REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

PHILIPPINE ASSOCIATED SMELTING AND REFINING CORPORATION,
Respondent.

C.T.A. E.B. NO. 338
(C.T.A. CASE NO. 6538)

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PHILIPPINE ASSOCIATED SMELTING AND REFINING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. E.B. NO. 342
(C.T.A. CASE NO. 6538)

Present:
ACOSTA, *P.J.*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:
FEB 2 5 2009 10:30 a.m.

x---x

DECISION

UY, J.:

Before Us are consolidated Petitions for Review filed separately by the Commissioner of Internal Revenue against Philippine Associated Smelting and Refining Corporation in C.T.A. E.B. No. 338; and by Philippine

Associated Smelting and Refining Corporation against the Commissioner of Internal Revenue in C.T.A. E.B. No. 342 on December 26, 2007 and December 20, 2007, respectively, seeking a review of the Decision[1] dated May 21, 2007 and Resolution[2] dated November 15, 2007 of the First Division of this Court (Court in Division) in CTA Case No. 6538, entitled "Philippine Associated Smelting and Refining Corporation vs. Commissioner of Internal Revenue". The dispositive portions of which read as follows:

Decision promulgated on May 21, 2007:

"**IN VIEW OF THE FOREGOING,** the Petition for Review is **PARTIALLY GRANTED.** Respondent is hereby **ORDERED** to refund or the issue a tax credit certificate the reduced amount of P12,113,625.97 representing petitioner's timely claimed and substantiated excise tax payments.

SO ORDERED."[3]

Resolution promulgated on November 15, 2007:

"**WHEREFORE**, finding no cogent reason to reverse, amend or modify the Decision dated May 21, 2007, the Motions for Partial Reconsideration are hereby **DENIED** for lack of merit.

SO ORDERED."[4]

THE FACTS

The factual antecedents of the case are not in dispute.

Philippine Associated Smelting And Refining Corporation, hereinafter referred to as PASAR, is a domestic corporation duly organized and existing under Philippine laws with principal office at the 6th and 7th Floors, Linden Suites, 37 San Miguel Avenue, Ortigas Center, Pasig City. It is engaged in

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[1] Ponencia of Presiding Justice Ernesto D. Acosta concurred by Associate Justice Caesar A. Casanova with Associate Justice Lovell R. Bautista, dissenting. Docket, pp. 28 – 57.
[2] Docket, pp. 58 – 66.
[3] Docket, pp. 29 – 30.
[4] Docket, p. 33.

the business of exporting, processing, smelting and refining metals and is a duly registered Zone Export Enterprise with the Export Processing Zone Authority pursuant to the provisions of P.D. No. 66, as amended, and E.O. No. 567 with Certificate of Registration No. 82-40 dated September 23, 1982. Its plant is located at the Leyte Industrial Development Estate (LIDE), Isabel, Leyte, a Special Export Processing Zone.

On the other hand, the Commissioner of Internal Revenue, hereinafter referred to as the Commissioner, is empowered by law to decide on, among others, claims for refund and tax credits and holding office at the BIR National Office, Agham Rd., Diliman, Quezon City.

In its operations, PASAR uses petroleum products such as diesel, bunker fuel oil and lubricants. These products are purchased by PASAR from local distributors, like Petron Corporation (Petron). The latter remits the excise taxes thereon to the Bureau of Internal Revenue, and consequently bills PASAR these excise taxes.

For purchases of petroleum products from September 1999 to August 2001, Petron allegedly billed PASAR excise taxes amounting to P26,438,444.78. And on January 2, 2002, claiming exemption from internal revenue taxes, PASAR, filed with the Commissioner an application for tax credit and/or refund of its excise tax payments (in the amount of P26,438,444.78), made in connection with its purchase of petroleum products from Petron, covering the period September 1999 to August 2001.

Then on August 28, 2002, PASAR received the Commissioner's August 13, 2002 letter, denying the claim for tax credit or refund, it reads in part:

> "We regret that your claim for the tax refund is not meritorious on the basis that excise tax of petroleum products is the *direct liability of the manufacturer/producer, on your case* PETROPHIL CORPORATION, *and when added to the cost of goods sold to the buyer it is no longer a tax but a part of the price which the buyer has to pay to obtain the article*. (Philippine Acetylene vs. CIR, 20 SCRA 1056).
>
> Based on the above ruling, PASAR, the buyer of said articles is not in the position to demand a tax refund for the excise taxes paid by Petrophil Corporation, the producer of said petroleum products. These taxes which formed part of the purchased (*sic*) price cannot be considered as tax anymore on the part of PASAR hence, tax refund is unwarranted for lack of legal basis."

Unable to obtain an immediate relief from the Commissioner, PASAR filed before the Court in Division of the Court of Tax Appeals, a Petition for Review on September 27, 2002 (docketed as C.T.A. Case No. 6538) seeking for a refund of the amount of P26,438,444.78 allegedly representing erroneously paid excise taxes billed to PASAR for its purchases of petroleum products from Petron, for the period September 1999 to August 2001.

On May 21, 2007, the Court in Division rendered its assailed Decision partially granting PASAR's claim therein only in the reduced amount of P12,113,625.97.

A Dissenting Opinion[5] was rendered by Associate Justice Lovell R. Bautista in CTA Case No. 6538, wherein he expressed his view that although an indirect tax can be passed-on to the purchaser of goods, the liability for the indirect tax still remains with the manufacturer or seller. As Section 130 of the NIRC of 1997 clearly provides, the manufacturer or producer of the petroleum products are the ones directly liable for the payment of the excise tax before the removal from the place of production, thus making it the taxpayer under

[5] Docket, pp. 51 – 57.

the law, who under Section 204(c) of the same law, is the only one who may ask for a refund in cases of erroneous payment of taxes. Further, he said that it is unquestionable that there is no erroneous payment of excise taxes which can be refunded to PASAR since it did not pay any excise tax to the BIR. It is Petron who actually paid and remitted the excise taxes and the taxpayer statutorily liable for the taxes, which can claim any refund. Moreover, the assertion of PASAR that it shouldered the payment of the excise tax when the same was passed on to it does not matter anymore because when it was passed on by Petron, it became a part of the PASAR's purchase price already. Thus, notwithstanding the fact that it is a registered EPZA enterprise and exempt from taxes, national or local, it cannot file a claim for refund of the excise taxes billed to it since PASAR did not pay the tax per se.

The Commissioner filed a Motion for Partial Reconsideration of the assailed Decision on June 13, 2007 to which PASAR filed its Comment thereto on July 11, 2007. Likewise, PASAR filed a Motion for Partial Reconsideration of said Decision on June 27, 2007.

Both parties' respective motions were denied by the Court in Division in the Resolution dated November 15, 2007, as it found no justifiable reason to overturn its assailed Decision. Consequently both PASAR and the Commissioner filed separate Petitions for Review before the Court *En Banc* docketed as CTA EB No. 342 and CTA EB No. 338, respectively, assailing the Decision dated May 21, 2007 and the Resolution dated November 15, 2007 rendered by the Court in Division in CTA Case No. 6538.

<u>CTA EB No. 338 : "Commissioner of Internal Revenue vs. Philippine Associated Smelting and Refining Corporation"</u>

The Commissioner of Internal Revenue (respondent in the Division case) filed the Petition for Review in CTA EB 338 on December 26, 2007[6] praying that the May 21, 2007 Decision and November 15, 2007 Resolution be reversed and set aside and a new Decision be rendered denying PASAR's claim for refund or issuance of a tax credit certificate in the reduced amount of P12,113,625.97.

On January 18, 2008 the Court *En Banc* ordered PASAR as respondent in CTA EB No. 338 to file his Comment thereto within five (5) days from notice. PASAR filed its Comment (On the Petition for Review dated 17 December 2007) on February 18, 2008.

<u>CTA EB No. 342 : Philippine Associated Smelting and Refining Corporation vs. Commissioner of Internal Revenue</u>

PASAR filed its Petition for Review on December 21, 2007[7] praying that this Court renders judgment setting aside the questioned Decision and Resolution, only insofar as the same holds that PASAR is entitled to a refund of the reduced amount of P12,113,625.97 instead of P22,568,928.14, while its claim for refund of specific taxes in the amount of P10,455,302.17 (P22,568,928.14 less P12,113,625.97), pertaining to remittances for the period from September 4, 1999 to September 6, 2000, are barred by prescription.

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[6] Upon motion filed on December 7, 2007, the Commissioner was granted a final and non-extendible period of fifteen (15) days or until December 27, 2007 within which to file her Petition for Review.
[7] Upon motion filed on December 11, 2007, PASAR was granted a non-extendible period of fifteen (15) days or until December 26, 2007 within which to file its Petition for Review.

On January 15, 2008, the Court *En Banc* ordered respondent Commissioner in CTA EB No. 342 to file her Comment within ten (10) days from notice. However, the Commissioner filed a Motion for Extension of Time to File Comment on January 28, 2008 and was granted by the Court *En Banc* a final and non-extendible period of fifteen (15) days or until February 12, 2008 within which to file her Comment. And thereafter, the Commissioner timely filed its Comment (On Petitioner's Petition for Review filed on 11 January 2008) on February 12, 2008.

Consolidation of Petitions before the Court En Banc

In a Resolution dated March 28, 2008, the Court *En Banc* ordered the consolidation of CTA EB No. 338 with CTA EB No. 342 on the ground that both cases are appeals field by both parties from the same Decision promulgated on May 21, 2007 by the Court in Division in CTA Case No. 6538 pursuant to Section 1, Rule 31 of the Revised Rules of Court. In the same resolution, considering that both parties had already filed their respective Comments, both parties were required to submit their respective Consolidated Memorandum within the period of thirty (30) days from notice.

The Commissioner filed her Consolidated Memorandum on May 2, 2008; while PASAR filed its Consolidated Memorandum on May 12, 2008. This case was deemed submitted for decision on June 4, 2008.

Hence, this Decision.

ASSIGNMENTS OF ERRORS

As raised by Philippine Associated Smelting and Refining Corporation

PASAR asserts that it is entitled to the refund and / or tax credit of the entire amount of P22,568,928.14, representing the total amount of the excise taxes erroneously paid and properly substantiated by supporting documents. The prescriptive periods under the NIRC of 1997 and other revenue laws are inapplicable to the instant case by specific mandate of Section 17(1) of the EPZA Law. Thus, the provisions under the Civil Code on *solutio indebiti*, providing for a prescriptive period of six years from payment, should allegedly apply.

PASAR invokes the ruling of the Supreme Court in **Commissioner of Customs vs. Philippine Phosphate Fertilizer Corporation,** 437 SCRA 453 (2004) stating that while an ecozone is geographically within the Philippines, it is deemed a separate customs territory and is regarded in law as foreign soil; that as a duly registered export processing zone enterprise located within an ecozone, by clear mandate of the EPZA law, PEZA law and the PEZA IRR, it is exempted from customs and internal revenue laws and regulations of the Philippines as well as from local tax ordinances.

In the questioned Resolution, it was ruled that since the subject of the present case pertains to excess tax payments, it is the NIRC which specifically pertains to taxes, and not the doctrine of *solution indebiti* under the Civil Code, which is applicable in the instant case. The questioned Resolution was allegedly based on the rule on statutory construction that a special law is considered an exception to the general law on the same subject since the legislature in passing the law of special character has its attention directed to the special facts and circumstances which the special act is intended to meet. Therefore, PASAR claims that in the instant case, it should have been that EPZA law and the PEZA law, which should prevail over the NIRC of 1997, contrary to what the pronouncement of the Court in Division that it is the NIRC of 1997 which should prevail over the Civil Code. It rationalizes that the EPZA law are the special laws that specifically govern enterprises duly registered with the Export Processing Zone Authority (now the Philippine Economic Zone Authority [PEZA]) and, the EPZA law and the PEZA law specifically cover the taxes to be imposed upon as well as the tax incentives available to EPZA (or PEZA) duly registered enterprises, such as PASAR.

On the other hand, the NIRC of 1997 is allegedly a general law which generally governs the internal revenue taxes imposable and tax incentives available to individuals, corporations and other entities. Applying the afore-mentioned rule on statutory construction, PASAR emphasizes that the EPZA and PEZA law as special laws should prevail over the NIRC of 1997 which is a general law.

On the issue of whether or not it is the proper party to claim for the refund, PASAR asserts that it is the proper party based on the Supreme Court decision in COMMISSIONER OF CUSTOMS vs. PHILIPPINE PHOSPHATE FERTILIZERS CORPORATION[8] (Philpos Case) and Section 16 and 17 of Presidential Decree No. 66[9] (EPZA Law), Letter of Instruction (LOI) No. 942[10], Section 130(D) of the NIRC of 1997, Article 77(2) of Executive Order No.

[8] G.R. No. 144440, September 1, 2004, 437 SCRA 453.
[9] Creating the Export Processing Zone Authority and Revising Republic Act No. 5490; November 20, 1972.
[10] SUBJECT: Simplification of Export Procedures and Availment of Tax Credits and Duty Drawbacks; October 16, 1979.

226[11], Republic Act No. 7916[12] (PEZA Law), and Section 4 of Revenue Regulation No. 1-00[13].

<u>As raised by the Commissioner of Internal Revenue</u>

The Commissioner argues that PASAR is not the proper party to ask for refund and thus, it is not entitled to the claimed refund, which the Court in Division granted in the reduced amount of P12,113,625.97 because it is only the taxpayer who paid the excise taxes on petroleum products that has the legal personality to claim any refund. And as stated in Section 130 of the NIRC of the 1997, it is the manufacturer or producer of the goods – Petron in this case – that is made to be statutorily liable to pay the excise tax. Thus, while the excise taxes may have been paid by PASAR to Petron as part of the purchase price, it did not really pay the tax per se but only the price of the commodity.

On the issue regarding the applicable prescriptive period, the Commissioner alleges that the Court in Division correctly found that PASAR's claim for the refund of its remittances for the period from September 4, 1999 to September 6, 2000, in the total amount of P10,455,302.17, are already barred by prescription considering that the Petition for Review in CTA Case No. 6538 was filed on September 27, 2002, while payments for the said period were made prior to September 27, 2000.

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[11] The Omnibus Investment Code of 1987; July 16, 1987.
[12] An Act Providing for the Legal Framework and Mechanisms for the Creation, Operation, Administration, and Coordination of Special Economic Zones in the Philippines, Creating for this Purpose, the Philippine Economic Zone Authority (PEZA), and for Other Purposes; otherwise known as "The Special Economic Zone Act of 1995"; February 24, 1995.
[13] SUBJECT: Regulations Implementing Section 4 of RA. No. 8748, Entitled "An Act Amending Republic Act No. 7916." Otherwise Known as the Special Economic Zone Act of 1995, Amending for this Purpose Revenue Regulations No. 12-97.

THE ISSUES

Based on the assigned errors presented in CTA E.B. Nos. 338 and 342, these are the issues submitted for the resolution of the Court *En Banc:*

> WHETHER OR NOT THE HONORABLE DIVISION ERRED IN HOLDING THAT PASAR IS ENTITLED TO A REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE IN THE AMOUNT OF P12,113,625.97 (CTA E.B. No. 338);
>
> WHETHER OR NOT SPECIFIC TAXES IN THE AMOUNT OF P10,455,302.17, PERTAINING TO REMITTANCES FOR THE PERIOD FROM 04 SEPTEMBER 1999 TO 06 SEPTEMBER 2000 ARE ALREADY BARRED BY PRESCRIPTION (CTA E.B. No. 342).

THE COURT EN BANC'S RULING

After careful evaluation of the assigned errors and issues raised by the parties in these consolidated petitions, the Court finds no merit in both petitions.

First Issue

PASAR is entitled to the refund or issuance of tax credit in the amount of P12,113,625.97.

As a general rule, based on the Supreme Court's ruling in the recent case of SILKAIR (SINGAPORE) PTE, LTD. vs. COMMISSIONER OF INTERNAL REVENUE[14], the proper party to question, or seek a refund of, an indirect tax is the statutory taxpayer, the person on whom the tax is imposed by law and who paid the same even if he shifts the burden thereof to another.

An exception thereto was however laid down by the High Court in the case of PHILIPPINE PHOSPHATE FERTILIZER CORPORATION vs.

[14] G.R. No. 173594, February 6, 2008.

COMMISSIONER OF INTERNAL REVENUE[15], wherein it held that an EPZA registered enterprise is exempted from the payment of excise taxes, and if said taxes were passed on by the supplier to EPZA registered enterprises, tax credit shall be granted. The fact that it was not the one who had paid the taxes directly to the BIR does not have an adverse effect on the EPZA registered enterprises' action for refund. Considering that the law granting the exemption makes no distinction as to the circumstances when the law shall apply, thus, neither should We.

Evidently, PASAR is an EPZA registered entity. In its operations, PASAR uses petroleum products such as diesel, bunker fuel oil and lubricants, purchased from local distributors like Petron, which imports the same and pays the corresponding customs duties to the Bureau of Customs and excises taxes to the Bureau of Internal Revenue. Petron, in turn, bills PASAR the duties and excises taxes it paid on the petroleum products.[16]

And although it was not the taxpayer who directly paid and remitted the excise taxes to the BIR covering its purchases of petroleum products from Petron, but having been billed PASAR for the duties and excise taxes it paid on the petroleum products, it is considered as a proper party to file the subject claim for refund pursuant to the ruling of the Supreme Court in the Philippine Phosphate case.

We quote with approval the exhaustive discussion of the Court in Division on this matter, to wit:

> "Petitioner is a duly registered Zone Export Enterprise with the Export Processing Authority (EPZA) pursuant to the

[15] G.R. No. 141973, June 28, 2005, 461 SCRA 369.
[16] Paragraph 3.4, Petition for Review, CTA E.B. Case No. 342, Docket, p. 14

Provisions of P.D. No. 66 and E.O. No. 567. And under this law, enterprises registered with an export processing zone are granted certain incentives.

The Special Economic Zone Act of 1995, R.A. No. 7916, as amended clearly endows a tax exemption privilege on businesses within the ECOZONE:

> 'Except for real property taxes on land owned by developers, no taxes, local or national, shall be imposed on business establishments operating with the ECOZONE.'

Section 23 thereof further provides that business establishments within the ECOZONES shall be entitled to fiscal incentives under P.D. No. 66 or those provided by Book VI of Executive Order No. 226, the Omnibus Investments Code of 1987.

Section 17 of P.D. No. 66 makes the entry of merchandise into the zone tax-free. It provides:

> 'Section 17. Tax Treatment of Merchandise in the Zone. —
>
> (1) Except as otherwise provided in this Decree, foreign and domestic merchandise, raw materials, supplies, articles, equipment, machineries, spare parts and wares of every description, except those prohibited by law, brought into the zone to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded or otherwise processed, manipulated, manufactured, mixed with foreign or domestic merchandise or **used directly or indirectly** in such activity shall not be subject to customs and internal revenue laws and regulations nor to the local tax ordinances, the provisions of the law to the contrary notwithstanding.' (*Emphasis Supplied*)

As testified to by petitioner's witness, the major products needed by PASAR in its smelting and refining business include bunker fuel and diesel oil. The use of these petroleum products will easily fall under the phrase "used directly or indirectly" in the business. Clearly then, these petroleum products qualify for tax and duty free privileges under Section 17(1) of P.D. 66 and should not be subjected to excise taxes.

Moreover, the Court agrees with the petitioner that the issuance of Letter of Instruction No. 942, dated October 16, 1979, further bolstered their claim that EPZA-registered enterprises are entitled to refund/credit of taxes paid on purchases of petroleum products, it states:

> '7. Sales and delivery of products to bonded warehouse of export-oriented manufacturers and to export processing zone enterprises can be considered as "export sales" and products constructively exported, so that tax credit and duly drawback can be availed of immediately, without awaiting for actual exportation of the finished products abroad. For this purposes, the requirement that the exporter has in fact exported shall include constructive exportation as defined.'

It is noteworthy that exports are encouraged by providing enterprises with all the incentives including those discussed above, and for which reason the Omnibus Investments Code states '[A]ll doubts concerning the benefits and incentives granted enterprises and investors by the Code shall be resolved in favor of investors and registered enterprises.'

Even the Revenue Regulations implementing the Special Economic Zone Act of 1995 lend basis for the above-discussed exemption privileges:

> 'SEC. 4. Nature of the 5% Tax and Extent of Tax Exemption. — . . . Registered ECOZONE enterprises shall be exempt from all other taxes, national and local, except the real property tax on land owned by the developers, pursuant to Section 24 of R.A. No. 7916, as amended by R.A. No. 8747.'

Moreover, Section 24 provides that no taxes shall be due on business within the ECOZONE, it reads:

> 'SEC. 24. Exemption from National and Local Taxes. — Except for real property taxes on land owned by developers, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu thereof, five percent (5%) of the gross income earned by all business enterprises within the ECOZONE shall be paid and remitted as follows:

> (a) Three percent (3%) to the National Government;
>
> (b) Two percent (2%) which shall be directly remitted by the business establishments to the treasurer's office of the municipality or city where the enterprise is located.'
>
> In sum, ECOZONE enterprises, like PASAR, are exempt from all national and local taxes including excise taxes."

Clearly there from, PASAR is entitled to the refund of excise taxes because of its exempt status. Denying its lawful claim on the basis that it was not the one who has directly remitted the money to the BIR will only defeat the purpose of the law granting the tax exemption.

Second Issue:

The claim for the refund of specific taxes in the amount of P10,455,302.17, pertaining to remittances for the period from 04 September, 1999 to 06 September, 2000 are barred by prescription.

PASAR submits that the Supreme Court held in the Philpos Case[17] that the Civil Code provision on solutio indebiti applies – prescriptive period being 6 years – thus the claim has not prescribed.

We are not convinced.

In the said Philpos case, the claim for exemption involved covers the years 1991 and 1992, or before the enactment of R.A. No. 7916 – the PEZA Law – and as such, the Supreme Court applied Section 17 of the EPZA Law, enacted in 1972, which particularizes the tax benefits accorded to duly registered enterprises. It states that:

[17] Supra, Note 6.

> **SEC. 17. Tax Treatment of Merchandize in the Zone.** — (1) Except as otherwise provided in this Decree, foreign and domestic merchandise, raw materials, supplies, articles, equipment, machineries, spare parts and wares of every description, except those prohibited by law, brought into the Zone to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded, or otherwise processed, manipulated, manufactured, mixed with foreign or domestic merchandise or used whether directly or indirectly in such activity, shall not be subject to customs and internal revenue laws and regulations nor to local tax ordinances, the following provisions of law to the contrary notwithstanding.

The cited provision clearly exempts the supplies used, directly or indirectly, from customs and internal revenue laws and regulations, as well as to local tax ordinances. Based on such exemption, the Supreme Court then held that the prescriptive periods or procedural requirements provided under the Tariff and Customs Code cannot be applied to the petitioner therein. Since the EPZA Law itself is silent on this matter, the decision in the Philpos case enunciated the application of the Civil Code provision on solutio indebiti.

In the present case however, the claim for refund of erroneously paid excise tax covers the period September 1999 to August 2000 thus, the PEZA Law, as amended by Republic Act No. 8748[18], is the law applicable herein. It is important to emphasize that Section 17 of the EPZA Law has been repealed already by the PEZA Law.

Unlike in the old EPZA Law, there is nothing in the PEZA law that provides that the NIRC of 1997 is inapplicable to PEZA registered entities. Section 24 and 25 of the PEZA Law, as amended by R.A. No. 8748, provides that:

[18] An Act Amending Republic Act No. 7916, Otherwise Known as the "Special Economic Zone Act of 1995"

"**SECTION 24. Exemption from National and Local Taxes.** — Except for real property taxes on land owned by developers, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu thereof, five percent (5%) of the gross income earned by all business enterprises within the ECOZONE shall be paid and remitted as follows:

(a) Three percent (3%) to the National Government;

(b) Two percent (2%) which shall be directly remitted by the business establishments to the treasurer's office of the municipality or city where the enterprise is located.

SECTION 25. Applicable National and Local Taxes. — All persons and service establishments in the ECOZONE shall be subject to national and local taxes under the National Internal Revenue Code and the Local Government Code."

From the foregoing, it is clear that the exemption of PEZA registered entities is in lieu of the 5% preferential tax they are now liable for, based on their gross income – which includes what is defined as such in the NIRC of 1997.

Further, it is evident that with the enactment of the PEZA Law, as explicitly provided in the above quoted provision, in cases of claims for refund/ tax credit of erroneously paid excise taxes the prescriptive period of two (2) years as provided in the NIRC of 1997 should therefore apply.

We reiterate the Court in Division's discussion in its Resolution dated November 15, 2007,:

"Although both the National Internal Revenue Code of 1997 and the Civil Code provide for prescriptive period for claim of erroneous or illegal payment; however, since the subject of the present case pertains to excess tax payments, it necessarily renders the Tax Code relevant and makes the doctrine of solutio indebiti under the Civil Code inapplicable. Where two statutes are of equal theoretical application to a particular case, the one designed specifically should therefore prevail. The reason for the rule that a special law is considered as exception to the general law on the same subject is that the legislature in passing a law of special character has its attention directed to

> the special facts and circumstances which the special act is intended to meet.
>
> As correctly explained by this Court in the subject Decision that since the Petition for Review was filed on September 27, 2002, the two-year prescriptive period commenced on September 27, 2000 and any excise tax payment made prior to September 27, 2000 has already prescribed. Accordingly, the specific taxes of P10,455,302.17 pertaining to remittances for the period September 4, 1999 to September 6, 2000 are already barred by prescription. Only the remaining substantiated specific taxes of P12,113,625.97 (P22,568,928.14 less P10,455,302.17) fall within the two-year prescriptive period."

Taken collectively, in the light of the laws and jurisprudence on the matter, We see no cogent reason to reverse or modify the assailed Decision and Resolution dated May 21, 2007 and November 15, 2007, respectively.

WHEREFORE, premises considered, both petitions are hereby **DENIED** for lack of merit. The assailed Decision dated May 21, 2007 and the Resolution dated November 15, 2007 are hereby **AFFIRMED *en toto***.

Accordingly, the Commissioner is hereby ORDERED to refund or issue a tax credit certificate in the reduced amount of P12,113,625.97 representing petitioner's timely claimed and substantiated excise tax payments.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice