAL GEM MULTISALES CORPORATION.[1]

In compliance therewith, the prosecution filed on June 7, 2023 its **Manifestation** with attached *Amended Information*, indicating the correct name of the accused corporation.

Accordingly, plaintiff's *Manifestation* is **NOTED**. The attached *Amended Information* is **ADMITTED** as forming part of the records of the case.

That having been settled, this Court shall now proceed with the determination of the existence of probable cause for the issuance of warrant of arrest against accused.

The *Amended Information* reads as follows:

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[1] *Resolution* dated April 4, 2023, Docket, pp. 52-53.

"That on December 15, 2014 in Caloocan City, and within the jurisdiction of this Honorable Court, accused Krystal **Gem** Multisales Corporation, a domestic corporation engaged in the distribution of soap products and a registered taxpayer of the Revenue District Office No. 27, Caloocan City, with Tax Identification No. 000-043-414,[2] and accused Vanessa M. Velasco, its president, required by law to file value-added tax returns and pay the taxes due thereon, did then and there, willfully, unlawfully and knowingly fail to pay Value-Added Tax in the amount of Php70,454,243.04, exclusive of interest, for taxable year 2013, despite prior and post notices and demands, the latest being the Final Notice Before Seizure dated December 15, 2014, to damage and prejudice of the government in aforesaid amount, exclusive of surcharge."

CONTRARY TO LAW.

July 5, 2019, City of Manila, Philippines."

The prosecution presented certified true copies of the following supporting documents for the examination of the Court:

1. *Resolution* dated July 5, 2019 signed by Assistant State Prosecutor Hjalmar M. Quintana, Jr., recommended by Senior Deputy State Prosecutor Miguel F. Gudio, Jr., and approved by Prosecutor General Benedicto A. Malcontento;

2. *Investigation Data Form* with NPS Docket Number XVI-INV-19B-00065 dated February 28, 2019;

3. *Referral Letter* dated January 21, 2019 of the Commissioner of Internal Revenue; and

4. *Complaint-Affidavit* of Revenue Officer Robert M. Reyteran, Jose S. Barcela, Jr. and Kathlean S. Atacador, dated February 28, 2019, with attached annexes.

After careful consideration of the allegations in the *Amended Information* and personally examining and evaluating the supporting documents submitted, the Court finds that the right to institute the criminal action has already prescribed.

In resolving the issue of prescription of the offense charged, the following should be considered: (1) the period of prescription for the offense

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[2] Based on the *Original Information* and the supporting documents, the TIN of the accused corporation is **008**-043-414.

charged; (2) the time the period of prescription starts to run; and (3) the time the prescriptive period was interrupted.[3]

Section 281 of the NIRC of 1997, as amended, provides:

> "SEC. 281. *Prescription for Violations of any Provision of this Code.* - **All violations of any provision of this Code shall prescribe after five (5) years.**
>
> **Prescription shall begin to run from the day of the commission of the violation of the law,** and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.
>
> **The prescription shall be interrupted when proceedings are instituted against the guilty persons** and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.
>
> The term of prescription shall not run when the offender is absent from the Philippines." *(Emphasis supplied)*

Based on the afore-cited provision, the period of prescription for the offense charged is five (5) years. Likewise, the prescription shall begin to run from the day of the commission of the violation of the law, or if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.

This Court takes into consideration the case of *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines*[4] (*Lim* case), which is instructive in interpreting Section 281 of the NIRC of 1997 with respect to the commencement of the prescriptive period in relation to the charge of refusal to pay deficiency taxes due, to wit:

> "Relative to Criminal Cases Nos. 1788 and 1789 which involved petitioners' **refusal to pay the deficiency income taxes due**, again both parties are in accord that **by their nature, the violations as charged could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayers**. Petitioners maintain that the five-year period of limitation under Section 354 should be reckoned from April 7, 1965, the date of the original assessment while the Government insists that it should be counted from July 3, 1968 when the final notice and demand was served on petitioners' daughter-in-law.
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> We hold for the Government. Section 51 (b) of the Tax Code provides:

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[3] *Romualdez vs. Marcelo*, G.R. Nos. 165510-33, July 28, 2006, citing the case of *Domingo vs. Sandiganbayan.*

[4] G.R. Nos. L-48134-37, October 18, 1990.

> (b) Assessment and payment of deficiency tax. — After the return is filed, the Commissioner of internal Revenue shall examine it and assess the correct amount of the tax. *The tax or deficiency in tax so discovered shall be paid upon notice and demand from the Commissioner of Internal Revenue.* (Emphasis supplied)

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

In *Tupaz vs. Ulep*[5] (*Tupaz* case), the Supreme Court, citing the *Lim* case, held that the offense of failure to pay deficiency taxes is committed only after finality of the assessment coupled with the taxpayer's willful refusal to pay the taxes within the allotted period. We quote:

> "Petitioner was charged with failure to pay deficiency income tax after repeated demands by the taxing authority. In *Lim, Sr. vs. Court of Appeals,* we stated that by its nature **the violation could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayer**. Hence, it cannot be said that the offense has been committed as early as 1980, upon filing of the income tax return. This is so because prior to the finality of the assessment, the taxpayer has not committed any violation for nonpayment of the tax. **The offense was committed only after the finality of the assessment coupled with taxpayer's willful refusal to pay the taxes within the allotted period**. In this case, when the notice of assessment was issued on July 16, 1984, the taxpayer still had thirty (30) days from receipt thereof to protest or question the assessment. Otherwise, the assessment would become final and unappealable. As he did not protest, the assessment became final and unappealable on August 16, 1984. Consequently, when the complaint for preliminary investigation was filed with the Department of Justice on June 8, 1989, the criminal action was instituted within the five (5) year prescriptive period." (*Emphasis supplied*)

In the present case, records show that the accused received the *Formal Letter of Demand* and *Assessment Notice* on September 4, 2014,[6] which then attained finality thirty (30) days thereafter, or on October 5, 2014, when the period to file a protest lapsed. The BIR then issued a *Preliminary Collection Letter* on November 21, 2014[7] and a *Final Notice Before Seizure* dated

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[5] G.R. No. 127777, October 1, 1999.
[6] Docket, pp. 39-40.
[7] Docket, p. 42.

December 15, 2014,[8] which indicates that the accused refused to pay its tax liability despite demands.

Counting from the finality of the assessment (i.e., October 5, 2014), coupled with the accused's willful refusal to pay the taxes within the allotted period despite demands (i.e., December 15, 2014), the Information should have been filed before this Court within five (5) years from December 15, 2014, or until December 15, 2019. Thus, it is apparent that the five-year prescriptive period has already lapsed when the instant Information was filed before this Court on December 6, 2022.

WHEREFORE, CTA Criminal Case No. O-1006 is **DISMISSED** on the ground of prescription.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

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8 Docket, p. 43.