REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FORT BONIFACIO DEVELOPMENT CORP.,
Petitioner,

- versus -

C.T.A. CASE NO. 5885

COMMISSIONER OF INTERNAL REVENUE and REVENUE DISTRICT OFFICER, REVENUE DISTRICT NO. 44, TAGUIG & PATEROS, BUREAU OF INTERNAL REVENUE
Respondents.

Promulgated:
OCT 13 2000

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DECISION

This is a petition seeking for the refund or issuance of a tax credit certificate in the amount of P486,355,846.78, with legal interest, allegedly representing erroneously paid value-added taxes (VAT) for the second quarter of 1997.

The antecedent facts follow.

Petitioner is a domestic corporation duly registered and existing under Philippine laws, with office address at Bonifacio Centre, NDCP Compound, Fort Bonifacio, Taguig, Metro Manila. It is owned, to the extent of forty-five per cent (45%) of its issued and outstanding capital stock, by the Bases Conversion Development Authority (BCDA), a wholly-owned government corporation created by Republic Act No. 7227 for the purpose of accelerating the conversion of military reservations into alternative productive uses and raising funds through the sale of portions of said military reservations in order to promote the economic and social development of the country in general. The remaining fifty-five per cent (55%) is owned by Bonifacio Land Corporation, a consortium of private domestic corporations.

Petitioner is engaged in the development and sale of real property. It is the owner of, and is developing and selling, parcels of land known as the Fort Bonifacio Global City, located within Fort Bonifacio, Taguig, Metro Manila, and formerly part of the Fort Bonifacio reservation before it was sold by the National Government to Petitioner on February 8, 1995 by virtue of R.A. No. 7227, *supra*, and Executive Order (EO) No. 40, dated December 8, 1992. On February 7, 1995, Original Certificate of Title No. SP-001 of the Registry of Deeds for the Province of Rizal was issued to Petitioner covering the said land (Exh. A).

On September 18, 1996, Petitioner duly registered itself as a value-added tax (VAT) taxpayer (Exh. B) pursuant to R.A. No. 7716 which took effect on January 1 of the same year, extending the coverage of the VAT system to every sale, barter or exchange of real property held primarily for sale to customers or held for lease in the ordinary course of trade or business. The latter law further amended pertinent provisions of the National Internal Revenue Code (NIRC) previously amended by Executive Order No. 273 which took effect on January 1, 1988. And on the following day, Petitioner submitted to the BIR, Revenue District No. 44, Taguig, and Pateros, an inventory listing of real properties owned by it with a total book value of P71,227,503,200.00.

In October, 1996, Petitioner started selling lots within the Fort Bonifacio Global City to interested buyers. During the second quarter of 1997, Petitioner derived the total amount of P5,014,755,287.40 from its sales and lease of lots, on which the output VAT payable to the Bureau of Internal Revenue (BIR) was P501,475,528.74 (Exh. D). To pay the said amount, Petitioner made cash payments totalling P486,355,846.78 and utilized its regular input tax credit of P15,119,681.96 on its purchases of goods and services for the quarter.

On February 11, 1999, Petitioner filed with the BIR a claim for the refund of the output VAT cash payments in the amount of P486,355,846.78, citing as basis therefor, Section 105 of the NIRC, as amended by EO No. 273, which states:

> "**SEC. 105**. Transitional input tax credits. – A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall, subject to the filing of an inventory as prescribed by regulations, <u>be allowed input tax on his beginning inventory of goods,</u> materials and supplies <u>equivalent to 8% of the value of such inventory</u> or the actual value-added tax paid on such goods, materials and supplies, whichever is higher, which shall be creditable against the output tax." (underscoring supplied)

As there was no action by Respondent on Petitioner's claim and the two-year prescriptive period provided for under Section 230 of the Tax Code was about to lapse, the instant petition was filed on May 21, 1999.

In its Petition for Review, Petitioner contends that it is entitled to an input tax credit of 8% of the book value of its inventory of real properties pursuant to the aforementioned Section 105 of the National Internal Revenue Code, in relation to Section 100 of the same Code, to state:

> "**SEC. 100**. *Value-added tax on sale of goods or properties*. – (a) *Rate and base of tax*. – There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to 10% of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.
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> (1) <u>The term "goods</u> or properties" shall mean all tangible objects which are capable of pecuniary estimation and <u>shall include</u>:

(A) Real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business;

x x x x x

According to Petitioner, under the aforestated sections, it is clearly entitled to an input tax credit on the beginning inventory of its real properties it submitted to the BIR equivalent to 8% of the value of such real properties, or the total amount of P5,698,200,256.00. And since the amount of value-added tax paid by Petitioner for the second quarter of 1997 is P486,355,846.78, this is more than offset by the total amount of input tax credit of P5,698,200,256.00, after deducting therefrom the amounts of P269,340,469.45 and P359,652,009.47 which are the subject of Petitioner's earlier claims for refund of October 8, 1998 and November 17, 1998.

In their Answer, Respondents claimed by way of Special and Affirmative Defenses that:

"8. Under Revenue Regulations No. 7-95, implementing Section 105 of the Tax Code as amended by E.O. 273, the basis of the presumptive input tax, in the case of real estate dealers, is the improvements, such as buildings, roads, drainage systems and other similar structures, constructed on or after January 1, 1988.

9. Petitioner by submitting its inventory listing of real properties only on September 19, 1996, failed to comply with the aforesaid revenue regulations mandating that for purposes of availing the presumptive input tax credits under its Transitory Provisions, "an inventory as of December 31, 1995, of such goods or properties and improvements showing the quantity, description, and amount should be filed with the RDO not later than January 31, 1996."

10. The Secretary of Finance per recommendation of the Commissioner of Internal Revenue, in faithful compliance with Section 19 of Republic Act No. 7716 and Section 245 (now Section 244) of the Tax Code, had promulgated implementing revenue regulations for the effective enforcement thereof.

11. Administrative regulations have the force and effect of law. (*Valerio v. Secretary of Agriculture, L-18587, April 23, 1963*).

12. Petitioner's claim for refund is under verification/investigation by Respondent Commissioner of Internal Revenue.

13. In a claim for tax refund, Petitioner must show that taxes were paid erroneously or collected illegally and failure to sustain this burden is fatal to the action for refund.

14. Claims for refund are construed strictly against the claimants since they are in the nature of exemptions from taxation. (*Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 351*).

15. Taxes are presumed to have been paid and collected in accordance with law."

Respondents further maintain in their Memorandum that while these is no question that Petitioner is a real estate dealer, still it is not entitled to a transitional input tax credit on the raw land which it purchased from the Philippine Government prior to the effectivity of the Expanded VAT Law on the following grounds:

> 1. VAT free acquisition of the raw land. - petitioner purchased and acquired, from the Government, the aforesaid raw land under a VAT-free sale transaction. The Government, as a vendor was tax-exempt and accordingly did not pass on any VAT or sales tax as part of the price and paid therefor by the Petitioner.
>
> 2. No transitory input tax on inventory of land is allowed. - Section 105 of the Code, as amended by RA No. 7716, and as implemented by Section 4.105-1 of Revenue Regulations No. 7-95, expressly provides that no transitional input tax credit shall be allowed to real estate dealers in respect of their beginning inventory of land brought into the VAT regime beginning January 1, 1996 (supra). Likewise, the Transitory Provisions [(a) (iii)] of Revenue Regulations No. 7-95 categorically states that "for real estate dealers, the presumptive input tax of 8% (the effectivity of E.O. 273) shall be allowed." For purposes of subparagraph (i)(ii) and (iii) above, an inventory as of December 31, 1995 of such goods or properties and improvements showing the quantity, description, and amount should be filed with the RDO not later than January 31, 1996. It is admitted that Petitioner filed its inventory listing of

real properties on September 19, 1996 or almost nine (9) months late in contravention to the requirements in Revenue Regulations No. 7-95.

Respondents likewise justified the validity of Revenue Regulations No. 7-95 by expounding on the background and nature of the Philippine VAT Law, thus:

> "Section 4.105-1 of Revenue Regulations No. 7-95, implementing Section 105 of the Code in respect of transitory input tax credits, is not contrary to any law nor the Constitution. On the contrary, it is consistent with the Canon of the Value Added Tax System, which is of international application, that transitory input tax credit shall only be recognized and showed provided the inventory of goods of properties brought into the transition from non-VAT to VAT regime have previously been purchased subject to the VAT or to any form of sales tax which accordingly had been passed on as a part of the buyer's invoiced price or acquisition cost. Conversely, where no VAT or any form of sales tax which accordingly had been passed on as part of the buyer's invoiced price or acquisition cost of the inventory, no transitory input tax credit shall be recognized or allowed when the same is brought into the VAT regime, during the transition of the business from non-VAT to VAT, is to prevent the cascading of the VAT or sales tax in the subsequent turnover of inventories, in order to avoid imposition of a tax against tax or VAT against VAT and thus prevent double taxation of the inventory, since the VAT is only intended as a tax on the value added on every turnover of the inventory until it reaches the ultimate consumer against whom the full burden or cost of the tax is indirectly passed on as a part of his acquisition cost.
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> The Philippine VAT law, particularly in connection with the transitory input tax credit, adheres to the aforesaid internationally accepted practice that transitory input tax credit shall only be allowed provided any form of business tax had been paid and passed-on as part of the invoice price or acquisition cost of the inventory and such inventory is brought into the VAT regime by its owner. Thus, if no such tax forms part of the inventory cost, no transitory input tax credit shall be allowed when the same is brought into the VAT regime as the taxpayer's transitory beginning inventory."

Respondents explained that Petitioner as a real estate dealer was exempt from sales tax or any form of percentage tax under the old Tax Code. What it paid was only the old real estate dealers fixed tax. Hence, it should not be entitled to any transitional input tax. In support thereof, Respondents cited Section 17 of Revenue Reulations No. 5-87 which implemented the first VAT law under Executive Order No. 237 effective January 1, 1988 where business subject to VAT as of January 1, 1988 were not accorded with the benefit of any transitory input tax credit on their beginning inventory of land brought into the VAT regime on even date, notwithstanding that the same were used in the business or trade of the taxpayer.

Petitioner counters Respondents' arguments by assailing as invalid and ineffective Revenue Regulations No. 7-95 insofar as it limits the input tax credit to 8% of the value of the "improvements". It pointed out that Section 105 of the Tax Code, as amended, explicitly provides that the input tax credit shall be equivalent to 8% of the value of the "beginning inventory of goods, materials and supplies"; that the Respondents are without authority to extend the statute beyond its terms or to limit the scope of the statute to less than what it provides; and that per BIR regulations, the repeated use of the word "presumptive" strongly indicates that the input tax is imputed without necessarily having been paid, hence, it is presumed to have been paid on goods or properties which were heretofore not subject to VAT.

As regards the late filing of the beginning inventory of properties of the Petitioner on September 19, 1996 which allegedly was in contravention of the provisions of Revenue Regulations No. 7-95 requiring such filing to be filed not later than the 31st of January, 1996, Petitioner, in its Memorandum, contended that:

> "4.13.b. It will be noted that the aforequoted provision does not fix a date when the required inventory should be filed. Thus, in fixing the **arbitrary date** of January 31, 1996 for the filing of the inventory, Revenue Regulations No. 7-95 again expanded the provisions of the NIRC. Applying the authorities already cited earlier, the provision in the aforesaid Revenue Regulations fixing a specific date for the filing of the required inventory is **null and void**.

4.13.c. In this connection, it should be pointed out that under Revenue Regulations No. 6-97, which amended Revenue Regulations No. 7-95, there is no longer any deadline fixed for the filing of the required inventory (see Sec. 5 of Revenue Regulations No. 6-97).

4.13.d. It will be further noted in Section 105 that the **determinative date** is when the taxpayer **becomes liable to the value-added tax** or **elects to be a VAT-registered person.** In the instant case, the petitioner registered as a VAT taxpayer only on **September 18, 1999** (EXH. "E"). Likewise, it became liable to pay the VAT only when it started selling lots in **October 1996** (Exh. "X", Stipulation, par. 1.06, at pp. 2-3; TSN, June 3, 1999, at p. 32). Clearly, the filing by petitioner of the required inventory on **September 19, 1996** is in accordance and in compliance with the provisions of Section 105.

4.13.e. It is not also amiss to point out that the inventory submitted by petitioner to Revenue District No. 44 on September 16, 1996 was **accepted**. At no time thereafter did respondents ever inform petitioner that the said inventory was not timely filed, except on January 27, 1999, or more than two (2) years later, when they served on petitioner their Answer to the petition in this case.

4.13.f. In any case, in its transmittal letter to the BIR, petitioner explained that the land sold to it by BCDA was delivered only on February 29, 1996. Petitioner further explained in its letter that it transferred its principal office to Bonifacio Centre, NDCP Compound, Fort Bonifacio, Taguig, Metro Manila, a location within the territorial jurisdiction of Revenue District No. 44, Taguig-Pateros, with which it filed the inventory (EXHS. "C", "C-1")."

The sole issue We are tasked to resolve have been stipulated by the parties to be as follows:

"Whether Petitioner is entitled to a refund of the amount of P486,355,846.78 paid by it as value-added tax or to a tax credit for said amount." (4.00 Stipulation of Facts, Documents and Issue)

We rule in the negative.

To understand the meaning of "transitional input tax credit" as provided under Sections 104 and 105 of the 1996 Tax Code, it is necessary to unearth its history from the time it was first introduced under the original VAT Law of 1988 (Executive Order No.

273) up to its development under the present Tax Code now popularly known as the Tax Reform Act of 1997 which took effect on January 1, 1998.

As earlier mentioned, the provisions of Section 105 of the Tax Code on transitional input tax credit was first introduced by the original VAT Law pursuant to Executive Order No. 273 which took effect on January 1, 1988. To implement the provisions of Section 105, the Bureau of Internal Revenue issued Revenue Regulations No. 5-87 specifically Section 26(b) which provides as follows:

> **SEC. 26.** ***Transitory provisions.*** - x x x
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> ***(b) Transitional input tax credits.*** - *(1) Manufacturers, producers and importers.* - The unused deferred tax credit as of December 31, 1987 shall be allowed as input tax credits to all original sellers subject to the value-added tax for the first time, provided that they have registered in accordance with the provisions of Section 107. For this purpose, the amount appearing in their books of accounts and corroborated by the amount reflected in the sales tax return as of December 31, 1987 shall be initially accepted as the transitional input tax credit which shall be carried over as allowable tax credits against output tax less any amount for which an application for the issuance of a tax credit certificate has been filed. In the case of corporations filing their sales tax returns on a fiscal quarter basis, they shall file a short period return for the period ending December 31, 1987 which in addition to their ledger account of deferred tax credit shall be the basis of the transitional input tax credits which will be provisionally allowed.
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> *(2) Inventory of goods, not for sale.* - For goods, other than capital goods, not for sale but purchased for use in the business in their present condition, and which are not intended for further processing, which are on hand as of December 31, 1987, a presumptive input tax equivalent to 8% of the value of the goods shall be allowed, which amount may be credited against the output tax of a VAT-registered person, provided that the tax thereon has not been taken up or claimed as deferred sales tax credit.
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> *(3) Inventory of goods for sale.* - For goods purchased with the object of resale in their present condition, the same presumptive input tax equivalent to 8% of the value of the goods unused as of December 31, 1987 shall be allowed, which amount may also be credited against the output tax

> of a VAT-registered person, provided that the tax thereon has not been taken up or claimed as deferred sales tax credit.

x x x x x x x x x

From these provisions, we can see that the purpose of granting transitional input tax credit to be utilized as payment for output VAT is primarily to give recognition to the sales tax component of inventories which would qualify as input tax credit had such goods been acquired during the effectivity of the VAT Law of 1988. It must be remembered that the VAT Law abolished privilege taxes, percentage taxes and, more importantly, the sales tax on original or subsequent sale of articles. These taxes were substituted with the VAT at the constant rate of 0% and 10%. The transition or passage from the sales tax system to the value-added tax system, particularly in 1988, left many manufacturers, producers and importers with inventories consisting of goods upon which sales taxes were already paid or passed on as part of the invoice price or acquisition cost. To be able to utilize the sales taxes, the VAT Law of 1988 included a provision granting these taxpayers the benefit of transitional input tax credit to be utilized to pay for their VAT liability under the present system. The value of their transitional input tax credit corresponds to 8% of the value of their beginning inventories as prescribed by Revenue Regulations No. 5-87.

With the enactment of Republic Act No. 7716 in 1996, the original VAT Law of 1988 was amended to widen its tax base to include other sale of goods and services not previously subject to VAT. Republic Act No. 7716 is popularly known as the E-VAT law. The E-VAT law now included the sale of real properties as subject to the 10% VAT, amending for this purpose Section 100 of the Tax Code. Under the VAT Law of 1988, the term "sale of goods" was confined to the sale of movable, tangible objects, but under the E-VAT Law it now included the sale of immovable property as in real properties (see aforequoted Section 100 of the 1996 Tax Code).

The amendments introduced by the E-VAT Law did not touch on the provisions of Section 105 on transitional input tax credit; it remained the same with the same purpose as when it was first introduced by the VAT Law of 1988. The transitional input tax credit under the E-VAT Law now applied to persons or entities who were not subject to the VAT prior to the effectivity of the E-VAT Law but were now under its coverage such as real estate dealers. The purpose again was to provide these taxpayers with the benefit of utilizing the VAT or sales tax component of their inventories to pay for its output VAT liability under the E-VAT Law. Why, it must be asked, do these taxpayers have a VAT component on their beginning inventories, when they were exempt from paying the VAT under the original VAT Law of 1988? The answer is that these taxpayers may have purchased goods or services where the VAT was passed on to them as part of the invoice price or acquisition cost. Therefore the VAT passed on to them should qualify as their tax credit in paying their output VAT because this benefit is granted explicitly under the provisions of Section 104 of the 1996 Tax Code which provides, thus:

> **SEC. 104.** ***Tax Credits.*** - (a) *Creditable Input tax.* - Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 108 hereof on the following transactions shall be creditable against the output tax:
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> "(1) Purchase or importation of goods:
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> "(A) For sale; or
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> "(B) For conversion into or intended to form part of a finished product for sale including packaging materials; or
>
> "(C) For use as supplies in the course of business; or

"(D) For use as materials supplied in the sale of service; or

"(E) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code, except automobiles, aircraft and yachts.

"(2) Purchase of services on which a value-added tax has been actually paid.

"The input tax on domestic purchase of goods or properties shall be creditable:"

x x x x x x x x x

But because they were not covered by the VAT Law prior to the amendments introduced by the E-VAT Law, the latter law now provides them with the benefit of transitional input tax credit on their beginning inventories equivalent to 8%. It must be noted that even the Tax Reform Act of 1997 which took effect on January 1, 1998 did not touch the provisions of Section 105 (now Section 111 (A)) on transitional input tax credits. The amendments only consisted in adding a provision concerning presumptive input tax credits. It is the composition or meaning of this inventory that brought forth the present controversy. Petitioner contends that the inventory refers to the book value of the real properties while Respondent insists that it should be based on the improvements.

This issue cannot be resolved without an analysis of the nature and history of the transitional input tax credit. Where a statute has been enacted which is susceptible of several interpretations there is no better means for ascertaining the will and intention of the legislature than that which is afforded by the history of the statute **(Greenfield vs. Meer, 77 Phil. 394).**

The law granted the transitional input tax credit because the lawmakers were concerned that the imposition of the VAT might give rise to inequity if the taxes already paid or passed on to the taxpayer could not be utilized due to the transition from the sales tax system to the VAT system or in the case of the E-VAT law, the transition from being exempt from VAT to being subject to VAT as in the case of real estate dealers. We can now see that the rationale in granting the transitional input tax credit also serves as its condition for its availment as a benefit. Inherent in the law is the condition of prior payment of VAT or sales taxes. The facts of this case show that Petitioner purchased the real properties from the National Government in 1995 under a VAT-free sale transaction because the Government as seller was tax-exempt hence did not pass on any VAT or sales tax as part of the purchase price paid by Petitioner. Besides, in 1995 sale of real properties was still exempt from VAT. This fact alone suffices to exclude the Petitioner from availing of the transitional input tax credit provided by law. To base the 8% transitional input tax on the book value of the land is to negate the purpose of the law in granting such benefit. It would be tantamount to giving an undeserved bonus to real estate dealers similarly situated as Petitioner which the Government cannot afford to provide.

Corollary to our findings that Petitioner was wrong in basing its transitional input tax credit on the book value of its real properties, is our firm conclusion that Respondent was correct in basing the 8% transitional input tax credit on the value of the improvements on the land such as buildings, roads. drainage systems and similar structures constructed on or after the effectivity of Executive Order 273, pursuant to the wordings of Section 4.105-1 of Revenue Regulations No. 7-95 *(supra)*. Such basis is consistent with the purpose of the transitional input tax credit because when a real estate dealer puts up improvements on the real properties as those enumerated in Revenue Regulations No. 7-95, VAT is necessarily passed on to them either as part of the acquisition cost of the materials used in building the improvements or as part of the cost of the services rendered in building the same. So in the event those lots with improvements are sold by the dealers upon the effectivity of the E-VAT law or thereafter, the VAT passed on to them can be utilized to pay their output VAT liabilities. It is wrong therefore for the Petitioner to state that Section 4.105-1 of Revenue Regulations No. 7-95 is contrary to law, rather we find it to be consistent and in harmony with the law it seeks to implement (*Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5665 promulgated on August 11, 2000; Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5694 promulgated on September 29, 2000*). Construction given to a statute by administrative agencies charged with the interpretation and application of the statute is entitled to great respect and should be accorded great weight by the courts, unless such construction is clearly shown to be in sharp conflict with the governing statute or the constitution and other laws (*Nestle Philippines vs. Court of Appeals, 203 SCRA 504*).

WHEREFORE, in view of the foregoing, the instant claim for refund is hereby **DENIED** for lack of merit.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

(Dissenting)
AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge