REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CLARK WATER CORPORATION,
Petitioner,

CTA EB No. 1608
(CTA Case No. 8865)

-versus-

Present:

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 15 2019
11:51 a.m.

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RESOLUTION

CASTAÑEDA, JR., *J.:*

This resolves petitioner's "Motion for Reconsideration (Re: Decision dated October 5, 2018)" filed on November 5, 2018. Respondent filed his "Opposition (Re: Petitioner's Motion for Reconsideration dated 05 November 2018) on January 14, 2019. This motion was submitted for resolution on January 24, 2019.

The dispositive portion of the Decision dated October 5, 2018 states:

> **WHEREFORE,** premises considered, the present Petition for Review filed by Clark Water Corporation is **DENIED**. Accordingly, the November 23, 2016 Decision and February 13, 2017 Resolution of the CTA Third Division in CTA Case No. 8865 are **AFFIRMED with MODIFICATION** in the computation of the deficiency interest and delinquency interests in view of the effectivity of Republic Act No. 10963

(TRAIN Law) on January 1, 2018 and the issuance of Revenue Regulations No. 21-2018[1] dated September 14, 2018.

The assessment issued by respondent against petitioner for taxable year 2010 covering deficiency income tax and VAT is **UPHELD**. Accordingly, petitioner is hereby **ORDERED TO PAY** deficiency income tax and VAT in the total amount of **Twelve Million Six Hundred Eighty-One Thousand One Hundred Seventy-Seven and 23/100 Pesos (Php12,681,177.23)**, inclusive of the 25% surcharge and deficiency and delinquency interests imposed under Sections 248(A)(1)(3) and 249(B) and (C) of the NIRC of 1997, as amended, respectively computed until December 31, 2017 as follows:[2]

	Income Tax	VAT	Total
Basic tax	₱ 944,706.66	₱ 2,166,899.39	₱ 3,111,606.05
25% Surcharge	236,176.67	541,724.85	777,901.51
Deficiency Interest			
4/16/2011 to 1/15/2014[3] [1,006 days] (₱944,706.66 x 20% x 2.7562 yrs.)	520,753.37		1,810,206.92
1/26/2011 to 1/15/2014[4] [1,086 days] (₱2,166,899.39 x 20% x 2.9753 yrs.)		1,289,453.55	
Total Amount Due as of January 15, 2014	**₱1,701,636.69**	**₱3,998,077.79**	**₱5,699,714.49**
Deficiency Interest			
1/16/2014 to 12/31/2017 [1,446 days] (₱944,706.66 x 20% x 3.9616 yrs.)	748,518.26		2,465,414.99
1/16/2014 to 12/31/2017 [1,446 days] (₱2,166,899.39 x 20% x 3.9616 yrs.)		1,716,896.72	
Delinquency Interest			
1/16/2014 to 12/31/2017 [1,446 days] (₱1,701,636.69 x 20% x 3.9616 yrs.)	1,348,255.70		4,516,047.75
1/16/2014 to 12/31/2017 [1,446 days] (₱3,998,077.79 x 20% x 3.9616 yrs.)		3,167,792.05	
Total Amount Due as of December 31, 2017	**₱3,798,410.66**	**₱8,882,766.56**	**₱12,681,177.23**

In addition, petitioner is liable to pay delinquency interest at the rate of 12%[5] on the total unpaid basic deficiency tax, surcharge and deficiency interest as of January 15, 2014 amounting to ₱1,701,636.69 for income tax and ₱3,998,077.79 for VAT, or in the aggregate amount of ₱5,699,714.49, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN).

[1] Regulations Implementing Section 249 (Interest) of the National Internal Revenue Code (NIRC) of 1997, as amended under Section 75 of the Republic Act (RA) No. 10963 or the "Tax Reform for Acceleration and Inclusion (TRAIN Law)".

[2] Section 6 of Revenue Regulations No. 21-2018 dated September 14, 2018.

[3] Exhibit "P-13", Records, Vol. 1, p. 448.

[4] Exhibit "P-13", Records, Vol. 1, p. 449.

[5] Section 2 of Revenue Regulations No. 21-2018 dated September 14, 2018.

SO ORDERED.

Petitioner moves for reconsideration of the October 5, 2018 Decision based on the following grounds:

(a) It is clear from the provisions of Section 8, DOF Department Order No. 003-08 and the numerous rulings and regulations issued by the respondent CIR that the <u>entire</u> sales of a Clark Special Economic Zone (CSEZ)-registered enterprise qualify for the 5% preferential tax rate on gross income so long as its sales within the customs territory do not breach the 30% threshold. The CTA-Second Division has also applied the foregoing rule in its decision in CTA Case No. 9286.

(b) Based on Q8/A8, Revenue Memorandum Circular (RMC) No. 50-2007, the principle of "technical importation" applies only to the "sale of **<u>goods and properties</u>** by Freeport Zone-registered enterprises to a buyer from the customs territory." Hence, sales of **<u>services</u>** by a Freeport Zone-registered enterprise to a buyer from the customs territory may not be considered 'technical importations" under RMC No. 50-2007.

(c) Even assuming for the sake of argument that the petitioner's sales of services to enterprises within the Customs Territory may be considered "technical importations," it [is] already settled that the 12% VAT on such technical importation should be collected from the buyer-importer from the Customs Territory, and not from the Freeport Zone-registered seller.

After a careful review of the grounds raised and arguments presented by petitioner, We find no valid or cogent reason to deviate from our findings and conclusions reached in our Decision dated October 5, 2018, thus, the motion is denied.

We reiterate that Section 5 of DOF Department Order No. 03-08,[6] is clear that "the gross income, which is the basis of the 5% special rate, refers to gross sales or gross revenue **derived from business activities within the subject Ecozone or Freeport**. We emphasize that, 'For purposes of implementing the special 5% tax on Gross Income Earned, in lieu of national

[6] *RULES AND REGULATIONS TO IMPLEMENT REPUBLIC ACT NO. 9400, "AN ACT AMENDING REPUBLIC ACT NO. 7227, OTHERWISE KNOWN AS THE BASES CONVERSION AND DEVELOPMENT ACT OF 1992, AND FOR OTHER PURPOSES,"* February 13, 2008, signed by then DOF Secretary Margarito B. Teves.

and local taxes, granted to Ecozone Enterprises and Freeport Enterprises in SSEZ, SFZ, CFZ, PPFZ, and MSEZ the following [provisions in Section 5 of DOF Department Order No. 03-05[7] *[sic]*] **shall apply.'**[8] It is basic that the word 'shall' means mandatory. Considering that the sale of services were derived in the Customs Territory, these sales were not included in the computation of the special 5% tax on Gross Income Earned, in lieu of national and local taxes, thus, the CIR is correct in imposing the relevant internal revenue taxes under the National Internal Revenue Code of 1997, as amended."[9]

Also pertinent in this case is the Q & A No. 7 of Revenue Memorandum Circular No. 50-2007,[10] which states:

> Q7: What is the tax treatment for the income of Freeport Zone-registered enterprises derived from sources in the Customs Territory?
>
> A7: Freeport Zone-registered enterprises may generate income from sources within the Customs Territory of up to thirty percent (30%) of its total income from all sources; provided, that should a Freeport Zone-registered enterprise's income from sources within the Customs Territory exceed thirty percent (30%) of its total income from all sources, then it shall be subject to the income tax laws of the Customs Territory; provided further, that **in any case, customs duties and taxes must be paid with respect to transactions, receipts, income and sales of articles to the Customs Territory and in the Customs Territory.** *(Emphasis Supplied.)*

To recall, petitioner is registered as a Clark Special Economic Zone ("CSEZ") enterprise, engaged in the operation and maintenance of water and sewerage system within the CSEZ. Petitioner's sales of services within the Customs Territory for CY 2010 amounted to Php18,057,494.94 or only 7.65% of the total sales, which do not exceed the 30% threshold. Based on the foregoing discussions, the 5% preferential rate is applicable to the gross sales or gross revenue derived from business activities within the subject Ecozone or Freeport. In effect, petitioner's sales of services within the Customs Territory are still subject to the relevant internal revenue taxes under the National Internal Revenue Code of 1997, as amended.

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[7] Should be DOF Department Order No. 03-08.
[8] Section 5(a), DOF Department Order No. 03-08.
[9] October 5, 2018 Decision in the above-captioned case, p. 11.
[10] SUBJECT : Tax Treatment of Sale, Barter or Exchange of Goods or Properties 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 Sections 12 and 15 of Republic Act No. 7227, as amended by Republic Act No. 9400.

WHEREFORE, premises considered, petitioner's "Motion for Reconsideration (Re: Decision dated October 5, 2018)" is **DENIED** for lack of merit.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice