Significant Court of Tax Appeals Decisions
August 2019

The Philippine Government's accession to the charter of the Asia Development Bank (ADB) did not excuse Filipino ADB employees from paying income taxes. Further, Section 246 of the NIRC provides for non-retroactivity of circulars issued by the BIR which are prejudicial to the taxpayer. The provision is based on the principle of good faith.

RMC No. 31-2013 provides that all Filipino employees of ADB are subject to tax and those who are tax exempt are the ADB employees which are not Philippine nationals. The RTC of Mandaluyong ruled that the circular was issued without legal basis, without due process, and contrary to law. Based on this, the taxpayers filed an administrative refund for the income taxes paid by them covering TYs 2012 and 2013. The CIR did not act upon the same. The taxpayer thereafter filed a petition for review which was partially granted by the CTA Division. The Decision was challenged by the taxpayers and the CIR.

The CTA En Banc ruled that the Filipino ADB employees are subject to income tax following Sections 23(A) and 24(A)(1)(a) of the NIRC. Further, the Philippine Government's accession to the ADB Charter did not endow its citizens employed at the ADB the privilege of being excused from paying income taxes. The Philippine Government did not waive such right. Rather, it was retained by the Philippine Government.

Also, the CTA En Banc ruled that the application of the RMC was incorrect. Section 246 of the NIRC prohibits the retroactive application of the RMC if the same is prejudicial to the taxpayer. Here, the taxpayers relied in good faith with the differing opinions of the BIR, the application of the RMC should be made only to apply after its efficacy. Therefore, only the refund for TY 2012 should prosper. *(Commissioner of Internal Revenue vs. Licel Calderon, et.al, CTA EB No. 1876, July 2, 2019 and Licel Calderon, et.al vs. Commissioner of Internal Revenue, CTA EB No. 1876, July 2, 2019)*

The failure of the Formal Letter of Demand (FLD) to state a definite amount of tax liability and a period or date certain for the payment of the tax assessed renders the assessment void for failure to comply with the due process requirement mandated by law.

The BIR conducted a deficiency assessment against the taxpayer in relation with its *de facto merger* transaction with Fortune Tobacco Corporation. The BIR sent the taxpayer a Formal Letter of Demand (FLD) which failed to state a definite amount of the taxpayer's tax liability. Further, the FLD did not state the exact date for the payment of the assessed tax.

The CTA En Banc ruled that the failure of the BIR to provide for the exact amount of the tax liability and the exact date for payment of tax violates the taxpayer's due process. Hence, the assessment is void for the failure to comply with the provisions of the NIRC ***(Commissioner of Internal Revenue vs. Northern Tobacco Redrying Co. Inc., CTA EB No. 1760, July 2, 2019)***

A taxpayer who changes its place of residence is duty-bound to give written notice to the Revenue District Officer having jurisdiction over his former legal residence and/or place of business. Failure to do so, renders any communication sent to his former legal residence as valid and binding for purposes of counting the period within to reply or file its protests.

The taxpayer was assessed with various tax liabilities. The LOA, Notice of Informal Conference, and Amended Notice were sent to the taxpayer's previous address. The above mentioned documents were received by the taxpayer. However, when the PAN and FLD were sent to the taxpayer's previous address, the letter was returned to sender with notation which states that "address unknown" and "moved out".

The CTA ruled that the taxpayer did not notify the BIR of any change in its legal residence. Following Section 11 of RR No. 12-85, the taxpayer must notify the BIR through the RDO of its change of residence otherwise all communications sent to the previous address will be considered valid and binding. Hence, the period to avail of any administrative or judicial remedies has lapsed thereby depriving the CTA of jurisdiction of the case. *(PCI Management Solutions, Inc. vs. Commissioner of Internal Revenue, CTA No. 9038, July 2, 2019)*

All disputes and claims between government agencies and offices, including refund of internal revenue taxes are governed by the administrative procedure in Section 2 and 3 of Presidential Decree No. 242.

The taxpayer filed an administrative claim for refund The BIR denied the taxpayer's refund claim. Thereafter, the taxpayer filed with CTA to reverse and set aside the BIR's denial of its refund. The Second Division of the CTA dismissed the petition for lack of subject-matter jurisdiction, citing the *Power Sector Assets and Liabilities Management Corporation vs. Commissioner of Internal Revenue* case, which states that the disputes and claims between the BIR and another government entity shall be settled administratively following Presidential Decree No. 242.

The CTA En Banc agreed with the Second Division. The CTA En Banc stated that the refund of internal revenue taxes is governed by the administrative procedure in Section 2 and 3 of Presidential Decree No. 242. Further, the CTA En Banc stated that all disputes, claims and controversies solely amongst government agencies are bound by Presidential Decree No. 242, without exception. *(Duty Free Philippines Corporation vs. Bureau of Internal Revenue, CTA EB Case No. 1911, July 5, 2019)*

Income earners and payee of the Creditable Withholding Tax (CWT) is not mandated by law or regulations to prove actual remittance of the CWT. Such is the legal obligation of the income payors-withholding agents.

The taxpayer filed an administrative claim for refund for the alleged excess and utilized CWT. The claim was not acted upon by the BIR. The CTA in Division partially granted the refund. The BIR appealed the decision stating that an actual proof remittance is a mandatory precondition for a refund claim to prosper.

The CTA En Banc dismissed the appeal stating under Section 58(A) of the NIRC it is the withholding agents' responsibility to deduct and remit taxes due on income payments by requiring them to submit annual information return and provide recipients of income written statements containing: a) the amount of income paid; b) the details of the person to whom such payment was made; and c) the specific details of the sums they deducted and withheld. Further, RR No. 2-98, paragraph (B), Section 2.58.3 expressly states that the proof of remittance is the responsibility of the withholding agent. *(Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc. [Formerly Nissan Motor Philippines, Inc.], CTA EB No. 1789, July 5, 2019)*

The BIR in assessing the taxpayer must follow the due process requirements mandated by law. This includes valid service of the Preliminary Assessment Notice (PAN) and issuance of a Letter of Authority.

In a Letter Notice sent to the taxpayer, the BIR noted discrepancies based on its computerized-matching system. Due to failure to reconcile the discrepancies, a PAN was issued for deficiency taxes. Thereafter, the taxpayer received a Formal Letter of Demand (FLD). Such demand was protested by the taxpayer for lack of factual and legal basis. The protest was denied and the taxpayer elevated the case to the CTA. The CTA in Division granted the protest of the taxpayer.

The CTA En Banc ruled that there was no valid service of the PAN since there was no formidable proof that the person who received the PAN is authorized to receive the same. Further the person who received the PAN was not shown to live or reside in the area or locality of the taxpayer. In addition, the Court noted that the BIR, through the revenue officer, was not authorized to conduct a tax examination and an assessment. The Court cited *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue,* wherein the Supreme Court ruled that a Letter Notice is not a substitute for a Letter of Authority. Here, the BIR through the petitioner conducted an examination without a Letter of Authority relying solely on the Letter Notice. Hence, the issuance of the FLD is void and without legal consequence. *(Hon. Thelma S. Milabao OIC Regional Director, Bureau of Internal Revenue, Region No. 18 vs. Dionisia D. Pacquiao, CTA EB No. 1782, July 5, 2019)*

The transfer of properties in exchange for shares of stock in a corporation during its pre-incorporation stage is not sale. Hence, the transfer is not subject to VAT.

During the pre-incorporation stage, the taxpayer subscribed to 450,000 shares of stock of Century Peak Corporation. In consideration for the shares of stock, the taxpayer assigned two parcels of land. The taxpayer obtained a ruling from the BIR wherein the transfer was deemed subject to VAT.

CTA En Banc ruled that the transaction is neither a sale, barter nor exchange of goods or properties. Rather, the transaction is a pre-incorporation subscription agreement. Further, there was no disposition of property in the course of trade or business. *(Secretary of Finance vs. Century Peak Property Development, Inc. and Kingsville International Resources, Inc., CTA EB No. 1776, July 5, 2019)*

The failure to submit documents in the administrative level is not fatal to the case in the judicial level, as such are litigated de novo.

The BIR filed the instant Petition for Review alleging that the Court in Division erred in admitting evidence that were not submitted to the BIR in the administrative level. The Court denied the petition citing Section 8 of Republic Act No. 1125 (An Act Creating the Court of Tax Appeals) which categorically provides that the Court of Tax Appeals (CTA) shall be a court of record and as such it is required to conduct a formal trial (trial de novo).

The Court held that the CTA is authorized to receive evidence, summon witnesses, and give both parties, the Government and the taxpayer, opportunity to present and argue their sides, so that the true and correct amount of the tax to be collected may be determined and decided. *(Commissioner of Internal Revenue v. Oriental Assurance Corporation, CTA EB No. 1881 (CTA Case No. 9169), July 5, 2019)*

The failure to attach an Affidavit of Service to a Motion for Reconsideration may result in the questioned decision or resolution attaining finality.

The Court En Banc found no cogent reason to disturb the questioned Decision and Resolution of the Court in Division. It held that the Court in Division had fully and exhaustively resolved the issues raised in the instant petition. Moreover, the BIR's opportunity to appeal has already lapsed since the assailed Decision has become final and executory for failure of the BIR to file a motion for reconsideration in accordance with the rules, namely, that the motion filed before the Court in Division did not have the necessary Affidavit of Service.

Nevertheless, the Court En Banc affirmed the ruling of the Court in Division that the non-resident foreign corporation is entitled to the refund of capital gains tax it erroneously paid since the transaction is exempt from CGT in the Philippines pursuant to the RP-US Tax Treaty. This is so because the capital gains was derived from the transfer of its shares of stock in GECRF PH, a domestic corporation whose assets do not consist principally of real property in the Philippines. *(Commissioner of Internal Revenue vs. GE Consumer Finance, Inc., CTA EB No. 1775 (CTA Case No. 9144), July 5, 2019)*

In case of re-assignment or transfer of cases to another revenue officer, it is mandatory that a new LOA be issued with the corresponding notation thereto. Otherwise, the resulting assessment is void.

Both the taxpayer and the BIR elevated the case to the Court En Banc via Petition for Review, primarily raising the issue of whether the taxpayer is liable to pay the deficiency taxes, surcharge, and interests based on the assessment issued by the BIR.

While the parties, in their respective petitions, did not include the issue of whether or not the revenue officers (ROs) who examined the taxpayer were duly authorized, the Court still found it necessary to resolve the same. This is so because it is a vital issue to achieve an orderly disposition of the consolidated case which is sanctioned under Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals.

The Court therefore cancelled the assessment stating that records disclose that the ROs and group supervisor (GS) who recommended the issuance of NIC, PAN, FLD/FAN and FDDA were not named in the LOA. The BIR admitted that the supposed authority of the ROs to conduct the audit investigation of the taxpayer was based solely on Memorandum of Assignment (MOA). The Court held that in case of re-assignment or transfer of cases to another RO, it is mandatory that a new LOA be issued with the corresponding notation thereto, in accordance with RMO No. 43-90. *(Opulent Landowners, Inc. vs. Commissioner of Internal Revenue, CTA EB Nos. 1802 & 1803 (CTA Case No. 8956), July 5, 2019)*

In order to be considered as a non-resident foreign corporation doing business outside the Philippines, such entity must be supported, at the very least, by both a Certificate of Non-registration of Corporation/Partnership issued by the Philippine SEC and a Certificate/ Articles of Foreign Incorporation/ Association.

The taxpayer filed a claim for refund or issuance of tax credit certificate for its excess and unutilized input VAT. The taxpayer alleged that it is a regional operating headquarters (ROHQ) and that the excess and unutilized input VAT pertains to its zero-rated sales for its services to foreign clients doing business outside the Philippines, which were paid in USD, inwardly remitted into the Philippines.

The Court held that in order for the supply of services to be VAT zero-rated under Section 108(B)(2), the following requisites must be met: 1. the services must be other than processing, manufacturing or repacking of goods; 2. the recipient of such services is doing business outside the Philippines; and 3. the payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations.

In the instant case, the taxpayer failed to present both the Certificate of Non-registration of Corporation/Partnership issued by the SEC and a Certificate/ Articles of Foreign Incorporation/ Association of some of its customers. Hence, the Court disallowed those sales since there was no proof that the recipient of such services is doing business outside the Philippines. *(Manulife Data Services, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9126, July 5, 2019)*

The burden of proving valid service of the LOA, NIC, PAN, and FLD/FAN devolves upon the BIR and the act of the taxpayer in filing a protest on the FAN will not cure a defective service of the same.

The taxpayer argues that the assessment was not valid because the LOA, NIC, PAN and FLD/FAN were sent through registered mail to its former office address and was received by the security guard of the current possessor of the premises. The BIR alleges, in part, that the taxpayer is estopped from denying actual receipt of the said documents because it had filed a protest to the FAN.

The Court found that the taxpayer has complied with the requirements for a change of business address and that the BIR was well-informed of the transfer of address as shown by various returns filed before it. Accordingly, it was the duty of the BIR to send the PAN and FAN to the proper address to ensure its receipt.

The Court ruled that when service of notice is an issue, as in this case, the person alleging service must prove such fact. In civil cases, service made through registered mail is proved by the registry receipt issued by the mailing office and an affidavit of the person mailing. Absent one or the other, or worse both, there is no proof of service. Since the BIR failed to prove compliance of the requirements for a valid service by registered mail, the assessment is invalid. The fact that the taxpayer was able to protest the FAN does not cure BIR's violation of the taxpayer's right to due process. ***(****Vitalo Packaging International, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9231, July 5, 2019)*

The failure of the taxpayer to present the succeeding year's quarterly/annual ITRs is not fatal to the taxpayer's claim for refund of excess and unutilized CWT.

The BIR filed a motion for reconsideration alleging that the Court erred in holding that the failure of the taxpayer to present the succeeding quarterly and annual income tax returns (ITRs) are not fatal to the taxpayer's claim for refund of alleged unutilized creditable withholding taxes (CWT).

The Court ruled that there is no legal merit in the contention of the BIR that the taxpayer is required to present its quarterly income tax returns as well as the annual income tax returns of the succeeding taxable years. It held that the Supreme Court has already declared in the Philam Asset Management and Winebrenner cases that the presentation of the ITR or the Final Adjustment Return (FAR) has no basis in law and jurisprudence. The non-carry over clause may be proved by any other competent document.

On the other hand, the Philam case even declared that it is the BIR which ought to have presented the FAR for the succeeding year in order to buttress its assertion that there was a subsequent credit of the excess income payments for the previous year. *(Commissioner of Internal Revenue vs. PPI Prime Venture, Inc., CTA EB No. 1666 (CTA Case No. 8795) July 9, 2019)*

Since the taxpayer cannot be treated as one required to pay tax as there is no valid assessment to speak of, there is no basis to sustain the criminal charge.

Taxpayers were charged with tax evasion due to alleged nonpayment of deficiency internal revenue tax liabilities for the year 2002. Subsequently, CTA Division rendered the deficiency tax assessment void. In relation to its decision, CTA Division stated that the Taxpayers, in their motion for reconsideration, have no obligation or requirement to pay the alleged deficiency tax since the deficiency tax assessment was void. Hence, this Petition.

CTA En Banc has held that there is failure to prosecute on the part of the government because it did not prove beyond reasonable doubt the guilt of the accused. The requisites in order for a Taxpayer to be criminally liable are: (1) that a corporate taxpayer is required under NIRC, among others, to pay any tax; (2) that the corporate taxpayer failed to pay the required tax; and (3) that the accused to be criminally liable must be the employee responsible for the violation and willfully failed to pay such tax. Accordingly, the second and third elements are dependent in the existence of the first.

Here, the taxpayers proved that they did not receive the PAN or the FAN from BIR upon assessment. Moreover, since there was no demand to pay tax, the first requisite above-mentioned was not satisfied. Hence, the Taxpayers were properly acquitted. (*People of the Philippines vs. Bienvenido S. Dimson and Gilbert P. Dimson (Dimson Manila, Inc.) CTA EB Crim. No. 044, July 9, 2019*)

An application for abatement is properly subsumed under the phrase "other matters arising under the NIRC" falling under the jurisdiction of the CTA.

The BIR imposed penalties upon the taxpayer in relation to alleged late payment of taxes. The taxpayer applied for abatement of the penalties but the BIR issued a Notice of Denial. The taxpayer questioned the Notice of Denial by elevating the matter to the CTA. The BIR argued that the CTA has no jurisdiction to rule on its Notice of Denial. On the other hand, the taxpayer claims that the CTA has jurisdiction over the petition as it falls under the "Other Matters" jurisdiction of the CTA and the Notice of Denial provided no factual and legal bases for the denial of taxpayer's abatement application, in violation of taxpayer's constitutional right to due process.

The CTA held that the denial of taxpayer's application for abatement is properly subsumed under the phrase "other matters arising under the NIRC". Furthermore, the Court finds that the facts of the case do not fall on any of the instances that would validly allow BIR to dispense with the issuance of a PAN. The present case involves a late remittance of withholding tax which apparently arose from an error in the encoding of the Filing Reference Number. Considering that none of the conditions anent the exemption from pre-assessment notice exists, BIR is not justified in out rightly issuing the Audit Results/Assessment Notice, sans any PAN. The BIR failed to observe the due process requirements. *(Del Monte Philippines, Inc., vs Commissioner of Internal Revenue, CTA Case No. 9766, July 15, 2019)*

Contractees and licensees of PAGCOR shall pay five percent (5%) franchise tax in lieu of all other taxes.

Taxpayer is a co-licensee of a gaming license granted by PAGCOR, which provided for the payment of PAGCOR license fees, inclusive of franchise tax, in lieu of all other taxes. Subsequently, BIR issued RMC No. 33-13, which subjected PAGCOR and its contractees and licensees to the Regular Corporate Income Tax (RCIT). Consequently, Supreme Court promulgated a decision that clarified that contractees and licensees of PAGCOR are subject to franchise tax but are exempt from payment of all other taxes, including RCIT.

CTA has held that Section 13 of PD 1869, or the PAGCOR charter, provided that the tax exemption privileges of PAGCOR extend to its contractees and licensees, *i.e.* the taxpayer. No tax, fees or charges of any kind shall be assessed or collected from a franchise holder, except a Franchise Tax of Five percent (5%) of the gross revenue or earnings. *(Premiumleisure and Amusement, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9572, July 16, 2019*)

The shipment of imported products, which entered and were stored in the SSEZ, may not be considered as imported into Philippine customs territory for purpose of imposing taxes and duties on importation.

The taxpayer filed an application for the issuance of TRO regarding the forfeiture of the shipment of imported rice consigned in Subic Special Economic Zone (SSEZ) for failure to secure import permit.

The CTA held that SSEZ is regarded as a separate customs territory. The subject shipment of imported rice, which entered and were stored in the SSEZ, may not be considered as imported into Philippine customs territory for purpose of imposing taxes and duties on importation. Otherwise stated, the taxpayer was not required to secure import permit upon entry of the cargo into the SSEZ. The requirement to secure and present import permit becomes indispensable only when the imported rice is withdrawn from the SSEZ and introduced into the Philippine customs territory, for it is only at that point that said rice are considered imported into the country. *(Amira C Foods International DMCC vs. Republic of the Philippines, CTA Case No. 8557, July 18, 2019)*

Inaction of the local treasurer on the protest filed by the taxpayer after the lapse of the 60-day period constitutes a denial due to inaction and the taxpayer shall file an appeal within 30 days from the lapse of the 60-day period.

The taxpayer filed a petition for review on the dismissal of the RTC of the complaint against the denial of his protest by the city treasurer for being filed beyond the prescribed period under Section 195 he Local Government Code.

The CTA held that after the taxpayer filed its protest on the notice of assessment issued by the local treasurer, the local treasurer should decide within 60 days from the filing of said protest. If the local treasurer does not come up with a decision after the lapse of the 60-day period from the filing of the protest, the taxpayer shall likewise have 30 days to appeal such inaction which, in effect, constitutes a denial due to inaction. Here the taxpayer filed the complaint beyond the 30 days period to appeal. Hence, the RTC was correct in dismissing the case on the ground of prescription. *(Kuehne + Nagel, Inc., vs City of Parañaque and Anthony I. Pulmano, in his capacity as the City Treasurer of Paranaque, CTA AC No. 206, July 18, 2019)*

Absence of proof of resorting to other recognized modes of service of the PAN, in case the service by registered mail proved to be unsuccessful, renders the assessment void.

Taxpayer filed a petition for review against the judgement of the CIR declaring the taxpayer liable for deficiency taxes. The taxpayer claims that its constitutional and statutory right to due process was violated when it was not furnished with the required assessment notices under the law.

The CTA held that in case the taxpayer denies receipt of the assessment notices from the BIR, the latter has the burden to prove by competent evidence that the required notices were actually received by the taxpayer. In the present case, the taxpayer categorically denies having received the PAN and submits that it only received the FLD/FAN. In addition, there is also no indication whatsoever that the BIR validly resorted to other recognized modes of service of the PAN, considering the attempt to validly serve the PAN by registered mail proved to be unsuccessful.

Thus, for failure of the BIR to inform the taxpayer of the facts and the law on which the assessment was made through the valid service of PAN the subject assessment is void and of no legal effect. *(Trorev Real TV Co., as represented by its President, Roberto R. Ignacio, vs Commissioner of Internal Revenue, CTA Case No. 9251, July 18, 2019)*

Input taxes incurred that were used for transactions or activities that are not related to taxpayer's nature as a zero-rated cannot be claimed for VAT refund purpose.

Unsatisfied by the decision of the Court in Division, both the taxpayer and the BIR appealed to the CTA En Banc. The taxpayer argues that it is entitled for additional input tax refund on its unutilized input VAT attributed to its zero-rated sales; while the BIR argues that the taxpayer is not entitled for refund for failure to present evidence that will prove that the input taxes were directly attributable to zero-rated or effectively zero-rated sales.

The CTA En Banc finds that the taxpayer failed to comply with the basic requisite that the input taxes claimed are attributable to zero-rated or effectively zero-rated sales because the input taxes incurred were not at all related to its zero-rated sales. The CTA En Banc reasoned out that the input taxes incurred were used for transactions or activities that are not related to its nature as a zero-rated taxpayer.

***Note**:* The CTA En Banc denied the total amount of claim for refund of the taxpayer. However, considering that the required affirmative votes to reverse the assailed decision was not obtained in the instant case, the assailed decision granting a partial refund are deemed affirmed. *(Commissioner of Internal Revenue, vs Coral Bay Nickel Corporation, CTA EB Nos. 1735 & 1737 (CTA Case No. 8905), July 18, 2019)*

Alkylate fall within the category of naphtha, regular gasoline and other similar products of distillation under Sec. 148 (e) of the 1997 NIRC, and is subject to excise tax.

Petron filed a petition for review to the CTA En Banc over the denial of the claim for refund of excise taxes paid on the alkylate importations by the Court in Division. Petron argues that the Court erred in ruling that alkylate is subject to excise tax.

The CTA En Banc ruled that alkylate possesses properties and characteristics similar to that of gasoline, or is considered gasoline although not in its finished state. Thus, the court finds that alkylate fall within the category of naphtha, regular gasoline and other similar products of distillation under Sec. 148 (e) of the 1997 NIRC, and is subject to excise tax. (*Petron Corporation, vs Commissioner of Internal Revenue, CTA EB No. 1835 (CTA Case No. 9111), July 19, 2019)*

PAN and FAN/FLD must be served and received by the Taxpayer stating the laws and the facts in which the assessment is based within the three-year prescriptive period to assess by the BIR in order for the assessment to be valid. Otherwise, the assessment is void for being violative of the right to due process of the Taxpayer.

BIR issued warrant of distraint/levy against the Taxpayer due to the latter's deficiency taxes for the taxable year 2007. Taxpayer contended that it is not liable for such deficiency because it did

not receive a PAN and a FAN/FLD resulting to violation of its right to due process. Moreover, the right to assess by BIR already prescribed due to the lapse of the three-year prescriptive period. Conversely, BIR contended that it served a PAN and FAN/FLD to the Taxpayer through registered mail.

Pursuant to Section 228 of the NIRC, CTA has held that 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. Moreover, the denial by the taxpayer of the receipt of the PAN and/or FAN/FLD shifts the burden of proof to BIR that the latter served the said notices.

Here, Taxpayer denied having received the PAN and FAN/FLD within the three-year period for BIR to assess. Moreover, it also proved in court that the service of PAN and FAN/FLD were made only five (5) years after the lapse of the prescriptive period. On the other hand, BIR failed to prove with sufficient evidence that it timely served PAN and FAN/FLD to the Taxpayer. Hence, the assessment was invalid because BIR violated the right to due process of the Taxpayer. *(Clark Water Corporation vs. Commissioner of Internal Revenue, CTA Case No. 8648, July 19, 2019)*

The 180-day period within which the CIR should act on the administrative appeal against the FDDA is reckoned from the date of filing of the original protest to the FLD and FAN.

The BIR argues that the instant Petition for Review was filed beyond the prescriptive period to file an appeal with the CTA. It alleged that since the CIR did not act on the administrative appeal filed by the taxpayer against the FDDA, the taxpayer only has 30 days from the lapse of the 180-day period to decide within which to appeal to the CTA.

The Court decided in favor of the BIR and dismissed the Petition for Review. The Court held that in case there is inaction on the part of the CIR on an administrative appeal by way of a motion for reconsideration within the 180-day period, RR 18-2013 provides two mutually exclusive options, to wit, (1) await the decision of the CIR and then file an appeal with the CTA within thirty (30) days from receipt of the decision or (2) appeal to the CTA within thirty (30) days from the expiration of the 180-day period.

According to the Court, the taxpayer chose the second option because there was no CIR decision from which to appeal. Therefore, the counting of the prescriptive period of 180 days shall start from May 24, 2016, the date of filing of the original protest to the FLD and FAN, and end on November 20, 2016. To avail of the second option, the taxpayer should have filed its appeal with the Court on December 20, 2016. However, it only filed its Petition for Review on April 3, 2017, which was way beyond the period prescribed by law. *(Nueva Ecija I Electric Cooperative, Inc vs. Commissioner of Internal Revenue, CTA Case No. 9563, July 23, 2019)*

In a claim for refund of input VAT attributable to zero-rated sales, the taxpayer must prove that the payment for said zero-rated sales can be traced to the document supporting the foreign currency inward remittances.

The taxpayer filed a claim for refund or issuance of tax credit certificate for its alleged excess and unutilized input VAT. The taxpayer alleged that for the 1st quarter of TY 2014, it exported 100% of its copper concentrates, the export sales proceeds thereof were paid for in acceptable foreign currency which were inwardly remitted to the Philippines.

The Court held that a VAT registered person claiming VAT zero-rated direct export sales must present at least three (3) types of documents, to wit: a) the sales invoice as proof of sale of goods; b) bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and c) bank credit advice, certificate of bank remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services.

In the instant case, the Court disallowed the entire zero-rated sales for VAT refund purposes. The bulk of the disallowance was due to the fact that various amounts of Customer Charges were deducted from the corresponding foreign currency inward remittances which were not supported with any documents. Since the taxpayer failed to present any documents to show that these Customer Charges were actually deducted from the total amount due per sales invoice, the Court was not convinced that the alleged corresponding foreign currency inward remittance actually pertains to the zero-rated sales. *(Carmen Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9457, July 23, 2019)*

The requirement to post a Surety Bond in case of suspension of collection of taxes cannot be lifted until the judgement of the Court in the principal case becomes final and executory.

The Court resolved two motions pending before it, to wit: the Motion to Lift Bond filed by the taxpayer, and the Motion for Reconsideration filed by the BIR. The Court denied both motions.

The Court held that the bond cannot yet be lifted since the decision cancelling the deficiency tax assessment has not yet attained finality because the BIR has timely filed a motion for reconsideration thereon.

On the other hand, the Court held that the motion for reconsideration filed by the BIR was bereft of merit. As already held by the Court in its previous decision, the writ of distraint and levy constitutes an act of the Commissioner of Internal Revenue on “other matters” arising under the Tax Code which may be subject of an appropriate appeal before the Court of Tax Appeals. Furthermore, the Court ruled that the BIR failed to prove that the FAN and FLD was actually delivered to the taxpayer absent a certification from the Postmaster to that effect and an affidavit of the person who mailed the FAN and the FLD. *(Xylem Water Systems International, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 8901, July 25, 2019)*