REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 1909
(CTA Case No. 8804)

- versus –

CORAL BAY NICKEL CORPORATION,
Respondent.

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CORAL BAY NICKEL CORPORATION,
Petitioner,

CTA EB No. 1910
(CTA Case No. 8804)

Present:

Del Rosario, *P.J.*,
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban,
Manahan,
Bacorro-Villena, and
Modesto-San Pedro, *JJ.*

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

JAN 2 0 2020
1:12 p.m.

x--x

RESOLUTION

CASTAÑEDA, JR., *J.:*

Submitted for resolution are the following:

1. Motion for Reconsideration filed by Coral Bay Nickel Corporation (Coral Bay) via registered mail on September 27, 2019;[1] and

2. Coral Bay's Supplemental Motion for Reconsideration also filed via registered mail on September 27, 2019.[2]

The aforementioned Motions seek reconsideration of the Decision of the Court *En Banc* promulgated on September 5, 2019, ("Assailed Decision")[3] wherein the Court *En Banc* granted the Petition for Review filed by the Commissioner of Internal Revenue (CIR) docketed as CTA EB No. 1909 and denied the Petition for Review filed by Coral Bay docketed as CTA EB No. 1910 for lack of merit. The dispositive portion of the Assailed Decision reads:

> "**WHEREFORE**, the Petition for Review filed by the Commissioner of Internal Revenue docketed as CTA EB No. 1909 is **GRANTED**. The Decision dated November 23, 2017 as well as the Resolution dated July 27, 2018 of the Third Division of this Court in CTA Case No. 8804 are both **REVERSED**. Accordingly, Coral Bay Nickel Corporation's claim for refund or issuance of tax credit allegedly representing its unutilized input value-added tax (VAT) from its purchases of goods and services attributable to its VAT zero-rated sales for the period January 1, 2012 to December 31, 2012 is **DENIED**.
>
> On the other hand, the Petition for Review filed by Coral Bay Nickel Corporation docketed as CTA EB No. 1910 is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

In compliance with the Resolution of the Court *En Banc*,[4] the Commissioner of Internal Revenue filed his Opposition (Re: Motion for

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[1] CTA EB No. 1909 Docket, pp. 215-248.
[2] *Id.*, pp. 204-213.
[3] *Id.*, pp. 169-190.
[4] *Id.*, pp. 251-253.

Reconsideration and Supplemental Motion for Reconsideration) on November 14, 2019.

Coral Bay filed its Motion for Reconsideration on the basis of the following grounds, to wit:[5]

"GROUNDS FOR RECONSIDERATION

A. The Honorable Court erred in ruling that all purchases of Petitioner, a PEZA and VAT-registered enterprise, is (sic) VAT zero-rated.

B. The Government is already barred in denying that sales consumed and rendered outside the ECOZONE are subject to 12% VAT under the doctrine of equitable estoppel.

C. The Honorable Court erred in ruling that Petitioner is not entitled to the claim for a VAT refund."

In his Opposition, the CIR maintains that Coral Bay is not entitled to the claim for refund. As regards Coral Bay's contention that the Government is barred from denying that sales consumed and rendered outside the ECOZONE are subject to 12% VAT under the doctrine of equitable estoppel, the CIR asserts that the Government is never estopped by the mistakes or errors on the part of its agents.[6] Finally, the CIR submits that the claim for refund should be strictly construed against the claimant for being in the nature of tax exemption.[7]

The Court *En Banc* resolves to deny Coral Bay's Motions for lack of merit.

A careful review of the arguments presented by Coral Bay in its Motions reveals that it failed to raise any new or substantial matter or any compelling reason that will justify modification much less reversal of the Court *En Banc*'s findings. Nevertheless, the Court *En Banc* will tackle some points if only to reinforce the discussion in the Assailed Decision.

By and large, the Court *En Banc* stands by its ruling that the sale of services made by a VAT-registered enterprise from the customs territory to a PEZA-registered enterprise operating within the ECOZONE is subject to effectively zero-rated VAT by virtue of Section 108(B)(3) of the National Internal Revenue Code of 1997, as amended (1997 NIRC).

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[5] *Id.*, p. 217.
[6] *Id.*, pp. 258-259.
[7] *Id.*, p. 260.

The law is clear. To qualify for VAT zero-rating, Section 108(B)(3) of the 1997 NIRC plainly requires that a sale of service must satisfy the following:

1. Sale of service is performed in the Philippines;

2. Service is performed by a VAT-registered person; and

3. Service is rendered to persons or entities exempted under special laws or international agreement to which the Philippines is a signatory.

As the Court *En Banc* explained in the Assailed Decision, the sale of service subject of the present case met all of the foregoing requirements. *First*, the services purchased, *i.e.*, the construction of Coral Bay's row houses for its laborers, bus terminal, dormitory, runway, and foreman's duplex, were all performed within the Philippines.[8] *Second*, the services were performed by SMCC Philippines, Inc., a VAT-registered person.[9] And *third*, the services were all rendered to Coral Bay which is a VAT-exempt entity.

With respect to Coral Bay's invocation of equitable estoppel, the Court *En Banc* holds that the said doctrine is inapplicable.

Estoppel *in pais*, or equitable estoppel, arises when one, by his acts, representations or admissions or by his silence when he ought to speak out, intentionally or through culpable negligence, induces another to believe certain facts to exist and the other rightfully relies and acts on such beliefs so that he will be prejudiced if the former is permitted to deny the existence of such facts.[10] The doctrine of estoppel is based upon the grounds of public policy, fair dealing, good faith and justice, and its purpose is to forbid one to speak against his own act, representations, or commitments to the injury of one to whom they were directed and who reasonably relied thereon. Said doctrine springs from equitable principles and the equities of the case. It is designed to aid the law in the administration of justice where without its aid injustice might result.[11]

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[8] Exhibit "P-55", Division Docket Vol. III, pp. 1184-1191; Exhibit "P-61", Division Docket Vol. III, pp. 1212-1221; Exhibit "P-56", Division Docket Vol. III, pp. 1175-1183.
[9] Exhibits "P-29" to "P-40-a", Division Docket Vol. III, pp. 1401-1429.
[10] *Philippine National Bank v. The Honorable Intermediate Appellate Court*, G.R. No. 66715, September 18, 1990, 189 SCRA 686.
[11] *Bartolata v. Republic*, G.R. No. 223334, June 7, 2017, 827 SCRA 100, 121-122.

As a general rule, the State cannot be barred by estoppel by the mistakes or errors of its officials or agents.[12] But as jurisprudence elucidates, the doctrine is subject to exceptions, viz:

> Estoppels against the public are little favored. They should not be invoked except [in rare] and unusual circumstances, and may not be invoked where they would operate to defeat the effective operation of a policy adopted to protect the public. They must be applied with circumspection and should be applied only in those special cases where the interests of justice clearly require it. **Nevertheless, the government must not be allowed to deal dishonorably or capriciously with its citizens, and must not play an ignoble part or do a shabby thing; and subject to limitations ...,** the doctrine of equitable estoppel may be invoked against public authorities as well as against private individuals.[13]

The factual circumstances of the present case, however, do not call for the application of exception to the general rule.

In the Assailed Decision, the Court *En Banc* had pointed out that RMC No. 74-99, as quoted by the Supreme Court in the case of *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.), Inc.*,[14] made reference to Section 108(B)(3) of the 1997 NIRC as the specific legal provision governing the tax treatment of the sale of services made by VAT-registered suppliers from the customs territory to PEZA-registered enterprises. The said issuance emphatically clarified that all sales of services to any registered enterprise operating in the ECOZONE (regardless of the class and type of the latter's PEZA registration) made by VAT registered suppliers from the Customs Territory shall be treated effectively subject to 0% VAT pursuant to Section 108(B)(3) of the 1997 NIRC in relation to the provisions of RA No. 7916 and the cross-border doctrine. Accordingly, Coral Bay cannot invoke RMC No. 74-99 as basis for its contrary legal position. Neither can it invoke RMC No. 50-2007[15] because such issuance is intended to apply only to registered freeport zone enterprises in the Subic Freeport Zone (SFZ), the Clark Freeport Zone (CFZ) as well as the Poro Point Freeport Zone (PPFZ).

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[12] *Republic v. Amor Hachero and the Register of Deeds of Palawan*, G.R. No. 200973, May 30, 2016, 791 SCRA 367; *The Heirs of Atty. Jose C. Reyes v. Republic*, G.R. No. 150862, August 3, 2006, 497 SCRA 528; *Republic v. Court of Appeals*, G.R. No. 116111, January 21, 1999, 301 SCRA 377.

[13] *SM Land, Inc. v. Bases Conversion and Development Authority et. al.*, G.R. No. 203655, March 18, 2015, 753 SCRA 631; *Bartolata v. Republic*, G.R. No. 223334, June 7, 2017, 827 SCRA 100, 121-122.

[14] G.R. No. 150154, August 9, 2005, 466 SCRA 224 ("*Toshiba*").

[15] Tax Treatment of Sale, Barter or Exchange of Goods or Properties or Sale or Sale or Exchange of Services Made by Suppliers from the Customs Territory to Registered Freeport Zone Enterprises in the Subic Freeport Zone (SFZ), the Clark Freeport Zone (CFZ), as well as the Poro Point Freeport Zone (PPFZ), and Vice Versa under Section 12 and 15 of Republic Act No. 7227, as amended by Republic Act No. 9400.

> We should also take into consideration the nature of VAT as an indirect tax. Although the seller is statutorily liable for the payment of VAT, the amount of the tax is allowed to be shifted or passed on to the buyer. **However, reporting and remittance of the VAT paid to the BIR remained to be the seller/supplier's obligation. Hence, the proper party to seek the tax refund or credit should be the suppliers, not the petitioner**." *(Emphasis and underscoring supplied; Citations omitted)*

The Supreme Court has already spoken on the matter. Needless to say, this Court has no other option but to faithfully uphold and apply the same. The Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is. It is the final arbiter of any justiciable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[19]

WHEREFORE, Coral Bay Nickel Corporation's Motion for Reconsideration and Supplemental Motion for Reconsideration both filed on September 27, 2019 are **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ON LEAVE
ERLINDA P. UY
Associate Justice

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[19] *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc.*, G.R. No. 150947, July 15, 2003, 406 SCRA 178.

At any rate, the PEZA Certificate of Registration No. 02-072[16] issued to Coral Bay on December 27, 2002, which conferred it the status of an ECOZONE Export Enterprise, explicitly granted Coral Bay VAT zero-rating of local purchases subject to compliance with BIR and PEZA requirements. In addition, the Supreme Court had already confirmed in *Toshiba* as well as in the case of *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*[17] that PEZA-registered enterprises are considered VAT-exempt entities. Thus, their purchases of goods and/or services from VAT-registered enterprises located in the customs territory are effectively VAT zero-rated. These decisions were promulgated way before the purchases of services subject of the present case were made.

Given the foregoing, it really strains credulity to state that Coral Bay had relied in good faith on both RMC No. 74-99 and RMC No. 50-2007 when it considered its purchases of services purportedly consumed outside of the ECOZONE as subject to 12% VAT.

The Court *En Banc* also explained in the Assailed Decision that Coral Bay is not the proper party to seek the present judicial claim for tax refund and/or credit. In the event that Coral Bay actually paid the said input tax, its recourse is to seek reimbursement thereof against its supplier and not against the Government. This is in accordance with the Supreme Court's ruling in *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue*[18] wherein it was held:

> "x x x Verily, **if petitioner had paid the input VAT, the CTA was correct in holding that the petitioner's proper recourse was not against the Government but against the seller who had shifted to it the output VAT** following RMC No. 42-03, which provides:
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> > <u>In case the supplier alleges that it reported such sale as a taxable sale, the substantiation of remittance of the output taxes of the seller (input taxes of the exporter-buyer) can only be established upon the thorough audit of the suppliers' VAT returns and corresponding books and records.</u> It is, therefore, imperative that the processing office recommends to the concerned BIR Office the audit of the records of the seller.
> >
> > In the meantime, the claim for input tax credit by the exporter-buyer should be denied without prejudice to the claimant's right to seek reimbursement of the VAT paid, if any, from its supplier.

[16] Exhibit "P-1", Division Docket Vol. III, p. 1302.
[17] G.R. No. 153866, February 11, 2005, 451 SCRA 132.
[18] G.R. No. 190506, June 13, 2016, 793 SCRA 199, 200.

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

I reiterate my Concurring and Dissenting Opinion.
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

With due respect, I reiterate my
Separate Opinion dated September 5, 2019.
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice