Tax Management Association of the Philippines, Inc.

TMAP Tax Updates

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BIR ISSUANCES

REVENUE MEMORANDUM CIRCULAR (RMC)

RMC No. 12-2021 issued on January 26, 2021

- This RMC consolidates the weekly issuances of Operations Memoranda (OM) Nos. 2-2021, 3-2021, 4-2021, and 5-2021 for the month of December 2020, circularizing the weekly 'Price of Sugar at Millsite' issued by the Sugar Regulatory Administration (SRA).
- The consolidated schedule (Annex A) on the weekly OMs contains only that of the current year for purposes of imposing the one percent (1%) expanded withholding tax on sugar under RR No. 2-98, as amended by RR No. 11-2014, as compared to the weekly SRA-issued 'Price of Sugar at Millsite,' which reflects the comparative prices of sugar between the previous and current years.

RMC No. 13-2021, dated January 27, 2021

- This RMC provides for the availability of the BIR Mobile TIN Verifier Application, a service channel for taxpayers to send online TIN validation and TIN inquiry.

RMC No. 14-2021, dated January 27, 2021

- This RMC clarifies the effectivity date of RMO No. 47-2020 which imposed new documentary requirements for the processing of VAT refund claims pursuant to Section 112 of the Tax Code. RMO No. 47-2020 shall commence on January 19, 2021 or after the effectivity period reckoned from the date of submission of the issuance to UP Law Center. Thus, the following shall be observed:

    1. VAT refund claims filed prior January 19, 2021 shall be filed and processed following the guidelines and procedures set forth in RMC No. 47-2019 and RMO No. 25-2019; and
    2. VAT refund claims filed on or after January 19, 2021 shall be filed and processed in accordance with RMO No. 47-2020.

RMC No. 15-2021, dated January 27, 2021

- This RMC announces the availability of Central Business Portal (CBP), an online system which serves as a central system to receive applications and captures application data involving business-related transactions and a platform that will promote the use of the electronic payment systems for SEC, BIR, SSS, PhilHealth, and Pag-ibig. It will be available to the following domestic corporations:

    1. Corporations with two (2) to four (4) incorporators;
    2. Regular corporations whose incorporators are juridical entities and/or the capital structure is not covered by the 25%-25% rule; and
    3. One Person Corporation (OPC).

RMC No. 16-2021, issued on January 28, 2021

- This RMC prescribes the guidelines in the submission of list of recipients of income exempt from income tax pursuant to Bayanihan Act as implemented under Revenue Regulations (RR) No. 29-2020.

- Pursuant to RR No. 29-2020, all employers required to submit Alphabetical List of Employees/Payees are required to submit a one-time list of recipients of income relative to income payments exempt from income tax per Bayanihan Act.
- The circular prescribes the format or template to be used for the required list to be submitted on January 31, 2021. In addition to the one-time list, employer shall also submit a quarterly report pertaining to employees who received retirement benefits exempted from income tax but later re-employed by them or their related parties during the succeeding twelve-month period from retirement. The submission of this quarterly report shall be done thirty (30) days from the close of all calendar quarters of 2021.

RMC No. 17-2021, issued on January 29, 2021

- This RMC extends the deadline for the filing of the Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes (BIR Form Nos. 1604-C and 1604-F) from January 31, 2021 to February 28, 2021.

RMC No. 18-2021 issued on February 2, 2021

- This RMC circularizes the clarifications on the filing of BIR Forms 1604-CF and 1604-E.
- For copies of BIR Form No. 2316, the same shall be accepted even without the signature of employee provided that the certificates are duly signed by the authorized representative of the taxpayer-employer. Moreover, taxpayers who already filed their tax returns thru eFPS and offline eBIRForms package need not submit hard copies to the registered Revenue District Office.

RMC No. 19-2021 issued on February 9, 2021

- This Circular is issued in compliance with and in observance of the Bureau's FOI Program. The circular publishes the Revised One-Page FOI Manual of the Bureau (Annex 1), amending the Bureau's One-Page Manual as circularized under RMC No. 3-2021.

RMC No. 20-2021 issued on February 9, 2021

- This Circular reissues RA No. 11494, entitled "An Act Providing for COVID-19 Response and Recovery Interventions and Providing Mechanisms to Accelerate the Recovery and Bolster the Resiliency of the Philippine Economy, Providing Funds Therefor, and for Other Purposes".

COURT DECISIONS

CTA DIVISION DECISIONS

Toyota Motors Philippines Corporation vs. CIR
CTA Case No. 9250 promulgated on January 19, 2021

Facts:

Company T filed with the Office of the District Collector of the Bureau of Customs (BOC)-Collection District II-A a letter request for tax refund or credit in the total amount PhP248,821,231.76 consisting of customs duties, excess VAT, and excess excise taxes it paid on its Importations from Japan for the year 2010. Thereafter, a Petition of Review was filed by Company T to the Court due to the inaction of the BOC.

The Court partially granted the petition of Company T. The Court disallowed the amount of PhP128,963,113.83 due to the failure of Company T to present machine-validated Import Entry and Internal Revenue Declarations (IEIRDs) and/or Single Administrative Documents (SAD). Furthermore, the Court denied the refund of the excise taxes since the amended Importer's Sworn Statements (ISS) were unsigned, unnotarized, and not submitted to the BIR. Thus, a Motion Reconsideration was filed. Company T contends that there is no need for the IEIRDs/SADs to be machine-validated since the Statements of Settlement of Duties and Taxes (SSDTs) are sufficient to prove payment of duties and taxes. Furthermore, Company T argues that the Amended ISS which were unsigned and unnotarized should not materially affect its claim for tax refund and the Court should have referred to the original ISS, which were all notarized.

Issues:

1. Should the refund of Company T be granted even though the IEIRDs and/or SAD are not machine validated?
2. Does the Amended ISS materially affect Company T's claim for tax refund?

Ruling:

1. Yes. The presentation of machine-validated IEIRDs/SADs which were undertaken under the BOC's Electronic to Mobile (e2m Customs System) does not appear indispensable, since the presentation by Company T of the SSDTs issued under the e2m customs system clearly suffices to prove the customs duties and taxes on imported articles have been paid.

   To prove the fact of importation and the corresponding payment of custom duties and taxes through the automated e2m Customs System under Customs Administrative Order (CAO) No. 10-2008, it is imperative that the importer present both the IEIRDs/SADs which must contain the necessary details required by law albeit sans machine validation by the Authorized Agent Banks (AABs); and the SSDTs which shows that the BOC has received the payment of customs duties and taxes through the AABs.

   The presentation of the IEIRDs/SADs is still necessary to establish the connection between the source document.

2. Yes. Without the Amended ISS, the Court cannot ascertain any excess excise tax paid because there can be no comparison of the original and the adjusted selling price, which is the basis of the excise tax.

   Section 149 of the Tax Code and RR No. 25-2003 provides that the computation of the excise taxes shall be based on the selling price of the manufacturer or importer as reflected in the manufacturer's/assembler's or importer's sworn statement duly filed with the BIR. In this case, it is Company T who relied on the Amended ISS. Company T submitted in evidence the amended ISS to show that it effected a decrease in the selling price of its CBU Importations.

AC Energy, Inc. v. CIR
CTA Case No. 10009 promulgated on January 25, 2021

Facts:

Company A sold a number of shares it owned from other corporations to Company B and Company C. Pursuant to such sales, Company A filed its Capital Gains Tax (CGT) Returns corresponding to the sales. Thereafter, Company A filed its Annual CGT Return covering the earlier mentioned transactions which reflected an overpayment/refundable CGT

amounting to over P19 Million. Company A later on filed with the BIR an Application for Tax Credits/Refunds for its alleged overpayment of CGT. Subsequently, Company A filed a Petition for Review.

Respondent BIR primarily argues that the Petition must fail because there is no erroneously paid tax in the first place. Inversely, Company A argues that there exists an overpayment of CGT after deducting its capital losses from its capital gains.

Issue:

Is Company A entitled to a refund of erroneously paid CGT?

Ruling:

Yes. Section 52(D) of the Tax Code provides that there are two (2) dates involved in the filing of CGT returns relative to the sale of shares not traded thru a stock exchange: one for each transaction within thirty (30) days thereafter; and another relative to the final consolidation of all transactions in the TY, before the 15th day of the 4th month following the close thereof. The determination of CGT (from the sale or exchange of shares of stock not traded thru a local stock exchange) to which a domestic corporation may be held liable is on an annual basis.

Such being the case, the CGT paid for a particular transaction should be considered as a mere installment, an advance, or a deposit, subject to the final determination of CGT for the entire TY in which such transaction took place, and after considering other transactions which took place within the same TY.

Considering that the computation made by Company A is in accordance with Section 27(D)(2) of the Tax Code, as amended, and since Company A complied with the provisions of Sections 52(D) and 56(A)(1) thereof, the amount of over P19 Million represents an amount which was levied without statutory authority or plainly, an erroneously paid CGT, which is refundable under Section 229 of the same law.

New Farmers Plaza, Inc. vs. CIR
CTA Case No. 9474 promulgated on January 27, 2021

Facts:

Corporation F received a Formal Letter of Demand (FLD) from the BIR for deficiency income tax, VAT, and EWT for Calendar Year (CY) 2006. Corporation F then filed an Application for Compromise based on doubtful validity of the alleged deficiency taxes assessed, but was subsequently denied in the Notice of Denial issued by Respondent CIR.

Corporation F mainly argues that the Court of Tax Appeals (CTA) is empowered to review the petition pursuant to its "Other Matters" jurisdiction and that the assessment was not just of doubtful validity but was in fact void. Respondent CIR, on the other hand, argues that the CTA has no jurisdiction over the instant petition as the issue is his denial of the application/offer of compromise settlement which is discretionary on his part and that it is unappealable and the courts cannot compel a party to give his consent to a contract or agreement.

Issues:

1. Does the CTA have jurisdiction to try the case considering it involves the denial of the Respondent CIR on Corporation F's Application/Offer of compromise settlement?
2. Are the requirements prescribed by law for the exercise of the power to compromise a tax liability complied with by Respondent CIR?

Ruling:

1. Yes. The CTA has jurisdiction to entertain the present appeal. Section 7(1)(1) of R.A. 1125, as amended by RA No. 9282 provides that the CTA shall exercise exclusive appellate jurisdiction to review by appeal, the decision of the CIR in cases involving other matters arising under the Tax Code or other laws administered by the BIR. The appellate jurisdiction of this Court is not limited to cases which involve decisions of Respondent CIR on matters relating to assessments or refunds.

   As held in *PNOC v. CA* (G.R. No. 109976 & 112800, April 26, 2005), the discretionary authority to compromise granted to the BIR Commissioner is never meant to be absolute, uncontrolled, and unrestrained. The Commissioner would have to exercise his discretion within the parameters set by the law. In case he abuses his discretion, the CTA may correct such abuse if the matter is appealed to them.

   While Respondent CIR's power to compromise is sanctioned under the Tax Code, the exercise thereof, whether in granting or denying the application for compromise, is subject to the determination of this Court, in the first instance, whether the same is "within the parameters set by the law".

2. No. The legal requirements for a valid exercise of CIR's power to compromise a tax liability are as follows:
   a. There exists a reasonable doubt as to the validity of the claim against the concerned taxpayer, or the financial position of the taxpayer demonstrates a clear inability to pay the assessed tax;
   b. The taxpayer has paid the minimum compromise rate, which is either forty percent (40%) or ten percent (10%) of the basic assessed tax or taxes, depending on the ground being relied upon. The compromise offer must have been paid and fully settled by the concerned taxpayer upon the filing of the application for compromise settlement; and
   c. In case the basic tax exceeds P1,000,000.00, the application for compromise settlement has been approved by the National Evaluation Board (NEB), with the concurrence of Respondent CIR; and in case the basic tax is P500,00.000 or less, the said application was approved by the Regional Evaluation Board (REB).

   Corporation F has complied with the payment and full settlement of the required amounts upon the filing of its application for compromise settlement. However, there is no indication that the application for compromise settlement for the deficiency tax assessment, which in this case exceeds P1,000,000.00, was approved by the NEB. The Notice of Denial shows that it was only the Regional Evaluation Board (REB) which 'disapproved' Corporation F's application for compromise settlement. Thus, it is implied that the same application was never presented to the NEB for review and evaluation. Consequently, for failure to follow the proper exercise of the Respondent CIR's power to compromise tax liability, the Notice of Denial is void.

Wells Fargo Enterprise Global Services v. CIR
CTA No. 9849 promulgated on February 8, 2021

Facts:

Petitioner W Co. is a Philippine Economic Zone Authority (PEZA) registered entity operating as a duly licensed Philippine Branch office of Company W, a company duly-organized under the laws of the USA. In the course of its business, Petitioner W Co. purchased goods and services that were subjected to VAT. As a result, Petitioner incurred and paid input VAT attributable to its zero-rated sales.

The administrative claim for refund filed by Petitioner W. Co. was denied by the Respondent BIR on the ground that sales made by a VAT-registered supplier from a customs territory to a PEZA-registered enterprise is treated as indirect export subject to zero percent VAT. Petitioner mainly argued that it has complied with all the statutory requisites provided for under Section 112(A) of the Tax Code. Aggrieved with such decision, Petitioner Company W filed a Petition for Review with the CTA.

Issue:

Is Petitioner W Co. entitled to a refund of its excess and unutilized input VAT?

Ruling:

No. Although it would appear from the records that Petitioner incurred and paid input VAT for its domestic purchases, it cannot claim refund on the same.

Refund is not allowed as no VAT should have been passed to the W Co. by virtue of its status as a PEZA entity. Pursuant to the Destination Principle, Cross Border Doctrine, and Sections 8 and 25 of Republic Act (R.A.) No. 7916 (PEZA Law), W Co. is not eligible for the refund since domestic purchases of a PEZA entity should be accorded with zero-rating. Moreover, in reference to the Destination Principle, it is not essential that the sale of goods to a PEZA-registered entity be directly connected with the registered activities of the supplier.

The domestic purchases of goods and services by W Co. that were destined for consumption within the ecozone are deemed exports of petitioner's suppliers and should be free of VAT pursuant to Section 5(3) of RMC 74-99; hence, no input VAT should therefore be paid on such purchases. Accordingly, W Co. is not entitled to its claim for refund of input VAT on domestic purchases of goods and services other than capital goods Furthermore, Petitioner W. Co. can claim refund from its Supplier of Goods, Properties and Services that charged Input VAT in its purchases.

Ginebra San Miguel v. CIR
CTA Case No. 8953 & 8954, February 1, 2021

Facts:

Petitioner filed a Motion for Reconsideration on the earlier decision of the Court denying its claim for refund of erroneously assessed excise taxes in the total amount of Php715,258,843.38.

Petitioner asserted that it simply needs to show that the finished goods were produced exclusively from ethyl alcohol on which the excise taxes had already been paid.

On the other hand, the CIR argued that claims for refund partake the nature of exemptions and are strictly construed against the claimant and cannot be allowed.

Issue:

Is the Petitioner entitled to refund the excise taxes on removals of its distilled spirits or finished products?

Ruling:

The Petition is partially meritorious. A perusal of documents showed that not all imported raw materials were properly supported. Further, under the previous decision, Petitioner failed to determine the ratio of raw alcohol to finished goods, thus, a failure to prove the factual aspect of its claim. With this, Petitioner posited that prorating method utilized by Independent Certified Public Accountant (ICPA) is an accepted method, is mathematically

and logically sound, and is a logical consequence of the FIFO method which the ICPA employed.

Moreover, excise taxes on raw material in transit in 2012, though only reflected in the 2013 Official Registry Book, were also disallowed. Therefore, in light of the foregoing, the Motion was partially granted, entitling refund in the reduced amount of PhP319,755,320.82.

Penn Philippines, Inc. v. CIR
CTA Case No 7457 promulgated on January 19, 2021

Facts:

Petitioner P Co. filed a petition for review relative to its application for refund/issuance of TCC in the amount of Php4,758,453.00 on alleged unutilized input VAT for the four (4) quarters of calendar year (CY) 2004.

Issue:

Is P Co. entitled to a refund of its unutilized input VAT?

Ruling:

No. P Co. has complied with all the requirements for the refund of input VAT attributable to zero-rated sales, except that portion of input VAT which were not properly substantiated and not compliant with the invoicing requirements pursuant to Sections 113 and 237 of the Tax Code.

Furthermore, some valid input VAT are not entirely attributable to zero-rated sales since P Co. also had sales subject to VAT.

CTA EN BANC DECISIONS

Public Safety Mutual Benefit Fund, Inc., v. Laquian
CTA EB No. 2198 promulgated on January 15, 2021

Facts:

Petitioner Company A is a non-stock, non-profit domestic corporation organized as a mutual benefit association. On October 29, 2015, the acting City Treasurer of San Juan issued Tax Order of Payment (TOP 1) assessing petitioner for deficiency local business tax for taxable years 2009 to 2015, amounting to PhP122 Million inclusive of penalties and interests.

On December 29, 2015, Company A filed its protest letter assailing TOP 1. In 2017, respondent issued another TOP (TOP2), assessing Company A for deficiency local business tax covering 2009 to 2017, amounting to PhP160 Million inclusive of penalties and interests. Thereafter, on January 23, 2018 and January 25, 2018, Company A received by personal service and by registered mail, respectively, a letter issued by acting City Treasurer of San Juan denying its protest.

On February 22, 2018, Company A filed a Petition with the Regional Trial Court (RTC) praying for the cancellation and setting aside of TOP 1 and TOP 2.

Issue:

Has Company A's right to appeal the assessment before the RTC prescribed?

Ruling:

Yes. Company A's right to appeal the assessment before the RTC has already prescribed.

The Local Government Code (LGC) provides that the taxpayer has 60 days from receipt of the notice of assessment within which to file its written protest with the local treasurer. The local treasurer is then mandated to act on the protest within a period of 60 days counted from the filing of the protest. In case of denial, the taxpayer shall file its appeal before a court of competent jurisdiction within a period of 30 days from the receipt of the adverse decision. However, if the local treasurer fails to act on the protest within the prescribed 60-day period, the taxpayer shall institute an appeal before a court of competent jurisdiction within a period of 30 days reckoned from the lapse of the 60-day period within which the local treasurer should decide. It is further provided that the failure of the taxpayer to file a protest with the local treasurer or to appeal the decision or the inaction of the local treasurer, will result in the finality of the local tax assessment.

Records reveal that Company A received TOP1 on November 3, 2015. Company A then filed its written protest against the said assessment on December 29, 2015. Counting 60 days therefrom, the City Treasurer had until February 27, 2016, within which to decide on the protest. In view of the City Treasurer's failure to act on the subject protest within the mandated 60-day period, such inaction shall be deemed a denial of Company A's protest.

Consequently, Company A had 30 days from February 27, 2016 or until March 28, 2016 within which to file an appeal before a court of competent jurisdiction. However, considering that Company A filed its appeal before RTC only on February 22, 2018, the same was clearly filed out of time.

With regard to TOP 2, there is nothing on record which would show that Company A filed a written protest thereto. In fact, Company A admitted that it did not file any written protest to TOP2.

Hence, in view of Company A's failure to timely file an appeal before the RTC with respect to TOP1 and its failure to file a written protest with the City Treasurer relative to TOP2, both assessments have become final, executory, and unappealable.

People of the Philippines v. Consebido
CTA EB Crim. No. 079 promulgated on January 27, 2021

Facts:

Respondent filed three (3) Motions to Quash three (3) separate Informations for violations of Section 255 of the Tax Code, as amended, in connection with Respondent's alleged failure to supply correct and accurate information in his Annual Tax Return and willful failure to file quarterly VAT returns for the taxable year 2009.

Respondent primarily argues that the government's right to file an action has already prescribed.

On the other hand, Petitioner CIR argues that criminal tax cases are imprescriptible as long as the period from the discovery and institution of judicial proceedings for its investigation and punishment does not exceed five (5) years.

Issue:

Has the Government's right to file an action already prescribed?

Ruling:

Yes. Petitioner took more than 5 years to file an information in court from the time of the institution of judicial proceedings for the investigation, in violation of the five-year prescriptive period for criminal violation under Section 281 of the Tax Code as amended. Where the period from the institution of judicial proceedings for the investigation until the filing of the information in court exceeds five (5) years, then the government's right to institute criminal action has prescribed.

In the case at bar, the filing of the complaint affidavit with the DOJ on January 30, 2014 constitutes as the judicial proceeding for investigation which commences the five-year prescriptive period. Counting five (5) years from January 30, 2014, the prescriptive period lapsed on January 30, 2019. Clearly, the prescription had already set in when Petitioner filed the Criminal Informations against the Respondent in March 2019.

CIR v. CE Luzon Geothermal Power Company, Inc.
CTA EB No. 2132 promulgated on January 28, 2021

Issue:

Is a Taxpayer allowed to introduce evidence (which were not presented during the administrative proceedings) in a judicial proceeding?

Ruling:

Yes. Jurisprudence dictates that a Taxpayer petitioner is allowed to introduce evidence in the judicial proceedings which were not presented during the administrative proceedings, provided that the denial of the VAT refund is not due to failure to submit complete documents despite notice or request.

A distinction must be made between a) an administrative VAT refund claim that was dismissed due to failure to submit complete documents despite notice or request, and b) administrative VAT refund claims that were either deemed denied due to inaction or denied by petitioner other than due to failure to submit complete documents despite notice or request. In the first instance, a taxpayer-claimant must show this Court during the judicial proceedings not only his entitlement to a VAT refund under substantive law, but that he also submitted complete documents as requested by petitioner CIR. In the second instance, a taxpayer-claimant may present all evidence to prove its entitlement to a VAT refund, and the Court will consider all evidence offered even those not presented before petitioner CIR at the administrative level.

In the instant case, the VAT refund claim for the second quarter of TY 2003 was denied by petitioner CIR allegedly because it was carried over to the succeeding periods. Hence, the same was not denied due to failure to submit complete documents despite notice or request. As such, the Court may similarly consider all evidence presented by the taxpayer in the judicial proceedings to support its claim for VAT refund, including those which were not submitted before petitioner CIR at the administrative level.

CIR v. Northwind Power Development Corp.
CTA EB No. 2151 promulgated on January 21, 2021

Facts:

Company A filed a Motion to Withdraw its Petition for Review filed with the CTA for Petitioner CIR's partial denial of Company A's claim for refund of the excess and unapplied input VAT directly attributable to its zero-rated sales for the TY 2016. The CTA then granted Company A's Motion to Withdraw. Petitioner CIR filed a Motion for Reconsideration arguing that while he did not have any opposition to Company A's Motion

to Withdraw, the CTA should have resolved the merits of his counterclaim that Company A's claim for refund should be denied in its entirety which the BIR's Excise Large Taxpayer Audit Division mistakenly partially granted. Company A, on the other hand, argues that Petitioner CIR had enough opportunity to review its input VAT claim and that to allow Petitioner CIR to question its own action through the filing of a counterclaim while revoking what he had already previously granted goes against the rules set forth by law.

Issues:

1. Is the CIR allowed to appeal before the CTA the granted portion of a VAT refund claim?
2. Is there a failure to exhaust administrative remedies on the part of CIR when it resorted to a counterclaim to question a grant of VAT refund?

Ruling:

(1) No. Section 112 (C) of the Tax Code expressly provides that what is appealable before the CTA is a full denial or partial denial of a VAT refund claim. Given the foregoing, Petitioner CIR cannot raise any issue on the granted portion of the VAT refund claim. Otherwise, the rule that only full denials or partial denials of VAT refund claims can be appealed before the court will be subverted.

Elementary is the rule that the right to appeal is a statutory right. "The right to appeal is neither a natural right nor is it a component of due process. It is a mere statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law." Hence, matters and issues that can be appealed are limited to those provided under the law. Considering that a granted VAT refund claim is not one of those specifically mentioned under Section 112 (C) of the Tax Code which can be appealed before the CTA, thus, any issue or question raised thereon cannot be entertained by the courts.

(2) Yes. Petitioner's act of immediately seeking a Petition for Review before the CTA denied the administrative machinery (i.e., BIR) a chance to resolve this tax dispute before recourse is had with the courts. Moreover, this deprived Company A of the rights and remedies available before the administrative proceedings, which include among others: the right to have a Letter of Authority (LOA) issued prior to an audit/investigation, the right to receive a preliminary assessment notice ("PAN"), the right to file a reply to said PAN, the right to a final assessment notice ("FAN") (which provides a final demand to pay deficiency taxes due, and the factual and legal bases for an assessment), and the right protest said FAN.

In effect, by setting up the subject counterclaim in a VAT refund case, petitioner CIR is collecting a tax liability without a prior assessment. This manner of tax collection deprives Company A of its due process rights guaranteed under the Constitution, Tax Code, and corresponding revenue issuances. Considering the foregoing, petitioner CIR's act of filing a counterclaim to collect on an erroneously granted and paid VAT refund claim cannot prosper as it violates Company A's right to due process.

CIR v. Lorenzo Shipping
CTA EB Case No. 1964 promulgated on January 26, 2021

Facts:

On April 18, 2013, Company L received an undated FAN and undated Audit Result/Assessment Notices assessing petitioner for alleged deficiency taxes amounting to P2 Billion for the TY of 2008. Company L filed a protest to the FAN on May 17, 2013 via registered mail. The Protest letter was however dispatched by the Post Office only on June 19, 2013.

Issue:

Was the protest filed on time?

Ruling:

Yes. Company L's protest was filed through registered mail on May 17, 2013, notwithstanding its dispatch by the Post Office only on June 19, 2013. This is in accordance with Section 3, Rule 13 of the Revised Rules of Court and by the Supreme Court in the case of *South Villa Chinese Restaurant and City Foods Corporation v. NLRC,* which stated that the date of the post office stamp on the envelope or the registry receipt is considered the date of filing of a pleading sent by registered mail. Thus, the administrative protest was timely filed on May 17, 2013.

CIR v. Kurimoto Corporation
CTA EB No. 2108 promulgated on February 3, 2021

Facts:

The CTA in Division partially granted Company K's application for VAT refund/credit for the 1st and 2nd quarters of TY 2013. Thereafter, Petitioner CIR filed a Petition for Review before the CTA *en banc*. Petitioner CIR argues that the CTA in Division erred in ruling that Company K was able to prove that it has VAT zero-rated sales of services since Company K failed to comply with the invoicing requirements in its official receipts under the Tax Code.

Issue:

Is a general allegation couched in the nature of a general assignment of error allowed?

Ruling:

No. Petitioner CIR merely alleged that the official receipts submitted by Company K do not contain the required information under the Tax Code without identifying the specific errors in the said documents. The petition for review of CIR is couched in the nature of a general assignment of error which is not allowed under the Rules of Court and jurisprudence.

Petitioner CIR failed to prove that Company K did not comply with the invoicing requirements under the Tax Code. Section 113 of the Tax Code provides for the invoicing requirements for VAT-registered persons. RMC No. 42-03, failure to comply with the invoicing requirements on the documents supporting the sale of goods and services will result in the disallowance of the claim for input tax by the claimant. Clearly, it is vital for a taxpayer claiming VAT refund/credit to prove that it had followed the invoicing requirements, failure of which will cause the denial of the said claim.

Lastly, tax refunds are in the nature of a claim for exemption and, therefore, the law is construed in *strictissimi juris* against the taxpayer. Accordingly, evidence presented entitling a taxpayer to an exemption must be scrutinized and must be duly proven. In this case, Petitioner CIR failed to cite the specific invoicing requirements Company K allegedly violated.

CIR v. Vitalo Packaging International, Inc.
CTA EB Case No. 2148 promulgated on February 3, 2021

Facts:

On April 18, 2008, Company V informed the BIR of its change of address. Company V was issued a Certificate of Registration reflecting its new address. Between 2010 to 2011, Company V received the PAN, FLD/FAN, amended PAN, amended FLD/FAN, and a Preliminary Collection Letter (PCL) at its old address. Company V was able to file a protest to the FLD/FAN and contest the PCL.

Thereafter, in 2011, a Final Notice Before Seizure (FNBS) was issued against Company V at its old address. Company V then filed a letter with the Revenue District Officer refuting the findings against the alleged delinquency taxes.

Company V's request was denied by the Revenue District Officer. In 2011, a warrant of distraint and/or levy (WDL) was issued against Company V at its old address.

Issue:

Is the deficiency tax assessment null and void for having been issued in violation of the due process requirement of law?

Ruling:

Yes. The record shows that the PCL, FNBS and WDL were served in 2011. During that period, RR 12-99 was the prevailing rule. In the said RR 12-99, notices are required to be sent only by registered mail or personal delivery. A constructive service is allowed if the notice was sent by registered mail and no response was received from the taxpayer within the prescribed period from the date of the posting thereof in the mail, the same was to be considered actually or constructively received by the taxpayer. However, this presumes that the notice was sent to the correct address. In *Commissioner of Internal Revenue v. BASF Coating + Inks Phils. Inc.* . where the FAN was sent to the wrong address, the Supreme Court reminds us that "one of the requirements of a valid assessment notice is that the letter or notice must be properly addressed. It is not enough that the notice is sent by registered mail as provided under the said Revenue Regulation."

In the instant case, Company V, in legal fiction, never received any of the notices the CIR sent, actually or constructively, notwithstanding the fact that they were able to protest the PAN and FAN.

In *CIR v. SVI Technologies, Inc.,* the CTA ruled that Section 3.1.4 of RR 12-99 requires that the FAN/FLD must be received by the taxpayer or its authorized representative and that the alleged receipt by a security guard of the FAN/FLD does not satisfy the due process requirement under RR 12-99 and Section 228 of the NIRC. Thus, if service to the security guard of a company is violative of due process for he has no authority to receive notices, what more if the notices are served to a security guard of a different company that has no connection whatsoever to the taxpayer?

In the case at bar, the CIR failed to present a certification of the postmaster that the notice was duly issued and delivered to Company V such that service by registered mail would be deemed completed. Furthermore, the signatures in the registry return receipts remained unidentified and unauthenticated. Neither was it established that the signatures thereon belonged to Company V's authorized representatives. The FAN, in fact, was received by the security guard of the new lessee of Company V's old address and was not even the latter's employee.

Lapanday Agricultural and Development Corp v. CIR
CTA EB No. 2177 promulgated on February 3, 2021

Facts:

In January 2008 and April 2009, Company A filed with the BIR its administrative claims for the issuance of tax credit certificates (TCCs), for excess and unutilized input VAT attributable to zero-rated sales covering the four (4) quarters of TY 2007. Respondent CIR did not act upon the said claims until almost 10 years later when Company A received a Denial Letter denying all four claims. Company A then filed a Petition for Review before the

CTA but was dismissed for lack of jurisdiction. Company A argues that the mandatory and jurisdictional nature of the 120+30-day period upheld in various Supreme Court decisions and RMC 54-2014 does not apply in cases where respondent issues a decision on the claim for input VAT refund/TCC after the 120-day period. Respondent CIR maintains that the CTA was correct in ruling that his inaction on Company A's administrative claims, which is "deemed a denial" decision, has attained finality and thus unappealable.

Issue:

Can the CTA take cognizance of the Petition for Review for actions involving claims for the issuance of TCCs which were denied by the CIR 10 years after its filing?

Ruling:

No. Section 112 of the Tax Code, as amended, provides the procedure for filing a claim for VAT refund or credit, and prescribes the corresponding periods.

Section 112(C) of the Tax Code, as amended, speaks of two (2) periods: (1) the 120-day period, which serves as a waiting period to give time for the CIR to act on the administrative claim for a tax credit or refund; and, (2) the 30-day period, which refers to the period for filing a judicial claim with the CTA. Contrary to petitioner's position that the aforesaid 120+30-day period is merely directory and non-jurisdictional, the Supreme Court, in a long line of cases, has consistently interpreted the 120+30-day period in refund or tax credit cases, pursuant to Section 112(C) of the Tax Code, as amended, as both mandatory and jurisdictional.

It is thus settled that the taxpayer may file the appeal within 30 days after the CIR denies the administrative claim within the 120-day waiting period, or it may file the appeal within 30 days from the expiration of the 120-day period if there is inaction on the part of the CIR. It must be emphasized, however, that the judicial claim has to be filed within a period of 30 days after the receipt of respondent CIR's decision or ruling or after the expiration of the 120-day period, whichever is sooner.

San Miguel Brewery v. CIR
CTA EB Case No. 2144 promulgated on February 4, 2021

Facts:

Company B is seeking to claim a refund or an issuance of tax credit for its erroneously paid excise taxes amounting to PhP48 Million. The CTA partially granted Company B's claim on the amount of PhP44 Million. It denied the refund for the PhP4 Million on the ground that Company B did not submit the required sworn statements as required by RR No. 17-2012. In its appeal to the CTA EB, Company B argued that it should be granted a refund to the remaining PhP4 Million as it had already submitted the sworn statements to the BIR.

Issue:

Is the submission of the sworn statements to the BIR enough in a judicial claim for refund or issuance of tax credit?

Ruling:

No. In tax refund cases filed before the CTA, it is incumbent upon the taxpayer-claimant to prove every minute aspect of his claim. He cannot simply rely on the evidence he has already presented in the administrative claim before the BIR for the success of the judicial claim for refund. He must present and offer anew with the Court the evidence already presented before the CIR and such other evidence (although was not submitted to the CIR during the administrative proceedings) which are necessary to prove his entitlement to his tax refund claim. The Supreme Court held in *CIR v. Manila Mining Corporation* that evidence submitted

before the BIR in tax refund cases cannot be given probative value by the CTA unless presented and formally offered anew by the taxpayer-claimant.

CIR vs. Mindanao Sanitarium and Hospital College, Inc.
CTA EB Case No. 2139 promulgated on January 27, 2021

Facts:

Petitioner CIR filed a Petition for Review seeking to reverse the decision of the CTA in Division to cancel the FLD issued to Respondent College M. In this case, the PAN received by College M was addressed and delivered to a certain "Mindanao Sanitarium and Hospital, Inc." Petitioner CIR insisted that the fact of mailing was supported by the corresponding Master List of Mail Matters and even a certification from the Post Office.

Issue:

Was the service of the PAN valid?

Ruling:

No, service of PAN to the wrong taxpayer necessarily leads to denial of due process. A perusal of records revealed that the PAN was addressed and delivered to a certain "Mindanao Sanitarium and Hospital, Inc." which is a different entity as compared to Respondent College M. Likewise, Petitioner CIR failed to present the registry receipt showing that Respondent College M indeed received the PAN. In *CIR vs. Metro Star Superama, Inc.,* the Court emphasized the importance of PAN to the due process rights of Respondent and the validity of the assessment made by Petitioner. Thus, in the absence of a valid service of the PAN, any assessment is void.

Amadeus Marketing Philippines, Inc. vs. CIR
CTA EB NOS. 2137 and 2153, promulgated on January 26, 2021

Facts:

Corporation A and Respondent CIR filed their respective Petitions for Review seeking the reversal of the earlier decision of the Court in Division partially granting Corporation A's request for refund or issuance of a TCC pursuant to Section 112 of the Tax Code. Respondent CIR argued that sales to Corporation B must be disallowed since the entity is found to be doing business in the Philippines-based Corporation B on an earlier decided case also involving Corporation A. On the other hand, Corporation A argued that the issue that Corporation B is an entity doing business in the Philippines has already been settled by the Court in Division finding the evidence Corporation A had presented to be sufficient in proving that Corporation B is a non-resident foreign corporation doing business outside the Philippines.

Issue:

Is Corporation B an entity considered doing business in the Philippines?

Ruling:

Yes. Although it would seem that under Section 108(B)(2) of the Tax Code, Corporation B is a foreign entity doing business outside the Philippines, a thorough review of the agreement submitted by Corporation A revealed that Corporation B is doing business in the Philippines. Hence, all of the alleged zero-rated sales to which refund is attributed were disallowed since it all resulted in services rendered by Corporation A to Corporation B.

SUPREME COURT DECISIONS

CIR vs. Filminera Resources Corporation
G. R. No. 236325 promulgated on September 16, 2020 (Uploaded in the Supreme Court website on January 26, 2021)

Facts:

Company C, a domestic corporation registered with the Board of Investments (BOI), entered into a Sales and Purchase Agreement with Company D. For the third and fourth quarters of the FY ending June 30, 2010, Company D 's sales were all made to Company C. On March 30, 2012 and June 29, 2012, Company D filed administrative claims for refund or issuance of Tax Credit Certificates of its unutilized input VAT attributable to its zero-rated sales for the third and fourth quarters. Thereafter, on August 16, 2012 and November 23, 2012, Company D filed separate petitions for review before the CTA.

The CTA Division initially denied Company D's petition on the ground of insufficiency of evidence. In seeking reconsideration, Company D submitted a certified true copy of a BOI Certification to establish that Company C was a BOI-registered enterprise that exported its total sales volume from July 1, 2009 to June 30, 2010. The CTA Division amended its decision and granted the refund to Company D. The CTA En Banc adopted the CTA Division's decision.

Issue:

Is the BOI Certification presented a sufficient document to prove that sales were exported?

Ruling:

No, a BOI Certification presented was not a sufficient document to prove that sales were exported.

Sales made to a BOI-registered buyer are export sales subject to the zero percent rate if the following conditions are met: (I) the buyer is a BOI-registered manufacturer/producer; (2) the buyer's products are 100% exported; and (3) the BOI certified that the buyer exported 100% of its products. For this purpose, the BOI Certification is vital for the seller-taxpayer to avail of the benefits of zero-rating. The certification is evidence that the buyer exported its entire products and shall serve as authority for the seller to claim for refund or tax credit.

A plain reading of the certification shows that Company C exported 100% of its total sales volume/value, from January 1 to December 31, 2009. However, nothing in the certification shows that Company C similarly exported its entire products for the third and fourth quarters of FY 2010, or from January 1 to June 30, 2010. The validity period of the BOI certification (January 01 to December 31, 2010) should not be confused with the period identified in the certification when the buyer actually exported 100% of its products.

In order for the sales made to Company C during the third and fourth quarters of FY 2010 qualify as zero-rated sales, the BOI must still certify that Company C actually exported its entire product from January 1 to December 31, 2010. The BOI Certification failed to ascertain this fact.

SECURITIES AND EXCHANGE COMMISSION ISSUANCES

Opinion No. 21-01 issued on January 18, 2021

- The By-Laws of Padgett Place Condominium Corp. (TPPC Corp.) does not provide for the procedure in filling-up vacancies in the Board of Trustees, where three out of its five members resigned. Thus, TPPC Corp. seeks the opinion of the SEC on how the vacancies will be filled-up and whether the remaining two trustees have the power and authority to merely appoint the replacement of the members of the Board of Trustees who resigned.
- Section 28 of the Revised Corporation Code (RCC) provides that any vacancy occurring in the board of directors or trustees other than by removal or by expiration of term may be filled by the vote of at least a majority of the remaining directors or trustees, if still constituting a quorum; otherwise, said vacancies must be filled by the stockholders or members in a regular or special meeting called for that purpose. Thus, the law requires that vacancies in the board resulting from resignation be filled-up by the stockholders or members in a regular or special meeting called for the purpose if the remaining trustees do not constitute a quorum to ensure the recognition and strict implementation of the policy that only those who have been elected by the shareholders or members can rightfully exercise and discharge the duties and functions of a director or trustee, and be made fully accountable to the shareholders or members for the same.
- Hence, the SEC opined that the remaining two members of the Board of Trustees of TPPC Corp. cannot fill-up the vacancies left by the three other members of the board who all resigned on the ground that the remaining two trustees will no longer constitute a quorum of the Board which is required under Section 28 of the RCC. Moreover, the remaining two members of the Board of Trustees of TPPC Corp., which do not constitute a quorum, do not have the legal authority to fill-up the vacancies by majority vote. Hence, the filling-up of the vacancies in the Board of Trustee must be done by the general membership of TPPC Corp. in a regular or special meeting called for that purpose.

Memorandum Circular No. 1 s. 2021 issued on January 27, 2021

- This MC provides for the guidelines in preventing the misuse of Corporations for illicit activities through measures designed to promote transparency of beneficial ownership. Under this Memorandum, all nominee directors/trustees and nominee shareholders, incorporators/applicants for incorporation, and all concerned corporations should be guided of the following:

  - Prohibition against the issuance, sale, public offering of bearer shares/bearer share warrants;
  - Disclosure and recording of alienation, sale, or transfer of shares shall be disclosed and recorded in the Stock and Transfer Book within 30 days from date of such alienation, sale, or transfer;
  - No dividends shall be paid to any person or entity unless his/her/its name appears in the records of the corporation as the owner of the shares of stock for which dividends are being paid;
  - Mandatory disclosure of the person on whose behalf the corporation is registered and the nominators/principals of nominee incorporators/first directors/trustees and shareholders of corporations applying for registration;
  - Mandatory disclosure of nominators on whose behalf the corporation is registered and the nominators/principals of nominee incorporators/first directors/trustees and shareholders of existing corporations;

- Period to Submit Disclosure Statement (Within 30 days from the date this Circular became effective or from the time they became or assumed the role of or started acting as nominee directors/trustees or shareholders;
- Exemption from disclosure requirements of all Covered Institutions as enumerated under Section 3(a) of the AMLA, as amended, and SEC Memorandum Circular No. 16, Series of 2018 or any amendments thereof;
- Compliance shall be done online in such form and manner as the Commission deems practicable;
- Data handling and management of information and communication technology (ICTD);
- Beneficial ownership as part of corporate records;
- Administrative sanctions;
- Criminal sanctions and criminal liability;
- Monitoring of compliance and enforcement by the Enforcement and Investor Protection department.

Memorandum Circular No. 2 s. 2021 issued on February 15, 2021

- SEC previously issued SEC MC No. 18, series of 2019, on the Prohibition on Unfair Debt Collection Practices of Financing Companies (FC) and Lending Companies (LC) applies to all FCs and LCs, whether existing as of the time of its effectivity or newly registered. Section 4 of SEC MC No. 18 requires the submission of a sworn certification stating that the Corporation complied with the provisions thereof.
- This Circular is issued to guide newly registered FCs and LCs in their compliance with Section 4 of SEC MC No. 18 to clarify the period for the submission of the Sworn Certification for FCs and LCs that were incorporated subsequent to the effectivity of SEC MC 18. Thus, FCs and LCs that were incorporated after September 8, 2019, which is the effectivity date of SEC MC No. 18, until the effectivity date of this Circular, shall submit the Sworn Certification within thirty (30) calendar days from effectivity hereof.
- FCs and LCs that will be incorporated subsequent to the effectivity of this Circular shall submit the Sworn Certification within thirty (30) calendar days from the issuance of their Certificates of Authority to Operate as FCs and LCs.
- The violation of Circular herein shall subject the FCs and LCs to the penalties prescribed under Section 5 of SEC MC No. 18.
- This Circular shall take effect immediately after its publication in two national newspapers of general circulation and its posting in the SEC website.

BUREAU OF CUSTOMS ISSUANCE

Customs Memorandum Order No. 03-2021 issued on January 13, 2021

- This CMO is a consolidation of the provisions of the CMTA and its implementing Customs Administrative Orders (CAOs) dealing specifically on the imposition of penalties and liabilities including the effects of failure on the part of the importer, exporter, third parties and other stakeholders to comply with the obligations provided for by laws and their implementing rules and regulation. This also includes other laws, and rules and regulations issued by other government agencies in relation to the importation or exportation of goods.
- The Compendium under this CMO does not supplement nor supplant the provisions under the CMTA and its implementing rules and regulations. Hence, after determining the applicable penalty, reading the text of the actual provision of the CMTA or the particular CAO is highly encouraged to ascertain the context of the penalty being imposed.
- The Compendium, attached as Annex A of the CMO, is presented in a matrix format and is divided into two parts. The first part refers to the specific provisions on penalty under

the CMTA while the second part dwells on the implementing CAOs promulgated by the Commissioner of Customs and approved by the Secretary of Finance.

- The first part of the matrix is categorized as follows:
    1. Description of the penalty or specific acts, omissions, or customs clearance process where a penalty, liability or obligation is imposed;
    2. Basis or the specific Section number under the CMTA;
    3. Penalty or the specific citation of the law is provided;
    4. Related CAOs to which the said legal provision is being applied; and
    5. Responsible Office.
- The second part of the matrix is categorized as follows:
    1. CAO number or the specific reference to the implementing CAO number presented in accordance with of date of issuance;
    2. Title or the subject matter of the CAO;
    3. Penalty or the specific section of the CAO dealing on penalty or imposition of liability for violation of the regulation;
    4. CMTA Section or the specific provision of the CMTA which is used as legal basis in the issuance or promulgation of the CAO; and
    5. Responsible Office.
- The CMO shall take effect on January 27, 2021.