MT&F

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ATTORNEYS AT LAW

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Highlights

BOC ISSUANCES

CMC No. 212-2023, November 28, 2023
(Full issuance and acceptance of the ASEAN trade in goods agreement ("ATIGA") electronic certificate of origin ("CO") Form D by December 2023.)

ASEAN Member States ("AMS") may only issue and accept the e-Form D to claim/grant ATIGA tariff preference starting December 2023. In case of system downtime in the National Single Window, the paper-based CO form D may be used.

This is to avoid a situation where the paper-based CO Form D will not be recognized by the AMS and claims for preferential treatment will be rejected.

COURT DECISIONS

SUPREME COURT

Pacific Cement Company v. Oil and Natural Gas Commission
G.R. No. 229471, December 05, 2023
(Nowhere in Financial Rehabilitation and Insolvency Act ("FRIA") is it stated that any action taken on pending actions against the debtor, including rendition of judgment, is automatically voided on the ground that it was rendered or issued after the issuance of a commencement order.)

Facts: Oil and Natural Gas Commission ("ONGC"), filed in a foreign court for the execution of the arbitral award and subsequently, before the Regional Trial Court ("RTC") for the enforcement of the judgment of the foreign court. The RTC rendered a decision in favor of ONGC ruling that it was able to prove beyond question the existence and authenticity of the foreign judgment sough to be enforced. During the pendency of the appeal before the Court of Appeals ("CA"), Pacific Cement filed in the RTC a petition for rehabilitation. The RTC issued a stay order dated December 15, 2014. On August 20, 2015, the CA upheld the RTC's decision as to the foreign judgment.

Issue: Is the August 20, 2015, decision of the CA valid despite the stay order dated December 15, 2014?

Ruling: No. Here, there is absolutely no showing that petitioner notified respondent or the CA of the issuance of the December 15, 2014, Commencement Order during the pendency of the appeal before the CA. It was only after the CA had promulgated its Decision on August 20, 2015, that it was apprised of the rehabilitation proceedings.

Nowhere in FRIA is it stated that any action taken on pending actions against the debtor, including rendition of judgment, is automatically voided on the ground that it was rendered or issued after the issuance of a commencement order. The mandate of the law is simply to consolidate the resolution of all such legal proceedings by and against the debtor to the rehabilitation court. As what happened in this case, the court, in a pending suit against the debtor, may have proceeded to render judgment for lack of information regarding the pendency of rehabilitation proceeding involving the said debtor.

The stay order incorporated in a commencement order shall suspend all actions or proceedings, in court or otherwise, for the enforcement of claims against the debtor, subject to certain exceptions as mentioned earlier. Practically, however, other courts and tribunals

must of course first be apprised of the rehabilitation proceedings and the issuance of the stay order so that they may suspend their own proceedings.

McDonald's Philippines Realty Corporation v. CIR

G.R. No. 247737, March 28, 2023

(Only intentional and deliberate errors may render the return false for purposes of invoking the extraordinary period under Sec 222(a) of the National Internal Revenue Code of 1997 ("Tax Code"). Certainly, a return may contain errors. However, if the CIR fails to establish that the misstatement was willful on the part of the taxpayer, plain errors cannot justify the application of the 10-year period.)

Facts: McDonald's Philippines Realty Corporation ("MPRC") was assessed for deficiency taxes for Calendar Year ("CY") 2007.

MPRC and the BIR executed two Waivers of the Defense of Prescription under the Statute of Limitations, viz: first one on December 29, 2010, extending the assessment period to December 31, 2011 (First Waiver); and another one on December 27, 2011, further extending said period to March 31, 2012 (Second Waiver).

One day prior to the expiration of the second waiver, MPRC received a Final Letter of Demand/Final Assessment Notice ("FLD/FAN") from the CIR.

Issue: Did the CIR satisfy the requirements to avail itself of the benefit of the extraordinary 10-year assessment period under Section 222(a) of the Tax Code?

Ruling: No. The Supreme Court underscores that only intentional and deliberate errors may render the return false for purposes of invoking the extraordinary period under Sec 222(a). Certainly, a return may contain errors. However, if the CIR fails to establish that the misstatement was willful on the part of the taxpayer, plain errors cannot justify the application of the 10-year period.

It must be stressed that a false return within the meaning of Sec 222(a) does not refer to false returns in general. To be sure, the extraordinary 10-year assessment period applies to a false return when: (a) the return contains an error or misstatement, and (2) such error or misstatement was deliberate or willful.

Consequently, the Court's ruling in *Aznar v. CTA* which applied 10-year assessment period under Sec 222(a) to false returns in general, i.e., regardless of whether the deviation is intentional or not, is abandoned. Hence, it shall be the CIR's burden to establish the existence of the above-enumerated statutory requisite with clear and convincing evidence.

CTA EN BANC

CIR v. Digos Market Vendors Multi-Purpose Cooperative

CTA EB No. 2518, November 30, 2023

(The Preliminary Assessment Notice ("PAN") is part of substantive, not just formal, due process requirements. As such, contravening the conditions laid down by Section 228 of the Tax Code and its implementing rules in Revenue Regulation ("RR") No. 12-99 denies the taxpayer's right to due process.)

Facts: Digos market Vendors Multi-purpose Cooperative ("DIMAVEMC") received a PAN and FAN on the same day. Without responding to either, DIMAVEMC subsequently received a Final Notice and a Warrant of Distraint and/or Levy ("WDL") one (1) year later. After almost 2 years, DIMAVEMC filed with the Revenue District Office ("RDO") a letter requesting reconsideration of the tax assessments, which was denied. Thus, DIMAVEMC filed the Petition for Review before the CTA.

Issue: Is the assessment valid?

Ruling: No. It must be emphasized that the PAN is part of substantive, not just formal, due process requirements. As such, contravening the conditions laid down by Section 228 of the Tax Code and its implementing rules in RR No. 12-99 denies the taxpayer's right to due process.

Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal must consider the evidence presented.

The BIR's act in issuing the FLD without even serving the PAN to DIMAVEMC and waiting for the lapse of the 15 days upon respondent's receipt of the PAN deprived DIMAVEMC of the opportunity to present its side of the matter and for BIR to consider the same. Consequently, for violation of DIMAVEMC s right to due process, the assessments are void.

CIR v. 10k South Concrete Mix Specialist, Inc.

CTA EB No. 2647, November 24, 2023

(Failure to prove the service of the FAN renders the assessment void.)

Facts: BIR issued a Letter of Authority ("LOA") to 10k South Concrete Mix Specialist, Inc. ("10SCMSI") covering taxable year 2013. It later issued a PAN and a FAN. 10SCMSI then received a letter from BPI and Security stating that they received a Warrant of Garnishment from the BIR. Hence, 10SCMSI filed a Petition for Review before the CTA.

10SCMSI argued that the FAN was not mailed since the BIR did not present or show any registry receipt to prove the fact of mailing the FAN and no affidavit was presented from the person who mailed the FAN.

Issue: Is the assessment void for failure to properly serve the FAN to 10k South Concrete Mix Specialist, Inc.?

Ruling: Yes. Petitioner failed to sufficiently prove the fact of mailing and receipt of the subject FAN. The assessment is void as respondent was not accorded due process. 10SCMSI denied the receipt of the assessment notices and the CIR has the burden of proving that the assessment notices were indeed mailed to and received by 10SCMSI. The Postmaster Certification which was presented as proof of mailing is silent on whether the document referenced in the Certification were the subject assessment notices. The CTA cannot discount the possibility that the mail matters allegedly delivered were not the assessment notices subject of this case. Failure to prove the service of the FAN renders the assessment void.

Malayan Education System, Inc. v. City of Makati, et al.

CTA EB No. 2546, November 20, 2023

(Reference to the local tax ordinance is vital, for the power of Local Government Units ("LGU") to impose local taxes is exercised through the appropriate ordinance enacted by the sanggunian, and not by the Local Government Code ("LGC") alone.)

Facts: Malayan Education System, Inc. ("MESI") received a Notice of Assessment ("NOA") from the City of Makati assessing it for deficiency Local Business Tax ("LBT"). It filed an administrative protest, which was later denied. It then filed a Complaint before the RTC to appeal the denial of its administrative protest and to seek cancellation of the NOA.

In 2018, MESI attempted to renew its business permit with the City of Makati, but the latter refused to grant it without prior settlement of the deficiency LBTs. MESI was thus constrained to pay 30% of said assessment. It filed an Amended and Supplemental Complaint which added to its original prayer a claim for refund of the partial payment.

The RTC dismissed the case. MESI filed a Petition for Review with the CTA. The CTA Division partially granted the Petition, nullifying the NOA and ordering the Makati LGU to refund the amount paid by MESI. However, the CTA denied, for lack of merit, MESI's prayer that it be declared a tax-exempt educational institution.

Issue: Is the NOA valid?

Ruling: No. A strict scrutiny of the subject NOA shall reveal that nowhere in its face or in the attached detailed worksheet did Makati LGU inform MESI as to the particular law it violated which resulted in said assessment.
The subject NOA informed MESI that it is "liable to pay the correct city business taxes, fees and charges," without stating the specific provision of the Revised Makati Revenue Code (RMRC) upon which the assessment was based. RMRC provides multiple provisions on business taxes, and at varying rates; thus, reference to the local tax ordinance is vital.
Clearly, MESI's right to due process was violated. Such violation impugns the validity of said assessment. Considering the nullity of the NOA, a refund of the taxes paid is in order.

CTA DIVISION

Royal Cargo Inc v. City Treasurer of Paranaque
CTA Case No. AC-270, December 13, 2023
(A Statement of Account ("SOA") cannot be considered the "notice of assessment" required under Section 195 of the LGC since it did not contain any amount of deficiency, surcharges, interests, and penalties due from taxpayer.)

Facts: On January 2020, upon application for renewal of Royal Cargo Inc. ("RCI") of its business permit, the City Treasurer of Paranaque issued a SOA indicating the LBT to be paid by RCI. PCI paid the assessed LBT. RCI files an administrative claim for refund then filed a judicial claim for refund by way of Complaint with RTC Paranaque which was dismissed by the court on the ground of prescription.

Issue: Is the Statement of Account considered as notice of assessment contemplated under Section 195 of the LGC?

Ruling: No. Citing the case of International Container Terminal Services, Inc. V. City of Manila, G.R. No. 185622, October 17, 2018, the CTA ruled that the subject SOA cannot be considered the "notice of assessment" required under Section 195 of the LGC since it did not contain any amount of deficiency, surcharges, interests, and penalties due from taxpayer. Here, the SOA pertains to the payment of LBT and other regulatory fees such as Mayor's permit fee, sanitary permit fees, inspection fees, barangay clearance, and processing fees that were issued by the Business Permits & Licensing Office ("BPLO") of the City of Paranaque as a condition for the renewal of petitioner's business permit for 2020. The SOA merely tabulated the amount and nature of the tax and fees assessed but did not contain the amount of deficiency tax, surcharges, interests, and penalties due from petitioner. The SOA also did not indicate the period covered for purposes of prescription and was signed by the Chief of the BPLO and not the local treasurer. Moreover, Section 196 of the LGC requires

that a written claim for refund or credit must be filed with the local treasurer and thereafter, a case or proceeding must be brought in court within two years from the date of the payment of illegally or erroneously collected tax, fee or charge. Here, RCI timely filed its administrative and judicial claim.

Green Cross, Inc. v. CIR

CTA Case No. 10410, December 12, 2023

(When the legislature reenacts a law that has been construed by an executive agency without substantial change, it is an indication of the adoption by the legislature of the prior construction by the agency.)

Facts: Green Cross, Inc. ("Green Cross") manufactures and sells splash colognes with the brand name Lewis & Pearl. Green Cross paid the 20% excise taxes imposed on perfumes and "toilet waters" pursuant to Section 150(b) of the Tax Code. Claiming that the collection of the excise tax was erroneous, Green Cross filed a claim for refund for the amount paid. Green Cross argues that the essential oil content (more than 3%) of the Lewis & Pearl cologne products are not "toilet waters" pursuant to RR No. 08-84 which implemented Section 194 of the Tax Code of 1977. The BIR issued BIR Ruling No. 43-00 interpreting the term "toilet waters" under Section 150(b) of the Tax Code to include "all other colognes".

Under the Tax Code of 1977, a sales tax was imposed on "toilet waters" while Under the Tax Code of 1997, as amended, excise tax was imposed on "toilet waters."

Issue: Is Green Cross entitled to refund?

Ruling: No. RR No. 08-84 may not be used to implement Section (15)(b) of the Tax Code, which pertains to the imposition of excise tax. Although the term "toilets waters" remains unchanged, the change in the nature of the tax from percentage tax to excise tax pursuant is an effective repeal of Section 194.

When the legislature reenacts a law that has been construed by an executive agency without substantial change, it is an indication of the adoption by the legislature of the prior construction by the agency. There was a substantial change insofar as the nature or kind of tax imposed, between then Section 194(b) of the Tax Code of 1977, and ultimately Section 150(b) of the Tax Code.

Thus, there has been no erroneous or illegal collection of excise tax that can be refunded to Green Cross.

CBK Power Company Limited v. CIR

CTA Case No. 10157, December 12, 2023

(The requirement of authentication only pertains to private documents and does not apply to public documents. Certificates of Compliance were issued by a public officer in the performance of official duties, hence, they come within the purview of what are deemed to be public documents, and are prima facie evidence of the facts stated therein.)

Facts: CBK Power Company Limited ("CBK") is seeking the refund or issuance of a tax credit certificate in the total amount of PhP35,593,569.57, representing the excess and unutilized input Value Added Tax ("VAT") on its domestic purchases of goods and services attributable to zero-rated sales for calendar year 2017. The CTA in its previous decision denied the claim for VAT refund and held that CBK did not proffer in evidence the Certificate of Compliance that would be relevant to its period of claim. Thus, without any proof that it

validly sold electricity to the National Power Corporation, the Court ruled that it failed to establish that it is engaged in zero-rated or effectively zero-rated sales.

Issue: Is the Certificate of Compliance, from the Energy Regulatory Commission, required to be offered as evidence by the Taxpayer to be considered as engaged in zero-rated or effectively zero-rated sales?

Ruling: No. As a general rule, no evidentiary value can be given to any piece of evidence unless it is formally offered in court. The Supreme Court previously held that as part of the authentication requirement, a witness should positively testify that a document being presented as evidence is genuine and has been duly executed. The Supreme Court, however, emphasized that the requirement of authentication only pertains to private documents and does not apply to public documents. Section 24 of Rule 132 of the Rules of Court provides that an accompanying certificate or an equivalent thereof is prima facie evidence of the due execution and genuineness of the public document.

Indubitably, the subject Certificates of Compliance were issued by a public officer in the performance of official duties, hence, they come within the purview of what are deemed to be public documents and are prima facie evidence of the facts stated therein pursuant to Section 232, Rule 132 of the Revised Rules on Evidence, as amended. Thus, even if none of CBK's witnesses testified on the said Certificates of Compliance, they remain to be unassailed prima facie evidence. It helps to note that they are found to be included in BIR's own records. Thus, in the absence of strong, complete, and conclusive proof of its falsity or nullity, the evidentiary nature of the Certificates of Compliance must be sustained and considered.

Ayala Corporation v. CIR

CTA Case No. 10056, December 11, 2023

(It does not matter how far apart the administrative and judicial claims were filed within the 2-year prescriptive period.)

Facts: Ayala Corporation ("Ayala") filed an administrative claim for issuance of Tax Credit Certificate ("TCC") for its Creditable Withholding Tax ("CWT") for CYs 2016 and 2017 on March 28, 2019. Without waiting for the CIR's action, Ayala filed a Petition for Review on April 3, 2019, or after six (6) days from filing its administrative claim.

Issue: Did Ayala violate the principle of exhaustion of administrative remedies?

Ruling: No. The Supreme Court in CIR v. Carrier Air Conditioning Philippines, Inc. Categorically held that from the plain language of Section 229 of the NIRC, as amended, it does not matter how far apart the administrative and judicial claims were filed, or whether the CIR was actually able to rule on the administrative claim, so long as both claims were filed within the 2-year prescriptive period.

The CIR's plea for ample time to decide refund claims cannot be addressed by judicial pronouncement but by appropriate legislation.

John Paul V. Medina v. CIR

CTA Case No. 10277, December 11, 2023

(An order with a tenor of indicating the final nature of the determination of the Commissioner of Customs ("COC") to forfeit seized goods is appealable to the CTA under Section 7(a)(4) of Republic Act ("RA") 9282.)

Facts: The COC issued a LOA directing a composite team to implement Mission Order Nos. 05-21-2019-221 and 05-28-2019-233. The composite team proceeded to John Paul V. Medina's ("Medina") office and storage areas located at Sta. Cruz, Manila.

The District Collector of the Port of Manila ("POM District Collector") issued a Warrant of Seizure and Detention ("WSD") against Medina. Medina submitted affidavits and supporting documents to prove that the items seized were purchased locally. During the clarificatory hearing, the government prosecutor did not interpose any objection as to the genuineness and due execution of the evidence offered by Medina.

Subsequently, the POM District Collector issued the Order dated January 3, 2020, recalling the WSD. Upon review by the COC, it reversed and set aside the order of the POM District Collector and remanded the case to the POM District Collector in an Order dated March 23, 2020. Afterwards, the POM District Collector issued an order forfeiting the seized goods in favor of the Government.

Aggrieved, Medina filed a Petition for Review before the CTA.

Issue: Does the CTA have jurisdiction over the Petition for Review?

Ruling: Yes. The CTA has jurisdiction over the Petition for Review. A thorough reading of the assailed Order dated March 23, 2020, would reveal that while COC's order to remand the case for further proceedings appears to be interlocutory, it is, in reality an order to effect the forfeiture of the subject seized goods. The order did not state that the remand of the case was for further reception of evidence. The order demanded for payment coupled with a threat to forfeit the subject seize goods, if no payment will be made, shows that respondent had already decided to forfeit the goods unless petitioner would opt to settle the duties and taxes. The tenor of the March 23, 2020, Order unmistakably indicates the final nature of the determination made by COC on Medina's case, and that is to forfeit the subject seized goods.

Avaloq Philippines Operating Headquarters v. CIR

CTA Case No. 10397, December 07, 2023

(A Non-Resident Foreign Corporation ("NRFC") is an entity different from its affiliates. Hence, it cannot be presumed that such affiliates are likewise covered by an offsetting agreement between the NRFC and the Regional Operating Headquarters ("ROHQ").)

Facts: Avaloq PH is the regional operating headquarters ("ROHQ") of Avaloq Group AG, a company organized and existing under the laws of Switzerland. It filed a claim for VAT refund, alleging that it incurred excess and/or unutilized input VAT arising from its zero-rated sales. The BIR denied the claim. Thus, it filed a Petition for Review before the CTA.

Avaloq PH alleges that its zero-rated sales of services were paid for in acceptable foreign currency exchange through intercompany offsetting agreements.

Issue: Were the services of Avaloq PH paid for in acceptable foreign currency and thus qualified for VAT zero-rating?

Ruling: No. For a sale of service to NRFCs to qualify for VAT zero-rating under Section 108(B)(2) of the NIRC, it must be proven among others that the services were paid for in acceptable foreign currency accounted for in accordance with Banko Sentral ng Pilipinas ("BSP") rules and regulations.

An examination of the Short Term Credit Facility Agreement confirms that Avaloq PH is being loaned amounts in US Dollars by its head office, Avaloq Group AG, to pay-off its financial needs.

However, the Short Term Credit Facility Agreement did not provide an offsetting arrangement between affiliates. It refers only to a set-off of credits between Avaloq Group AG and an affiliate. Avaloq Group AG is an entity different from its affiliates. Hence, it cannot be presumed that such affiliates can use the amounts advanced by Avaloq Group AG to Avaloq PH to pay-off the latter's receivables which arose from its sales of service to such affiliates. Documentary proof on this matter should have been adduced by Avaloq PH.

For failing to prove that its sales of services to NRFCs doing business outside the Philippines were paid for in acceptable foreign currency in accordance with BSP rules and regulations, the said sales of services do not qualify for VAT zero-rating. Thus, the VAT refund claim cannot prosper.

Encore Receivable Management, Inc. v. CIR

CTA Case No. 10062, December 06, 2023

(It is the FAN that must be administratively protested or disputed within 30 days and not the PAN.)

Facts: Encore Receivable Management, Inc. ("ERMI") received a PAN containing its deficiency taxes on Withholding Tax on Compensation ("WTC"), Expanded Withholding Tax ("EWT"), and Final Withholding Tax ("FWT") for Taxable Year 2014. Thereafter, BIR issued a FAN assessing the deficiency taxes plus interest. In 2018, ERMI received a Preliminary Collection Letter ("PCL") and Final Notice Before Seizure ("FNBS"). In 2019, ERMI contested the BIR's PCL and FNBS by filing a Petition for Review before the CTA and argued that the tax assessments issued against it are void because it never received the FAN for the said year and BIR's right to assess taxes is barred by prescription, citing Section 228 of the Tax Code.

Issue: Does the CTA have jurisdiction over the case?

Ruling: CTA dismissed the case. Worthy to note that ERMI filed its Request for Reinvestigation in 2018 of July 11 and July 26 after it received PCL and FNBS on June 11 and June 26, respectively. ERMI's administrative protests before the BIR were not directed against the FLD/FAN, specifically what was assailed are the BIR's collection letters PCL and FNBS. It is the FAN that must be administratively protested or disputed within 30 days and not the PAN. The *Allied Banking* and *Maxicare* cases are instructive, a request for reinvestigation must be directed against the FLD/FAN received by the ERMI.

ERMI should have challenged the PCL and FNBS directly before the CTA under the premise that it did not receive the BIR's FAN. Under Sec. 7(a)(1), in relation to Section 11 of RA 1125, as amended by RA 9282, that the CTA's jurisdiction over CIR's decision or action embraces other matters arising under the Tax Code. Among the matters specified in Section 2 of the Tax Code is the BIR's authority to collect all national internal revenue taxes, fees, and charges. This includes the issuance of rules, regulations, and measures in pursuit thereof.

An appeal must be seasonably taken from such action, through the filing of Petition for Review, within 30 days. ERMI belatedly filed its Petition for Review on April 8, 2019, depriving the CTA of jurisdiction over the case.

Petron Corporation. v. CIR

CTA Case No. 9993 & 10015, December 05, 2023

(A claim for refund or credit shall be granted only upon proof that the excise taxes sought to be refunded were paid upon removal/release of the petroleum products from the refinery or customs house, as the case maybe and that the petroleum products have become tax exempt, e.g. these have been sold subsequently to international carriers, tax-exempt entities by treaty or tax-exempt entities by law.)

Facts: Petron Corporation ("Petron") seeks the refund of the excise taxes paid relative to locally produced and imported Jet A-1 fuel which were sold and delivered to various international carriers and tax-exempt entities.

Issue: Is the payment of excise taxes paid on manufactured or imported petroleum products but sold to international carriers or tax-exempt entities erroneous and/or illegal and thus subject to refund?

Ruling: Yes Section 135 of the Tax Code provides that petroleum products sold to international carriers and exempt entities or agencies are exempt from excise tax. Citing the case of *Pilipinas Shell Petroleum Corporation v. CIR*, the Supreme Court stated that the nature of excise taxes. An excise tax pertains to a levy imposed on specific manufactured or imported goods intended for domestic consumption rather than being charge on the privilege. As an indirect tax, its legal responsibility falls upon one entity, yet the economic tax burden can be transferred to another. Here, Petron's manufacture of petroleum products sold to various entities, the tax liability or the fiscal responsibility for the payment of excise tax remains with Petron, notwithstanding its capacity to transfer the economic weight or the tax burden, to its consumers. Pertaining to Section 135 of the Tax Code, in instances where petroleum products are vended to tax-exempt entities, it is imperative that the benefit of such exemption aligns with the party actually bearing the tax liability. Thus, the exemption should appropriately correspond to Petron, the entity shouldering the fiscal responsibility to settle the tax.

Moreover, claim for refund or credit shall be granted only upon proof that the excise taxes sought to be refunded were paid upon removal/release of the petroleum products from the refinery or customs house, as the case maybe and that the petroleum products have become tax exempt, e.g. these have been sold subsequently to international carriers, tax-exempt entities by treaty or tax-exempt entities by law. Here, Petron was able to prove that it paid the excise taxes through the testimony of the Independent Certified Public Accountant ("ICPA") and sold subsequently to international and tax-exempt entities.

Bukidnon Second Electric Cooperative Inc. v. CIR

CTA Case No.9761 & 9819, November 28, 2023

(Mere issuance of a Letter Notice ("LN") to taxpayer is not sufficient if no corresponding or subsequent LOA was issued. Due process demands that after an LN has serve its purpose, the Revenue Officer ("RO") should have properly secured a LOA before proceeding with the examination and assessment of the concerned taxpayer.)

Facts: Bukidnon Second Electric Cooperative Inc. ("BUSECO") was furnished with a copy of LN signed by Revenue District of Malaybalay City for VAT discrepancies for calendar year ending December 31, 2012. Thereafter, on January 13, 2016, BUSECO received PAN from

Regional Director of BIR Region of Cagayan De Oro. On March 15, 2016, BUSECO received FLD/FAN for the deficiency VAT.

Issue: Is the assessment valid?

Ruling: An assessment must be preceded by a valid LOA, before the BIR may conduct an investigation of a taxpayer; otherwise, the resulting tax assessment shall be void and ineffectual. There must be a grant of authority, in form of a LOA, before any revenue officer can conduct any kinds of examination or assessment. Mere issuance of an LN to taxpayer is not sufficient if no corresponding or subsequent LOA was issued. Due process demands that after an LN has serve its purpose, the RO should have properly secured a LOA before proceeding with the examination and assessment of the concerned taxpayer. The result of the absence of an LOA renders the examination and assessment a nullity, based on the taxpayer's right to due process.

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MTF Counsel is a full-service law firm comprised of experienced, multi-disciplined and innovative tax, customs and international trade, corporate, and litigation attorneys.