



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

BAKBAK (1 AND 2) NATIVE CHICKEN RESTAURANT,
represented by the owner ROSSELLE G. BARCO,

G.R. No. 217610

Petitioner,

Present:

LEONEN,
Chairperson,
 GESMUNDO,
 CARANDANG,
 ZALAMEDA,
 GAERLAN, *JJ.*

- versus -

**SECRETARY OF FINANCE,
 COMMISSIONER OF INTERNAL
 REVENUE, AND/OR
 RESPONSIBLE OFFICERS, namely:
 NESTOR S. VALEROSO,
 REGIONAL DIRECTOR; ***

Promulgated:

Respondents.

September 2, 2020

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DECISION

CARANDANG, J.:

Before this Court is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court, assailing the Decision² dated March 26, 2014 and Resolution³ dated February 12, 2015 of the Court of Appeals (CA) in CA-G.R. CV No. 02567-MIN filed by Bakbak (1 and 2) (Bakbak) Native Chicken Restaurant represented by Rosselle G. Barco (Rosselle) against the Secretary of Finance and Commissioner of the Internal Revenue (CIR) and/or its responsible officers.

* Felix B. Pepito, Chief of the Legal Division; Lita I. Chin, Chief of the Assessment Division; Leo O. Gonzales, Chief of the Special Investigation, and its subordinates, as follows: SP I Rex Vincent Perido, SP II Gervacio B. Angco, SP III Dennis C. Dimalanta, and RO III Nelia Monica J. Ramintas.

¹ *Rollo*, pp. 3-53.

² Penned by Associate Justice Henri Jean- Paul B. Inting (now a Member of this Court), with the concurrence of Associate Justices Edgardo A. Camello and Jhosep Y. Lopez; id. at 54-70.

³ Penned by Associate Justice Henri Jean-Paul B. Inting (now a Member of this Court), with the concurrence of Associate Justices Edgardo A. Camello and Pablito A. Perez; id. at 49-53.

Facts of the Case

Bakbak is a food business enterprise and retailer of fermented liquor.⁴ On April 16, 2008, the Special Investigation Division (SID) of the Bureau of Internal Revenue (BIR) headed by Leo Gonzales (Gonzales), together with Rex Vincent Perido, Gervacio Angco (Angco), Dennis Dimalanta, and Nelia Ramintas (Ramintas), proceeded to Bakbak and presented to Federico Barco (Federico), father of Rosselle, owner of Bakbak, a copy of the Mission Order No. 00044789 to conduct surveillance pursuant to the “*Oplan Kandado*.”⁵ *Oplan Kandado* is a flagship program of the BIR aimed at strengthening the imposition of prescribed administrative sanctions for non-compliance with Value Added Tax (VAT) requirements.⁶ The issuance of the Mission Order was based on reports that Bakbak has not been issuing invoices or receipts for its sales and that despite earning more than the VAT threshold, it only issues non-VAT invoices.⁷

Pursuant to the Mission Order, the SID conducted overt surveillance on Bakbak from April 17 to 26, 2008 and found that by adding the daily sales receipts during the ten-day period, the sales amounted to ₱524,568.00 which translates to daily average sales of ₱52,456.80.⁸ This figure is in stark contrast with the declared gross income of Bakbak in taxable year 2006 which amounted to ₱120,000.00 only, and wherein a measly amount of ₱500.00 as income tax was paid.⁹

Meanwhile, upon learning that Federico has a farm in Arakan, North Cotabato, Gonzales and Angco met with him there. In the course of their conversation and to Federico’s mind, Gonzales was trying to solicit from Federico 10 hectares of land, which the latter tried to dodge. On April 30, 2008, another meeting was arranged between Federico and Gonzales where the latter explained how the alleged tax liability of Bakbak ballooned to more than ₱1,000,000.00 for the taxable years 2006-2008. Gonzales asked Federico how much he is willing to give to avoid paying the substantial amount of tax liability. Federico answered that he could only give a much lower amount than the alleged more than ₱1,000,000.00 tax liability, to which Ramintas quipped, “*Magsabi ka na, ang dami mong pera eh.*”¹⁰

This was followed by another meeting on May 6, 2008 where Gonzales allegedly proposed to Federico that he may pay the lowered amount of ₱700,000.00 but only ₱90,000.00 shall be receipted. They met again on May 27, 2008 where Gonzales told Federico that the Mission Order shall expire in a month. No conclusion was reached in any of those meetings.¹¹

⁴ Id. at 55.

⁵ Id. at 99.

⁶ Id. at 118.

⁷ Id. at 119.

⁸ Id.

⁹ Id. at 56.

¹⁰ Id. at 11.

¹¹ Id. at 57.

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In a letter dated July 17, 2008, the BIR informed Rosselle of the results of the 10-day surveillance on Bakbak as well as the under-declaration of its gross sales for taxable year 2006 and non-payment of percentage tax. It was also stated therein that under-declaration entails a penalty of 30% under Sections 115 and 248 of the National Internal Revenue Code (NIRC). Rosselle was then required to present her side on the matter and make necessary corrections on the gross sales and pay the correct taxes. It was stated in the letter that the failure of Rosselle to heed said requirement shall trigger the elevation of the case to the BIR-National Office and possible recommendation for the closure of Bakbak.¹²

Rosselle and Federico disputed the findings of the SID contending that the sales evidenced by the Cash Register Machine receipts and sales invoices representing only one transaction were recorded as two separate transactions. They also assert that during the surveillance, Bakbak benefitted from the massive advertisement and promotional campaign of San Miguel Brewery of its products with Bakbak, hence, the increase in its sales.¹³ However, Bakbak failed to comply with what were required of it under the letter.

A second notice dated September 24, 2008 was received by Federico and Rosselle giving them five days to submit their books of accounts and supporting documents enumerated in the notice.¹⁴ A third and final notice dated October 2, 2008 was also sent giving them five days to respond. Federico called Gonzales to complain about the five-day period considering the voluminous documents required from them. On December 4, 2008, Rosselle received a subpoena *duces tecum* directing her to submit books of accounts and supporting documents and to appear before the Legal Division of the BIR.¹⁵ She also received a memorandum from the BIR Regional Director dated December 3, 2008 regarding the surveillance conducted in Bakbak and its violation of Section 115 of the NIRC. On December 11, 2008, another letter was received by Rosselle from the Chief of the Legal Division giving her 48 hours to explain the under-declaration of gross sales.¹⁶

In a letter dated December 24, 2008, Rosselle expressed her willingness to comply with the notices but explained that she is having financial difficulties at that time. She offered a compromise settlement. This was reiterated in another letter dated January 20, 2009.¹⁷

In a Letter of Authority dated February 3, 2009, the Regional Director authorized the SID to examine the books of accounts and other accounting records for VAT liabilities of Bakbak for the period covering January 1, 2008 to December 31, 2008.¹⁸

¹² Id. at 56.

¹³ Id.

¹⁴ Id. at 57.

¹⁵ Id.

¹⁶ Id. at 58.

¹⁷ Id.

¹⁸ Id.

Consequently, another first notice was issued to Rosselle giving her five days to submit books of accounts and supporting documents. In response, Rosselle requested 30 days to accomplish the needed records.¹⁹ However, a resolution approving the issuance of 5-day VAT compliance notice was sent to Rosselle stating that she is non-VAT registered but filed two monthly VAT returns for May and June 2008. Rosselle also received a five-day VAT compliance notice directing her to register as a VAT taxpayer and comply with the requirements of a VAT registered person.²⁰

In a letter dated February 25, 2009, Rosselle alleged that she attempted to register as a VAT establishment but was not accepted; that she has been filing VAT returns since May 2008; that the period of five days given to her is not enough to comply; and that she requested another 10 days; and she is willing to pay the tax liability but requested a re-evaluation.²¹

In reply thereto, the BIR reiterated the result of its 10-day surveillance; the non-payment of Bakbak of VAT from April 2008 and prior years; and the non-compliance to the directive to submit books of account and other accounting records. The same letter also stated that a recommendation to the CIR may be made for the closure of Bakbak.²²

Fearing for the closure of Bakbak, Rosselle filed with the Regional Trial Court (RTC) on March 9, 2009 an action for the Declaration of Nullity/Constitutionality of Revenue Memorandum Order (RMO) Nos. 20-2002 and 31-2002, the circulars which contain the rules for the closure of an establishment for violation of Section 115 of the NIRC on VAT.²³ According to Rosselle, the subject RMOs violated her right to due process for giving her only five days to respond instead of 30 days under Section 228 of the NIRC.

The CIR countered that the guidelines in the questioned RMOs do not form part of the procedure for protesting an assessment under Section 228 of the NIRC. Instead, the RMOs prescribe for guidelines on the implementation of Section 115 of the NIRC on the Title on VAT.²⁴

On February 2, 2010, the RTC rendered its Decision²⁵ declaring the RMOs void and unconstitutional.²⁶ During the pendency of the case in the RTC, RMO No. 3-2009 was issued by BIR, which consolidated RMO Nos. 20-2002 and 31-2002, with other RMOs.²⁷

According to the RTC, the subject RMOs were not in accordance with Section 228 of the NIRC in that, Section 228 gave the taxpayer 30 days to

¹⁹ Id. at 58.

²⁰ Id. at 59.

²¹ Id. at 59.

²² Id.

²³ Id. at 60.

²⁴ Id. at 102.

²⁵ Penned by Judge George E. Omelio; id. at 98-106.

²⁶ Id. at 105

²⁷ Id. at 121.

protest the assessment made upon it while the RMOs gave only five days for the taxpayer to respond.²⁸ Hence, the promulgation of the RMOs diminished and altered the substantive right of Bakbak under Section 228 of the NIRC to protest the assessment within 30 days and not just five days as required under the questioned RMOs.²⁹

The RTC explained that the issuances of the BIR must conform to the existing laws and statutes. The governmental agencies must not enlarge, alter, or restrict the provisions of the laws in issuing implementing rules, regulation or procedure.³⁰

The RTC also voided RMO No. 3-2009 in so far as it codified RMO Nos. 20-2002 and 31-2002.³¹

The CIR moved for reconsideration which was also denied in an Order³² dated May 26, 2010.

Aggrieved, the CIR elevated the case to the CA.

The CA rendered its Decision³³ dated March 26, 2014 granting the appeal and setting aside the ruling of the RTC.

According to the CA, it was error for the RTC to nullify RMO 3-2009 as well because the latter not only codified the two questioned RMOs but also contained certain provisions that were never part of the questioned RMOs.³⁴

Be that as it may, the CA ruled that Section 228 of the NIRC speaks of protesting an assessment. An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. Hence, the provisions of Section 228 shall only be operational when there is already an assessment.³⁵

The CA summarized the letters and notices sent by the BIR to Rosselle in the following manner:

Letter dated July 17, 2008	Rosselle was informed of the results of the surveillance. Based on the results and the amount she paid for taxable year 2006, there is an under-declaration of her gross sales. She was also informed that based on the records, she made no payment of percentage taxes.
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²⁸ Id. at 102-103.
²⁹ Id. at 104.
³⁰ Id. at 103.
³¹ Id. at 105.
³² Id. at 107.
³³ Supra note 2.
³⁴ *Rollo*, p. 64.
³⁵ Id. at 65.



	She was given 5 days from receipt to present her side and make necessary corrections.
Second Notice dated September 24, 2008	Rosselle was given 5 days from receipt to submit her books of accounts and supporting documents for the year 2007.
Third Notice dated October 2, 2008	Rosselle was given 5 days from receipt to submit her books of accounts and supporting documents for the year 2007.
Memorandum dated December 3, 2008 Re: Violation of Section 115 of the NIRC	The Memo was addressed to the Regional Director. It stated the results of the surveillance vis-à-vis the annual gross sales declared for 2007 and finding that: (1) there is an under-declaration of taxable income; and (2) non-registration as a VAT taxpayer.
Letter dated December 8, 2008	Rosselle was informed of the results of the surveillance vis-à-vis her 2007 annual tax income return which shows an under-declaration of her taxable sales. She was given 48 hours to explain under oath why she should not be dealt with administratively, for suspension of business or temporary closure, and/or for criminal liability under the Tax Code.
Letter of Authority dated February 3, 2009	Authorizing the SID to examine Rosselle's books of accounts and other accounting records for VAT liabilities for 2008.
First Notice dated February 3, 2009 Re: VAT	Rosselle was given 5 days from receipt to submit her books of accounts and supporting documents for the year 2008.
Resolution Approving the Issuance of the 5-Day VAT Compliance Notice	The Board granted the issuance of the 5-day VAT compliance notice considering that there was an under-declaration of Rosselle's taxable income and that she is a non-VAT taxpayer.
5-Day VAT Compliance Notice dated February 18, 2009	Rosselle was asked to comply with the Tax Code: (1) register as a VAT taxpayer; (2) comply with the requirements of a VAT-registered person. She was given 5 days from receipt to rectify.
Letter dated February 27, 2009	The letter refuted the arguments of Rosselle's letter-reply to the 5-day VAT compliance notice. She was informed that she violated Section 115 (b), (a1), (a2), and (a3). Her request for immediate reevaluation was denied. The letter ended that "the recommendation may be made to the Commissioner of Internal Revenue for the temporary closure of your establishment until you shall have complied with the requirements of the Five-Day VAT Compliance Notice sent to you." ³⁶

In assessing the letters, the CA concluded that the letters and notices sent by the CIR to Rosselle are not assessments. The communications merely required her to submit her books of accounts and supporting documents or to comply with the requirements of the NIRC. Also, the subject of the letters pertains to matters under Section 114 of the NIRC on the return and payment of VAT and Section 115 which gives the CIR the power to suspend the business operations of a taxpayer for failure to comply with Section 114. The subject of the letters was issued also in connection with Section 237 on the requirement to issue of receipts or sales or commercial invoices and Section 238 on the need to print receipts or sales or commercial invoices. The letters and notices to Rosselle pertain to the proper administration of taxes and not assessment.³⁷

The CA noted that since the assailed RMOs implement Section 115 of the NIRC, Rosselle cannot insist that the periods under Section 228 shall be applied. Besides, even in the letters sent to her, Rosselle was given the opportunity for her to rectify the under-declaration of income as well as register as VAT taxpayer, but she failed to do so.³⁸

Bakbak filed a motion for reconsideration but it was denied as well.

This time aggrieved, Bakbak filed a Petition for Review on *Certiorari*³⁹ before this Court insisting that the meetings called upon by Gonzales and his SID team to discuss the payment of alleged deficiency taxes is in the form of an assessment which would trigger the application of the periods given in Section 228 of the NIRC.⁴⁰ Bakbak also argues that Sections 115 and 228 of the NIRC should be construed together.⁴¹

Hence, for being contrary to Section 228, the assailed RMOs should be declared invalid and unconstitutional.⁴²

In its Comment,⁴³ the CIR, through the Office of the Solicitor General (OSG), counters that the activities of certain BIR employees in the aforesaid meetings with Federico were irregular and were already subject of criminal and administrative proceedings. Thus, the irregular activities of the BIR officials should be better threshed out in the proper forum.⁴⁴ These meetings cannot be considered demand for payment of taxes under the NIRC which would be tantamount to an assessment and which would trigger the application of the provisions of Section 228.⁴⁵ The OSG points out that Rosselle and Federico were actually fully aware and even complicit to the illegal activities of the BIR officers.⁴⁶ Reiterating its argument that RMO Nos.

³⁷ Id. at 67.

³⁸ Id. at 69.

³⁹ Id. at 3-46.

⁴⁰ Id. at 22.

⁴¹ Id. at 27.

⁴² Id. at 45.

⁴³ Id. at 118-147.

⁴⁴ Id. at 125-126.

⁴⁵ Id. at 130.

⁴⁶ Id. at 132.

20-2002 and 31-2002 do not form part of the procedure for protesting an assessment, the OSG states that Section 228 of the NIRC and Section 115, which the subject RMOs are implementing, pertain to different procedures in revenue collection and administration.⁴⁷ The OSG also cited the differences between a five-day VAT Compliance Notice and a Final Assessment Notice.⁴⁸

Bakbak filed its Reply⁴⁹ reiterating its arguments already raised in the petition.

Issue

The issue in this case is whether Revenue Memorandum Order Nos. 20-2002 and 31-2002 are invalid for being inconsistent with Section 228 of the NIRC.

Ruling of the Court

The petition is not meritorious.

**The filing of the case to the RTC
questioning the validity of the
RMOs was proper.**

Before going into the substantive issue in this case, there is a need to discuss whether the filing of the action in the RTC questioning the constitutionality of the subject RMOs is proper.

In the case of *Banco de Oro v. Republic of the Philippines*,⁵⁰ We have pronounced in no uncertain terms that the Court of Tax Appeals shall have the jurisdiction to rule on the constitutionality or validity of a tax law as well as tax regulations or administrative issuances, *viz*:

x x x x

The Court of Tax Appeals has undoubted jurisdiction to pass upon the constitutionality or validity of a tax law or regulation when raised by the taxpayer as a defense in disputing or contesting an assessment or claiming a refund. It is only in the lawful exercise of its power to pass upon all matters brought before it, as sanctioned by Section 7 of Republic Act No. 1125, as amended.

This Court, however, declares that the Court of Tax Appeals may likewise take cognizance of cases directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance (revenue orders, revenue memorandum circulars, rulings).

⁴⁷ Id. at 136.

⁴⁸ Id. at 137-138.

⁴⁹ Id. at 163-175.

⁵⁰ 793 Phil. 97, 123-124 (2016).

x x x x⁵¹

However, at the time that Bakbak filed the complaint dated March 9, 2009 to the RTC, the prevailing doctrine was that espoused in *British American Tobacco v. Camacho*⁵² which provided that:

x x x x

While the above statute confers on the CTA jurisdiction to resolve tax disputes in general, this does **not include cases where the constitutionality of a law or rule is challenged**. Where what is assailed is the **validity or constitutionality of a law, or a rule or regulation issued by the administrative agency in the performance of its quasi-legislative function, the regular courts have jurisdiction to pass upon the same**. The determination of whether a specific rule or set of rules issued by an administrative agency contravenes the law or the constitution is within the jurisdiction of the regular courts. Indeed, the Constitution vests the power of judicial review or the power to declare a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation in the courts, including the regional trial courts. This is within the scope of judicial power, which includes the authority of the courts to determine in an appropriate action the validity of the acts of the political departments. Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.⁵³

x x x x

Since at the time of the filing of the complaint the prevailing dictum was that only regular courts had jurisdiction to pass upon the constitutionality or validity of tax laws and regulations, the complaint was properly lodged before the RTC and appealed to the CA.

Section 228 and 115 of the NIRC pertain to two different matters.

Be that as it may, Section 228 of the NIRC provides for the procedure in protesting an assessment. It falls under the Title on Remedies provided to a taxpayer, to wit:

Sec. 228. Protesting of Assessment. – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the

⁵¹ Id.

⁵² 584 Phil. 489, 511 (2008).

⁵³ Id.

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taxpayer of his findings: Provided, however, That a pre-assessment notice shall not be required in the following cases:

x x x x

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be **protested administratively** by filing a request for reconsideration or reinvestigation within **thirty (30) days from receipt of the assessment** in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

x x x x (Emphasis supplied)

Clearly, for the provisions of Section 228 to take effect, there must first be an assessment. Jurisprudence has described an assessment as a notice that contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and protests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer.⁵⁴

Not all notices and letters coming from the BIR can be deemed assessments. As concluded by the CA, the letters sent to Bakbak were not in the nature of an assessment which may be protested against under Section 228 of the NIRC. We likewise agree with the CA that the meetings which allegedly happened between Federico and the erring officials of the BIR where the latter asked from the former payment of the alleged tax deficiency of Bakbak cannot be considered a final assessment notice. Section 228 is itself clear that an assessment must be in writing and the legal and factual basis thereof shall be clearly laid down. None of these formalities and required contents of an assessment are present in this case.

On the other hand, Section 115 which is found under the Title on VAT, gives upon the CIR the power to suspend business operations of a taxpayer for the following violations:

x x x x

⁵⁴ *CIR v. Pascor Realty and Development Corp.*, 368 Phil. 716 (1999).



- (a) In the case of a VAT-registered Person. -
- (1) Failure to issue receipts or invoices;
 - (2) Failure to file a value-added tax return as required under Section 114; or
 - (3) Understatement of taxable sales or receipts by thirty percent (30%) or more of his correct taxable sales or receipts for the taxable quarter.
- (b) Failure of any Person to Register as Required under Section 236.

The temporary closure of the establishment shall be for the duration of not less than five (5) days and shall be lifted only upon compliance with whatever requirements prescribed by the Commissioner in the closure order. (Emphasis supplied)

The pertinent provisions of RMO No. 20-2002 which implements Sections 113, 114, 115, 236, 237 and 238 of the NIRC are as follows:

- (2) Section II(4)(B). -
- (B) Confrontational Requirements. -

1. Consistent with the requirements of due process, the report of the handling Revenue Officer shall be concurred in by the Head of the investigating office. The findings of the investigating office shall be reviewed by a Review Board composed of the following:

x x x x

The Review Board must act on the report within seven (7) days from receipt thereof. The chairperson of the Board may always seek the assistance of any Revenue Official and Employee, in the interest of public service. The reviewing board shall convene, upon the initiative of the chairperson, whenever necessary. If the report is approved by the Review Board, the concerned Regional Director or the ACIR, Enforcement Service/LTS, as the case may be, as chair, shall immediately require, through the Chief, Legal Division or ACIR, Legal Service, the taxpayer to refute the apprehension and to explain under oath within **forty eight (48) hours why he should not be dealt with administratively, by suspension of business or temporary closure of his establishment**, and/or criminally, for violation of pertinent provisions of the Tax Code. Thus, the 48-Hour Notice shall be signed by the Chief, Legal Division or ACIR, Legal Service, as the case may be, appending thereto the report of the investigating office as approved by the Review Board.



2. Upon submission of the explanation or if none is submitted on or before the deadline, the Review Board headed by the Regional Director or the ACIR, Enforcement Service/LTS, shall decide whether or not to terminate or indorse the docket of the case to the ACIR, Legal Service, with specific recommendation on whether or not to pursue administrative or criminal action against the taxpayer.

3. Upon evaluation of the evidence presented and arguments of the parties involved, the ACIR-Legal Service shall make the necessary recommendation for the approval of the DCIR-Legal and Inspection Group unless the CIR delegates the approval thereof to another subordinate official. **If the recommendation is for the issuance of the 10-Day VAT Compliance Notice**, the same shall be prepared by the ACIR-Legal Service for the signature of the DCIR-Legal and Inspection Group (unless the CIR delegates the signing thereof to another subordinate official). **The 10-day VAT Compliance Notice with details of the findings of the investigating office as approved by the Review Board shall be served immediately to the taxpayer by the Regional Director/ACIR-LTS/ACIR-Enforcement Service**, whoever is the appropriate official who has jurisdiction over the case. The taxpayer may again **refute the allegations and findings of the BIR within five (5) days from receipt of the notice**. The BIR originating office shall respond to the letter or protest of the taxpayer within five (5) days from receipt thereof. The response letter shall be signed by the Head of the Review Board. Upon receipt by the BIR of the protest, the running of the 10-Day compliance period is deemed suspended and shall begin to run only upon receipt by the taxpayer of the resolution on the protest.

Section II(4)(C)

(C) Execution and Enforcement. –

1. Where a **taxpayer refuses, neglects, or fails to comply with the terms of the 10-day VAT Compliance Notice** or to satisfactorily refute the findings of the BIR, the Review Board chaired by the Regional Director/ACIR-Enforcement Service/ACIR-LTS, shall prepare a report **recommending the closure of the establishment** for the approval of the DCIR-Legal and Inspection Group. On the basis of the approval made by the DCIR-Legal and Inspection Group, the Regional Director/ACIR – Enforcement Service/ACIR-LTS shall prepare, sign, and execute the Closure Order. The service of the Closure Order shall be accompanied with the report of the Review Board as approved by the DCIR-Legal and Inspection Group indicating therein the computed tentative amount of under declaration of gross sales/receipts/other taxable base as a result of the violations committed.

However, if in the meantime the taxpayer corrects the violation pursuant to Section IV hereof, the Regional Director or the ACIR, Enforcement Service/Large Taxpayer



Service who signed the closure order shall desist from implementing the closure order and shall communicate such information to the Deputy Commissioner – Legal and Inspection Group who approved the recommendation of the Review Board for the issuance of the closure order.

2. The execution of the closure order shall consist in the physical closing of the doors or other means of ingress unto the establishment and the sealing thereof with the BIR official seal. (Emphasis supplied)

RMO No. 31-2002 in part provides that:

Section 3. Guidelines and Procedures. – While the general provisions on the administrative sanction of suspension/temporary closure of business have been clearly laid down in RMO 57-2000 as amended by RMO 20-2002, the following modifications shall be observed in respect to the institution of closure order pursuant to this Order:

(1) The Letter Notice and follow-up letters sent and duly received by the taxpayer concerned shall be considered as sufficient compliance with the 48-Hour Notice provided for under RMO 57-2000 and RMO 20-2002;

(2) In view of the long period of time attended to such taxpayers to comply with their obligations as indicated in the Letter Notice that was served, up to the time that follow-up letters have been sent, a **5-Day VAT Compliance Notice shall be issued in lieu of the 10-Day VAT Compliance Notice**. The approval and the signing of the 5-Day VAT Compliance Notice is hereby delegated to the Regional Director having jurisdiction over the taxpayer concerned;

(3) The signing of Closure Order and lifting thereof shall be delegated to the Regional Director having jurisdiction over the taxpayer concerned;

(4) The procedures for the institution of closure proceedings shall be as follows:

(a) The Technical Working Group (TWG) in the National Office shall transmit the case file to the RDO and the RDO, upon receipt thereof, shall complete documentation of the case file in preparation for the closure proceedings;

(b) Once the case file has been fully documented, the RDO shall submit a report to the Regional Director recommending the action of closure of the concerned establishment based on guidelines provided for under this Order. In instances where it is found that the case does not qualify for closure proceedings, a memorandum for the recommended next course of action to be undertaken shall be submitted by the RDO to the TWG in the National Office, for further evaluation;



(c) Upon approval thereof by the Regional Director, a Mission Order shall be signed by the Regional Director ordering the service of a 5-Day VAT Compliance Notice to the concerned taxpayer by the RDO;

(d) The 5-Day Compliance Notice shall state the particular provision of Section 115 that was violated by the taxpayer with specific reference to the amount of sales discrepancy discovered by the RELIEF System and shall further require the taxpayer to pay an amount equivalent to 3% (in case of seller of goods)/6% (in case of seller of service) of the underdeclared sales/receipts or 110% of the adjusted basic tax due (after considering underdeclaration), whichever is higher, using BIR Payment Form No. 0605. In addition, the RDO shall recommend an audit of the case by the Tax Fraud Division of the National Office unless taxpayer likewise pays the minimum income tax payment as prescribed in the VAAP regulations (Revenue Regulations Nos. 12-2002, 17-2002 and 18-2002);

(e) In case of **failure to respond to the 5-Day VAT Compliance Notice, Closure Order shall be prepared by the RDO** and shall be recommended by the Chief, Legal Division for the final approval of the Regional Director;

x x x x (Emphasis supplied)

As can be seen from the wordings of RMO Nos. 20-2002 and 31-2002, the subject matter pertains to the implementation of the power of the CIR to order the closure of the business of a taxpayer for violations provided under Section 115. RMO Nos. 20-2002 and 31-2002 did not in any way amend the provisions of Section 228 of the NIRC on the procedure for protesting an assessment. Section 115 and Section 228 pertain to entirely different matters.

As a final note, Bakbak was given numerous chances to respond and rectify its under-declaration and non-registration as VAT entity. The first letter sent to Bakbak requiring it to submit its books of accounts and other accounting records was dated July 2008 while the last letter recommending its closure for failure to comply with Section 115 of the NIRC was sent in February 2009. Despite the long period of time given to it by the BIR, Bakbak still failed to comply with the directives of the Bureau. It cannot now question that the assailed RMOs are unconstitutional just because they were made to apply against it.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The Decision dated March 26, 2014 and the Resolution dated February 12, 2015 of the Court of Appeals in CA-G.R. CV No. 02567-MIN is **AFFIRMED**.

SO ORDERED.

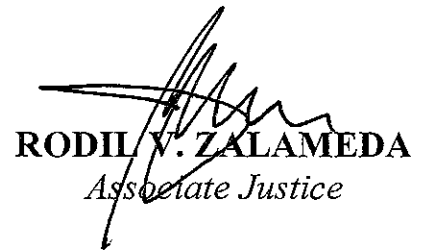



ROSMARI D. CARANDANG
Associate Justice

WE CONCUR:


MARVIC MARIO VICTOR F. LEONEN
Associate Justice

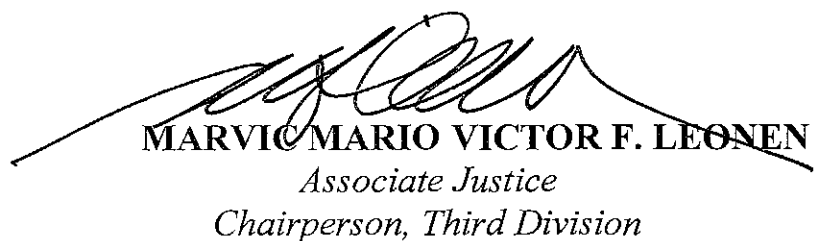

ALEXANDER G. GESMUNDO
Associate Justice


RODIL V. ZALAMEDA
Associate Justice


SAMUEL H. GAERLAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARVIC MARIO VICTOR F. LEONEN
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA
Chief Justice