REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

## SECOND DIVISION

**FORD GROUP PHILIPPINES, INC.,**
*Petitioner,*

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
*Respondent.*

**CTA CASE NO. 10316**

Members:

**RINGPIS-LIBAN,** *Chairperson,*
**MODESTO-SAN PEDRO,** *and*
**FERRER-FLORES,** *JJ.*

Promulgated:

NOV 29 2024 2:48 pm

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# RESOLUTION

## RINGPIS-LIBAN, J.:

Before this Court is respondent's **Motion for Reconsideration (of the Decision dated July 15, 2024)** filed on August 2, 2024, with petitioner's **Comment and Opposition (to the Motion for Reconsideration dated August 2, 2024)** filed on September 2, 2024.

On July 15, 2024, the Court promulgated a Decision cancelling respondent's deficiency value-added tax (VAT) assessment for taxable year 2015 against petitioner for lack of basis thereof, the dispositive portion of which reads as follows:

> "**WHEREFORE,** in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**. Accordingly, the FLD dated November 10, 2017 and the FDDA dated June 29, 2020 issued against petitioner for deficiency VAT assessment in the aggregate amount of **₱120,332,694.77**, inclusive of interest, for taxable year 2015 are **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED**."

In his Motion, respondent mainly argues that the Court erred in ruling that petitioner's sales of automobiles to Westcoast Automotive Corporation (WAC)/Ford Subic are subject to VAT zero-rating; and, that petitioner is not liable to pay the deficiency VAT in the amount of ₱120,332,694.77, inclusive of interests.

Respondent asserts that the sales of automobiles to WAC/Ford Subic in the amount of ₱520,471,920.52 are subject to twelve percent (12%) VAT. Admittedly the sale, barter, or exchange of goods or properties into a Freeport Zone by suppliers from the customs territory is considered as "export sales" and are generally subject to zero percent (0%) VAT, respondent however expounds that in Revenue Memorandum Circular (RMC) No. 50-2007,[1] the Bureau of Internal Revenue (BIR) clarified the territorial limitations vis-à-vis the tax treatment of sale of ordinary vehicles made by suppliers from customs territory to registered Freeport Zone enterprises such as in the Subic Freeport Zone (SFZ) and vice versa, pursuant to the cross border doctrine of the VAT system. Respondent stresses that under the cross border doctrine, the subject of the sale must be "destined for use or consumption" outside the customs territory to be subject to VAT zero-rating.

Moreover, respondent posits that the provision of RMC No. 50-2007 clearly provides that sale of ordinary cars, vehicles, automobiles, or specialized vehicles or other transport equipment to a special Freeport Zone enterprise shall only be subject to 0% VAT if the said cars, vehicles, or automobiles are to be used exclusively within the subject Special Freeport Zone. To allow the imposition of 0% VAT on sales of vehicles which are not exclusively used within the subject Special Freeport Zone would run contrary to the cross border doctrine as these vehicles may be possibly used in the customs territory, considering that SFZ in not actually a separate customs territory but treated as such only by fiction of law.

Here, respondent stresses that petitioner failed to prove that the automobiles it sold to WAC/Ford Subic are being used exclusively within the SFZ. Respondent point outs that WAC/Ford Subic is a dealer of Ford vehicles, who just like any other dealer of motor vehicles, sells to the same to customers both within and outside the SFZ. As such, respondent submits that the vehicles sold by WAC/Ford Subic are not exclusively used within SFZ and that, if any, it should be the sales of WAC/Ford Subic to qualified customers, and not petitioner's sales to WAC/Ford Subic, which should be subjected to zero-rated.

Lastly, respondent insists that as per audit and verification of petitioner's books of accounts, it disclosed that petitioner has sales/receipts amounting to ₱260,680,999.54 that was not subjected to VAT; unidentified zero-rated sales of ₱76,446.62 that should be subjected to 12% VAT; various purchase invoices and official receipts revealed violations of invoicing requirements; and the

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[1] "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", dated July 30, 2007.

corresponding input tax in the amount of ₱8,900,000.66 was disallowed pursuant to Section 113 of the National Internal Revenue Code (NIRC) of 1997, as amended. Hence, taking everything into account, respondent reiterates that petitioner is liable for deficiency VAT in the amount of ₱71,356,631.13 and for interests in the amount of ₱48,976,063.64, in accordance to Section 247(a) in relation to Section 249(B) and 249(C) of the NIRC of 1997, as amended.

On the other hand, in its Comment, petitioner submits that the Court correctly ruled that its sales of automobiles to WAC/Ford Subic are subject to VAT zero-rating and that there were no unidentified zero-rated sales in the present case.

Petitioner argues that Section 4.106-5 of Revenue Regulations (RR) No. 16-2005,[2] as amended by RR No. 4-2007,[3] provides that the sales to enterprises duly registered and accredited with the Subic Bay Metropolitan Authority (SBMA) shall be considered as "constructive exports", and are therefore entitled to VAT zero-rating. Petitioner continues that Sections 12 and 15 of Republic Act (RA) No. 7227, otherwise known as the "Bases Conversion and Development Act of 1992",[4] as amended by RA No. 9400,[5] provides that the SFZ shall be operated and managed as a separate customs territory. As such, by legal fiction, petitioner concludes that SFZ is regarded as a foreign territory.

Petitioner further cites Section 43(a) of the Implementing Rules and Regulations (IRR) of RA No. 7227, wherein it states that relative to the Subic Special Economic and Freeport Zone, Subic Bay Freeport (SBF) enterprises are declared to be exempt from customs and import duties and national internal revenue taxes, such as VAT, excise and *ad valorem* taxes on foreign articles. More so, petitioner avers that Section 48 of the said IRR further provides that articles which are admitted to the SBF from the customs territory under proper permit, shall be considered exported for purposes of Philippines laws and regulations, and shall be considered to be zero-rated. Petitioner stresses that these tax incentives are manifested in Article III of the Certificate of Registration issued by SBMA to WAC/Ford Subic. Hence, petitioner submits that its sales of motor vehicles and spare parts to WAC/Ford Subic totaling ₱520,395,473.90 are entitled to VAT zero-rating since WAC/Ford Subic is a registered SBMA enterprise.

Also, petitioner reiterates that the Court found that the amount of zero-rated sales declared per VAT return ties up with the amount of zero-rated sales per Summary List of Sales. Thus, petitioner stresses that there is no basis in respondent's allegation that there were unidentified zero-rated sales of

[2] "SUBJECT: Consolidated Value-Added Tax Regulations of 2005", dated September 1, 2005.

[3] "SUBJECT: Amending Certain Provisions of Revenue Regulations No. 16-2005, As Amended, Otherwise Known as the Consolidated Value-Added Tax Regulations of 2005", dated February 7, 2007.

[4] Approved on March 13, 1992.

[5] "AN ACT AMENDING REPUBLIC ACT NO. 7227, AS AMENDED, OTHERWISE KNOWN AS THE BASES CONVERSION AND DEVELOPMENT ACT OF 1992, AND FOR OTHER PURPOSES", approved on March 20, 2007.

₱76,446.62 that should be subjected to 12% VAT. As to respondent's claim that there is over-claimed/unsupported input tax amounting to ₱8,900,000.66, petitioner points out that it already paid the corresponding deficiency VAT in the total amount of ₱15,058,570.97 inclusive of interest and compromise as evidenced by BIR Form No. 0605 and eFPS Payment Details.

The Court finds respondent's Motion for Reconsideration bereft of merit.

At the outset, the Court notes that the arguments raised in respondent's Motion for Reconsideration are mere reiterations of the arguments that were previously raised in his *Answer*[6] and *Memorandum*,[7] which have already been considered and discussed extensively in the assailed Decision.

As the grounds relied upon by respondent were mere reiterations of the issues already passed upon, the Court need not deal individually and specifically with the arguments, in much the same way that the Court does in its judgment as regards the issues raised and submitted for decision. In the case *of Social Justice Society (SJS) Officers v. Lim*,[8] the Supreme Court held that:

> "The grounds relied on being mere reiterations of the issues already passed upon by the Court, there is no need to 'cut and paste' pertinent portions of the Decision or re-write the *ponencia* in accordance with the outline of the instant motion.
>
> As succinctly put by then Chief Justice Andres R. Narvasa in *Ortigas and Co. Ltd. Partnership v. Judge Velasco* on the effect and disposition of a motion for reconsideration:
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>> The filing of a motion for reconsideration, authorized by Rule 52 of the Rules of Court, does not impose on the Court the obligation to deal individually and specifically with the grounds relied upon therefor, in much the same way that the Court does in its judgment or final order as regards the issues raised and submitted for decision. This would be a useless formality or ritual invariably involving merely a reiteration of the reasons already set forth in the judgment or final order for rejecting the arguments advanced by the movant; and it would be a needless act, too, with respect to issues raised for the first time, these being, as above stated, deemed waived because not asserted at the first opportunity. It suffices for the Court to deal generally and summarily with the motion for reconsideration, and merely state a legal ground for its denial (Sec. 14, Art. VIII, Constitution); *i.e.*, the motion contains merely a reiteration or rehash of arguments already submitted to and pronounced without merit by the Court in its judgment, or the basic issues have already been passed upon, or the motion discloses no substantial argument or cogent

[6] Docket – Vol. I, pp. 287 to 297.
[7] Docket – Vol. III, pp. 966 to 978.
[8] G.R. Nos. 187836 and 187916, March 10, 2015.

> reason to warrant reconsideration or modification of the judgment or final order; or the arguments in the motion are too unsubstantial to require consideration, etc."

At any rate, it bears reiterating that sales of goods by a VAT-registered taxpayer, such as petitioner, to entities located in the Subic Special Economic Zone, which by legal fiction is regarded as foreign territory, are considered "*export sales*" subject to VAT zero-rating, pursuant to Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, and as implemented by Section 4.106-5(a)(5) of RR No. 16-2005, as amended by RR No. 4-2007. Herein, considering that WAC/Subic Ford is a Subic Bay Freeport Enterprise and its purchase of vehicles and spare parts from petitioner for subsequent resale are directly used in connection with the latter's registered activity, then, petitioner's sales in the total amount of ₱520,395,473.90 to WAC/Ford Subic is not subject to 12% VAT.

There is no basis in respondent's allegation that there were unidentified zero-rated sales of ₱76,446.62 since the Court already found that the amount of zero-rated sales declared per VAT return coincides with the amount of zero-rated sales per Summary List of Sales. Considering that petitioner already agreed with respondent's disallowance of input tax amounting to ₱8,900,000.66 for violation of the invoicing requirements, and thereafter paid the corresponding deficiency VAT in the total amount of ₱15,058,570.97, inclusive of interest and compromise, as evidenced by BIR Form No. 0605 and eFPS Payment Details, then, this item of assessment was deemed cancelled.

Finally, considering that all the items of assessment comprising the deficiency VAT assessment of ₱71,356,631.13 were cancelled and set aside, it necessarily follows that the corresponding interest computed based thereon in the amount of ₱48,976,063.64 should likewise be cancelled and set aside.

In view of the foregoing disquisitions, there being no new matter or substantial issue raised by respondent in his Motion for Reconsideration, the Court finds no compelling reason to reverse or modify the Decision promulgated on July 15, 2024.

**WHEREFORE**, premises considered, respondent's Motion for Reconsideration (of the Decision dated July 15, 2024) is **DENIED** for lack of merit.

**SO ORDERED.**

Ma. Belen

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

*WE CONCUR:*

**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice

(On Leave)
**CORAZON G. FERRER-FLORES**
Associate Justice