REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

WELLS FARGO ENTERPRISE GLOBAL SERVICES, LLC-PHILIPPINES, Petitioner,	**CTA CASE No. 9849**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson, and* **BACORRO-VILLENA,** ***JJ.***
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 08 2021 3:10 p.m.

x - x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Wells Fargo Enterprise Global Services, LLC-Philippines (**petitioner**) praying for

---

[1] Filed on 05 June 2018, Division Docket, Volume I, pp. 10-31.
Pursuant to Section 3(a)(1) of Rule 4 on Jurisdiction of the Court of the *2005 Revised Rules of the Court of Tax Appeals, as amended.*
...
SEC. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Divisions shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
...
(1) **Decisions of the Commissioner of Internal Revenue** in cases involving disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in

refund amounting to ₱29,528,728.86, allegedly representing its unutilized input value-added tax (**VAT**) attributable to its zero-rated sales for the calendar year January to December 2016 (**CY 2016**).

Petitioner is the duly licensed Philippine branch office of Wells Fargo Enterprise Global Services, LLC, a company duly organized and existing under the laws of the State of Delaware, United States of America (**USA**). It is a duly registered VAT taxpayer with Tax Identification No. (**TIN**) 008-725-483-000.[2] Likewise, petitioner is duly registered with the Philippine Economic Zone Authority (**PEZA**), as evidenced by its PEZA Amended Certificate of Registration No. 14-097 (registered on 27 June 2014) dated 27 October 2016.[3]

Respondent, on the other hand, is the Commissioner of Internal Revenue (**respondent/CIR**), the government agency vested with the power and authority to grant a refund of, or issue a tax credit certificate (**TCC**) for unutilized input VAT attributable to zero-rated sales.[4]

FACTS OF THE CASE

In the course of its business, petitioner purchased goods and services that were subjected to VAT. As a result, petitioner incurred and paid input VAT attributable to its zero-rated sales. For the four (4) quarters of CY 2016, petitioner allegedly has unutilized input VAT in the aggregate amount of ₱29,528,728.86.

For CY 2016, petitioner filed its quarterly VAT returns on the following dates:

Taxable Quarter	Close of Taxable Quarter	Date Filed
1st Quarter[5]	31 March 2016	25 April 2016
2nd Quarter[6]	30 June 2016	25 July 2016
3rd Quarter[7]	30 September 2016	20 October 2016

relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue[.] (Emphasis supplied)

2 Paragraph 1, Jointly Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), id., Volume II, p. 855.

3 Exhibit "P-159", id., Volume III, p. 1115.

4 Paragraph 2, supra at note 2, pp. 855-856.

5 Exhibit "P-118", Division Docket, Volume III, pp. 1283-1284.

6 Exhibit "P-119", id., pp. 1286-1287.

7 Exhibit "P-120", id., pp. 1289-1290.

Taxable Quarter	**Close of Taxable Quarter**	**Date Filed**
4th Quarter[8]	31 December 2016	13 January 2017

On 28 March 2018, petitioner filed its administrative claim[9] for refund with the Bureau of Internal Revenue (**BIR**) representing its unutilized input VAT arising from zero-rated sales for the four (4) quarters of CY 2016.

On 08 May 2018, petitioner received a Decision[10] of similar date denying its administrative claim. The denial was grounded on the provisions of Revenue Memorandum Circular (**RMC**) No. 74-99[11], providing that sales made by a VAT-registered supplier from a customs territory to a PEZA-registered enterprise is treated as indirect export subject to zero percent VAT. Also, pursuant to the said RMC, the claims for input VAT by PEZA-registered companies, regardless of the type or class of PEZA registration, should be denied.

PROCEEDINGS BEFORE THE COURT

Aggrieved by respondent's Decision, petitioner filed the instant Petition for Review on 05 June 2018.[12] Respondent filed his Answer[13] on 27 July 2018. Thereafter, a Notice of Pre-Trial Conference[14] was issued on 13 August 2018, setting the Pre-Trial Conference initially on 13 September 2018.

During the Pre-Trial Conference on 11 October 2018[15], the Court ordered the parties to submit their Joint Stipulation of Facts and Issues (**JSFI**). The parties filed their JSFI[16] on 31 October 2018, which the Court approved and incorporated in the Pre-Trial Order dated 16 November 2018.[17] The pre-trial was then terminated accordingly.

8 Exhibit "P-121", id., pp. 1292-1293.
9 Exhibit "P-1", id., pp. 1152-1156.
10 Exhibit "P-2", id., p. 1158.
11 *Tax Treatment of Sales of Goods, Property and Services Made by a Supplier from the Customs Territory to a PEZA Registered Enterprise, and Sale Transactions Made by PEZA Registered Enterprises Within and Without the ECOZONE.*
12 Supra at note 1.
13 Division Docket, Volume I, pp. 381-383.
14 Id., pp. 385-386.
15 Minutes of the Hearing dated 11 October 2018, id., Volume II, p. 843.
16 Id., pp. 855-857.
17 Id., pp. 859-869.

When trial ensued thereafter, petitioner presented three (3) witnesses, namely: Brett Donald Anderson[18] (**Anderson**), Enrique Juan C. Vera[19] (**Vera**) and Siegfred A. Sorbito[20] (**Sorbito**), who all executed a Judicial Affidavit in lieu of direct testimony.

Anderson, who was the Operations Risk and Compliance Manager in 2016 and currently the Business Functional Manager of Wells Fargo Bank, N.A. (**WFB**), first took the witness stand where he declared that petitioner is among those providing services to WFB since 06 June 2014 pursuant to an Intercompany Service Agreement, as amended. In accordance with the said agreement, petitioner provided information technology services, communications-related and business process outsourcing services for WFB's business operations in the USA. Although WFB has a representative in the Philippines, none of the mentioned services inured to the benefit of the latter. All of petitioner's services were for WFB's business operations in the USA, where WFB was organized.

Anderson was not subjected to cross-examination.[21]

Vera, petitioner's Assistant Secretary, assumed the witness stand next. He testified that he has custody of petitioner's corporate documents and records and that he assisted in providing the BIR with documents that would support petitioner's claim for refund.

Vera was not subjected to cross-examination.[22]

Petitioner's last witness was Sorbito, its Tax Accountant. He is responsible, among others, for ensuring petitioner's compliance with tax laws and regulations, including the preparation and filing of returns. He prepared and collated the supporting documents pertinent to petitioner's claim for refund of unutilized input VAT for CY 2016.

---

18 Judicial Affidavit, Exhibit "P-166", id., pp. 454-461.
19 Judicial Affidavit, Exhibit "P-164", id., pp. 442-450.
20 Judicial Affidavit, Exhibit "P-165", id., pp. 401-441.
21 TSN dated 05 December 2018.
22 TSN dated 04 February 2019.

Sorbito testified that petitioner is a VAT-registered taxpayer and is engaged in the business of providing services such as administrative, back office, call center, information technology, support, training and other allied services. In 2016, petitioner's clients included Wells Fargo Advisors LLC, Wells Fargo Advisors Financial Network, LLC, and WFB. The services rendered to these clients were each covered by an Intercompany Service Agreement. They were all for the benefit of its clients in the USA. In consideration for the services in 2016, petitioner received payments in US dollars totaling to USD80,202,175.23 inwardly remitted to petitioner's bank account.

Sorbito explained that for the four (4) taxable quarters of 2016, petitioner did not have any VATable or VAT-exempt sales. On the other hand, petitioner accumulated input VAT arising from its local puchase of goods and services. A substantial domestic purchase of capital goods from Wells Fargo Philippines Solutions, Inc. (**WFPSI**) amounted to ₱1,043,082,552.78, inclusive of VAT of ₱111,758,844.94.

As for the input VAT for CY 2016 amounting to ₱29,528,728.86, Sorbito stated that it remained unutilized and was not carried over to succeeding years. Out of the total amount, ₱26,097,188.36 represented the amortized portion of input VAT from purchase of capital goods exceeding ₱1 Million.[23]

After the presentation of its last witness, petitioner filed the Formal Offer of Evidence (**FOE**) *Ad Cautelam* with Omnibus Motion[24] and Supplemental FOE.[25] The Court admitted all of petitioner's exhibits in the Resolution dated 04 November 2019.[26]

Respondent's counsel, on the other hand, failed to appear at the hearing set for the presentation of his evidence-in-chief despite due notice. Upon petitioner's motion, the Court declared that respondent is deemed to have waived his right to present evidence. Consequently, the Court ordered the parties to file their respective memoranda.[27]

---

23 The cross and re-direct examination of Sorbito centered on the efforts exerted in locating the original copies of the Intercompany Service Agreements.
24 Division Docket, Volume III, pp. 930-958.
25 Id., pp. 1141-1150.
26 Id., pp. 1343-1351.
27 Order dated 09 December 2019, id., p. 1341.

Respondent filed his Memorandum on 20 January 2020[28], while petitioner filed its Memorandum on 06 February 2020.[29] Thereafter, the Court submitted the case for decision.[30]

ISSUE

The parties stipulated[31] on the sole issue to be resolved by the Court -

> WHETHER PETITIONER WELLS FARGO ENTERPRISE GLOBAL SERVICES, LLC-PHILIPPINES IS ENTITLED TO A REFUND OF ITS EXCESS AND UNUTILIZED INPUT VALUE-ADDED TAX (VAT) ATTRIBUTABLE TO ITS ZERO-RATED SALES FOR THE PERIOD JANUARY TO DECEMBER 2016 IN THE AMOUNT OF ₱29,528,728.86.

ARGUMENTS

Petitioner argues firmly that it has complied with all the requisites provided for in Section 112(A)[32] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, in its claim for refund, as follows: (1) it is a registered VAT taxpayer; (2) it is engaged in zero-rated or effectively zero-rated sales; (3) there are creditable input taxes due or paid attributable to the zero-rated sales; (4) the input taxes have not been applied against any output tax; and, (5) the application and the claim for refund have been filed within the prescribed period.

---

28 Id., pp. 1327-1331.

29 Id., pp. 1352-1385.

30 Resolution dated 13 February 2020, id., p. 1386.

31 JSFI, id., Volume II, p. 856.

32 **Sec. 112.** *Refunds or Tax Credits of Input Tax.* —

(A) *Zero-Rated or Effectively Zero-Rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax**: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section **108(B)**(1) and (2), the **acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)**: *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

...

Specifically, petitioner claims that the services it rendered pursuant to the Intercompany Services Agreements fall within Section 108(B)(2)[33] of the NIRC of 1997, as amended (which covers services other than processing, manufacturing or repacking of goods for other persons outside the Philippines), and thus, qualify for zero-rating. The services rendered, involving information technology, communications-related and business process outsourcing services, all pertain to the business operations in the USA and paid for in accepatable foreign currency.

Moreover, petitioner vehemently argues that its purchase of capital goods amounting to ₱1,043,082,552.78 is indeed subject to VAT for the reason that WFPSI's sale of its assets is not one of its registered activities, hence, not covered by the fiscal incentives. To support this contention, petitioner cited BIR Rulings[34] issued to other companies involving sale of assets between two (2) PEZA registered entities. In the said rulings, the BIR opined that the sale of assets which does not form part of the registered activities of the seller should be subject to regular income tax and VAT. Petitioner is of the view that the rulings cited are on all fours with its transaction therefore, the CIR's opinion therein should apply – that the sale of assets is VATable. It insists that respondent should not be allowed to adopt inconsistent positions depending on what is favorable to it under the circumstances.

In refutation, respondent remains firm that petitioner is not entitled to the refund of its unutilized input VAT. According to him, the tax refunds are in the nature of tax exemptions, which is construed strictly against the claimant. With petitioner lies the burden to prove with the required quantum of evidence its entitlement to the refund claimed, notwithstanding the absence of controverting evidence.

---

[33] **Sec. 108**. *Value-Added Tax on Sale of Services and Use or Lease of Properties*. –

...

(B) *Transactions Subject to Zero Percent (0%) Rate*. – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

...

(2) Services other than those mentioned in the preceding paragraph, rendered to a person engaged in business conducted outside the Philippines or to a non-resident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);

...

[34] BIR Ruling [DA-373-05] dated 30 August 2005, BIR Ruling No. 291-12 dated 25 April 2012, BIR Ruling No. 115-13 dated 22 March 2013.

RULING OF THE COURT

After an assiduous review of the records and the parties' contrasting arguments, We find the instant Petition for Review devoid of merit.

Petitioner anchors its claim on Section 112(A) and (C) of the NIRC of 1997, as amended, and further amended by Republic Act (**RA**) No. 10963 or the Tax Reform for Accelaration and Inclusion Act (**TRAIN Law**). The provision reads:

> ...
> **SEC. 112.** *Refunds or Tax Credits of Input Tax.* —
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax**: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section **108(B)**(1) and (2), the **acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)**: *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
>
> ...
> (C) *Period within which Refund of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided,* That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.

> **In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals**: *Provided, however,* That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code.[35]
>
> ...

As a rule, a taxpayer engaged in zero-rated transactions seeking a claim for refund of its unutilized input VAT shall satisty the following requirements:

1. The taxpayer is VAT-registered;
2. The taxpayer is engaged in zero-rated or effectively zero-rated sales;
3. The input taxes are due or paid;
4. The input taxes are not transitional input taxes;
5. The input taxes have not been applied against output taxes during and in the succeeding quarters;
6. The input taxes are attributable to zero-rated or effectively zero-rated sales;
7. For zero-rated sales under Section 106(A)(2)(a)(1) and (2)[36], 106(B)[37] and 108(B)(1) and (2)[38], the acceptable foreign currency exchange proceeds

---

[35] Emphasis supplied.

[36] **Sec. 106.** *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 twelve percent (12%) 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.
...
(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
(a) *Export Sales.* - The term 'export sales' means:
1. The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
2. Sale and delivery of goods to:
(i) Registered enterprises within a separate customs territory as provided under special laws; and
(ii) Registered enterprises within tourism enterprise zones as declared by the Tourism Infrastructure and Enterprise Zone Authority (TIEZA) subject to the provisions under Republic Act No. 9593 or the Tourism Act of 2009.
...

[37] **Sec. 106.** *Value-Added Tax on Sale of Goods or Properties.* –
(B) *Transactions Deemed Sale.* – The following transactions shall be deemed sale:
...

[38] **Sec. 108.** *Value-Added Tax on Sale of Services and Use or Lease of Properties.* –
...

have been duly accounted for in accordance with BSP rules and regulations;

8. If there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and,
9. The claim is filed within two (2) years after the close of the taxable quarter when such sales were made.[39]

THE ADMINISTRATIVE AND JUDICIAL CLAIMS FOR REFUND WERE TIMELY FILED.

Before the Court proceed to discuss petitioner's compliance with the other requisites, We find it propitious to first determine whether its administrative and judicial claims were filed on time as the same is crucial to the Court's exercise of jurisdiction over the instant case.

In accordance with the above-quoted Section 112(A) of the NIRC of 1997, as amended, the administrative claim for refund or issuance of a TCC of excess input VAT must be filed with the BIR within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The present claim for refund covers all quarters of CY 2016. The last day for petitioner's filing of its administrative claim for the four (4) quarters of CY 2016 and the actual filing thereof fell on the following dates:

(B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);

(2) Services other than those mentioned in the preceding paragraph, rendered to a person engaged in business conducted outside the Philippines or to a non-resident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);

...

39 *San Roque Power Corporation v. Commissioner of Internal Revenue,* G.R. No. 180345, 25 November 2009.

Period Covered	Last Day to File Administrative Claim	Actual Date of Filing of Administrative Claim
January to March 2016 (1st Quarter)	31 March 2018	28 March 2018
April to June 2016 (2nd Quarter)	30 June 2018	
July to September 2016 (3rd Quarter)	30 September 2018	
October to December 2016 (4th Quarter)	31 December 2018	

Soon thereafter, on 08 May 2018, petitioner received respondent's Decision denying its claim for refund. The 30-day period to appeal respondent's Decision before this Court began on the said date. The instant Petition for Review was filed well within the appeal period on 05 June 2018.

Indubitably, petitioner timely filed both its administrative and judicial claims.

We shall now discuss the other requirements, in *seriatim*.

PETITIONER IS A VALUE ADDED TAX-REGISTERED TAXPAYER

Petitioner has sufficiently established that it is a registered VAT taxpayer with the BIR as shown in its BIR Certificate of Registration OCN 9RC0000401293 (BIR Form No. 2303).[40]

INPUT TAXES ARE INCURRED AND PAID

In its Quarterly VAT Returns for the four (4) quarters of 2016, petitioner reported its input taxes in the amount of ₱29,528,728.86, which is the total amount of input VAT claimed for refund in the instant case, as follows:

[40] Exhibit "P-3", Division Docket, Volume III, p. 1160.

	1st Quarter of CY 2016[41]	**2nd Quarter of CY 2016**[42]	**3rd Quarter of CY 2016**[43]	**4th Quarter of CY 2016**[44]	**Total**
Domestic Purchase of Goods Other than Capital Goods	₱75,355.62	₱-	₱135,292.92	₱1,576,548.95	₱1,787,197.49
Domestic Purchase of Services	86,343.90	348,997.93	134,184.75	1,074,816.43	1,644,343.01
Input Tax on Capital Goods Exceeding P1 Million amortized for the period	6,746,652.02	6,651,775.23	6,406,138.07	6,292,623.04	26,097,188.36
Total Input Tax for the period	**₱6,908,351.54**	**₱7,000,773.16**	**₱6,675,615.74**	**₱8,943,988.42**	**₱29,528,728.86**

In sum, petitioner's claim for refund of input VAT is hinged on two (2) types of purchases – domestic purchases of goods and services other than capital goods with input VAT totaling to ₱3,431,540.50; and amortization of input VAT on capital goods (exceeding ₱1 Million) amounting to ₱26,097,188.36.

As earlier mentioned, respondent based his denial of the claim for refund on the provisions of RMC 74-99.[45] The Decision is reproduced in part below:

> ...
>
> Revenue Memorandum Circular (RMC) No. 74-99 states that, "Sales made by a VAT registered supplier from a Customs Territory to a PEZA registered enterprise is treated as indirect export and is considered subject to zero percent (0%) VAT." Moreover, pursuant to RMC No. 42-2003 under Question No. 5 specifically provides that "For invoices/receipts issued upon the effectivity of RMC No. 74-99, the claims for input VAT by PEZA-registered companies, regardless of the type or class of PEZA-registration, ***should be denied.***[46]
>
> ...

[41] Exhibit "P-118", id., pp. 1283-1284.
[42] Exhibit "P-119", id., pp. 1286-1287.
[43] Exhibit "P-120", id., pp. 1289-1290.
[44] Exhibit "P-121", id., pp. 1292-1293.
[45] Supra at note 11.
[46] Emphasis, italics and undercoring in the original text.

Undeniably, petitioner is a PEZA-registered entity as evidenced by its PEZA Amended Certificate of Registration No. 14-097 dated 27 October 2016.[47]

Although it would appear from the records that petitioner incurred and paid input VAT for its domestic purchases, it is unfortunate that the Court cannot allow the refund of the same. To begin with, no VAT should have been passed on to petitioner by virtue of its status as a duly registered PEZA entity.

The Supreme Court in *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue* (**Coral Bay**)[48], citing *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.), Inc.*[49], had the occasion to rule as follows:

> ...
>
> The rule that any sale by a VAT-registered supplier from the Customs Territory to a PEZA-registered enterprise shall be considered an export sale and subject to zero percent (0%) VAT was clearly established only on 15 October 1999, upon the issuance of RMC No. 74-99. Prior to the said date, however, whether or not a PEZA-registered enterprise was VAT-exempt depended on the type of fiscal incentives availed of by the said enterprise. This old rule on VAT-exemption or liability of PEZA-registered enterprises, followed by the BIR, also recognized and affirmed by the CTA, the Court of Appeals, and even this Court, cannot be lightly disregarded considering the great number of PEZA-registered enterprises which did rely on it to determine its tax liabilities, as well as, its privileges.
>
> According to the old rule, Section 23 of Rep. Act No. 7916, as amended, gives the PEZA-registered enterprise the option to choose between two sets of fiscal incentives: (a) The five percent (5%) preferential tax rate on its gross income under Rep. Act No. 7916, as amended; and (b) the income tax holiday provided under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, as amended.
>
> ...
>
> ***This old rule clearly did not take into consideration the Cross-Border Doctrine essential to the VAT system or the fiction of the ECOZONE as a foreign territory***. It relied totally on the choice of fiscal incentives of the PEZA-registered enterprise. Again,

47 Exhibit "P-159", Division Docket, Volume III, p. 1115.
48 G.R. No. 190506, 13 June 2016; Citation omitted, emphasis and italics in the original text.
49 G.R. No. 150154, 09 August 2005.

> for emphasis, the old VAT rule for PEZA-registered enterprises was based on their choice of fiscal incentives: (1) If the PEZA-registered enterprise chose the five percent (5%) preferential tax on its gross income, in lieu of all taxes, as provided by Rep. Act No. 7916, as amended, then it would be VAT-exempt; (2) If the PEZA-registered enterprise availed of the income tax holiday under Exec. Order No. 226, as amended, it shall be subject to VAT at ten percent (10%). ***Such distinction was abolished by RMC No. 74-99, which categorically declared that all sales of goods, properties, and services made by a VAT-registered supplier from the Customs Territory to an ECOZONE enterprise shall be subject to VAT, at zero percent (0%) rate, regardless of the latter's type or class of PEZA registration; and, thus, affirming the nature of a PEZA-registered or an ECOZONE enterprise as a VAT-exempt entity.***
>
> ...

The Philippine VAT system adheres to the *Destination Principle* and the *Cross Border Doctrine*. According to the *Destination Principle*, goods and services are taxed only in the country where these are consumed. On the other hand, the *Cross Border Doctrine* mandates that no VAT shall be imposed to form part of the cost of the goods destined for consumption outside the territorial border of the taxing authority.[50] Therefore, actual export of goods and services from the Philippines to a foreign country must be free of VAT, and conversely, those destined for use or consumption within the Philippines shall be imposed with 12% VAT.

For tax purposes, ecozones are effectively considered as a foreign territory separate and distinct from the customs territory, as provided under Sections 8 and 24 of RA 7916, as amended by RA 8748 or "*The Special Economic Zone Act of 1995*", which read as follows:

> ...
>
> **SEC. 8.** *ECOZONE to be Operated and Managed as Separate Customs Territory.* — **The ECOZONE shall be managed and operated by the PEZA as separate customs territory.**
>
> The PEZA is hereby vested with the authority to issue certificates of origin for products manufactured or processed in each ECOZONE in accordance with the prevailing rules of origin, and the

[50] *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. Nos. 141104 and 148763, 08 June 2007.

> pertinent regulations of the Department of Trade and Industry and/or the Department of Finance.
>
> ...
>
> 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 establishment operating within the ECOZONE....**[51]
>
> ...

Congruent with the above provision, the Supreme Court in *Commissioner of Internal Revenue v. Sekisui Jushi Philippines, Inc.*[52], elucidated the nature of ecozones as a foreign soil by legal fiction, to wit:

> ...
>
> Notably, while **an ecozone is geographically within the Philippines, it is deemed a separate customs territory and is regarded in law as foreign soil. Sales by suppliers from outside the borders of the ecozone to this separate customs territory are deemed as exports and treated as export sales.** These sales are zero-rated or subject to a tax rate of zero percent.
>
> ...

Applying the foregoing jurisprudence, the domestic purchases of goods and services by petitioner that were destined for consumption within the ecozone are deemed exports of petitioner's suppliers and should be free of VAT; hence, no input VAT should therefore be paid on such purchases. Accordingly, petitioner is not entitled to its claim for refund of input VAT on domestic purchases of goods and services other than capital goods amounting to ₱3,431,540.50.

In the same vein, the amortized input VAT of ₱26,097,188.36 resulting from petitioner's purchase of equipment and leasehold improvement from WFPSI, which is also a PEZA-registered enterprise[53], supported by Sales Invoice No. 01dated 06 June 2014[54], is not eligible for refund since the sale of goods or property by a PEZA-

---

51 Emphasis supplied.
52 G.R. No. 149671, 21 July 2006; Citations omitted and emphasis supplied.
53 Exhibit "P-161", Division Docket, Volume III, pp. 1117-1126.
54 Exhibit "P-127", id., p. 1048.

registered enterprise to another PEZA-registered enterprise (*i.e.*, Intra Ecozone Sales of Goods) is *exempt* from VAT pursuant to Section 5(3) of RMC 74-99.

Section 5(3) of RMC 74-99 states:

> ...
>
> SEC. 5. *Tax Treatment Of Sales Made By A PEZA Registered Enterprise.* —
>
> ...
>
> (3) Sale of Goods, by a PEZA Registered Enterprise, to Another PEZA Registered Enterprise (i.e., Intra ECOZONE Sales of Goods). — Its sale of goods or property to another zone enterprise shall **be exempt from VAT**, pursuant to Sec. 109(q), NIRC, in relation to Sec. 24, R.A. 7916, as implemented by Sec. 1, Rule VIII, PART V, of the PEZA implementing rules and regulations.[55]
>
> ...

An exemption means that the sale of goods is not subject to VAT (output tax) and the seller is not allowed any tax credit on VAT (input tax) previously paid. The person making the exempt sale of goods shall not pass on any output tax to his customers as the said transaction is not subject to VAT. Thus, a VAT-registered purchaser of goods, properties or services that are VAT-exempt, is not entitled to any input tax on such purchases despite the issuance of a VAT invoice or receipt.[56]

In line with the *Destination Principle*, the sale between PEZA registered entities should not have an impact on VAT considering the basic premise that ecozones are, by legal fiction, regarded as foreign territory. It is as if the sale was made outside of the Philippines and consumed thereat. The sale and consumption are thus beyond the taxing jurisdiction of the Philippines. Such being the case, it is not essential that the sale of goods to PEZA-registered enterprises be directly connected to its registered activities.[57]

---

55 Emphasis supplied.

56 *Commissioner of Internal Revenue v. Cebu Toyo Corporation.*, G.R. No. 149073, 16 February 2005.

57 *Wells Fargo Enterprise Global Services, LLC-Philippines v. CIR*, CTA EB Case No. 2087, 14 December 2020.

Petitioner's reliance on previous BIR Rulings is specious. Sections 1 and 7 of Revenue Memorandum Order (**RMO**) No. 9-2014[58] provides, to wit:

> ...
>
> **Section 1. Tax Rulings.**
>
> Tax rulings are official positions of the Bureau on inquiries of taxpayers, who request clarification on certain provisions of the National Internal Revenue Code (NIRC), other lax laws or their implementing regulations, usually for the purpose of seeking tax exemptions. **Rulings are based on particular facts and circumstances presented and are interpretations of the law at a specific point in time.**
>
> ...
>
> **Section 7. Effect and Validity of Issued Rulings.**
>
> ...
>
> **Tax rulings cannot be cited as precedent by other taxpayers**, but they can provide useful information on how the Bureau may treat a similar transaction.[59]
>
> ...

It bears stressing that BIR Rulings Nos. DA-373-05, 291-12 and 115-13 were issued by the CIR in response to queries made by taxpayers based on particular facts and circumstances. It was erroneous for petitioner to invoke such rulings which were specifically addressed to the requesters.

Considering that the input VAT incurred and paid by petitioner for its domestic purchases are not qualified to be claimed as refund, the Court finds no reason to discuss the other requisites for the entitlement to a refund.

---

[58] *Requests for Rulings with the Law and Legislative Division.*
[59] Emphasis supplied.

PETITIONER CAN CLAIM REFUND FROM ITS SUPPLIER OF GOODS, PROPERTIES AND SERVICES THAT CHARGED INPUT VALUE-ADDED TAX (VAT) IN ITS PURCHASES.

Petitioner also contends that, even assuming that the sale by WFPSI to petitioner was VAT-exempt, respondent should not now be allowed to take a different stance convenient to it and deprive it of its claim for refund of taxes which would have been erroneously paid to the government.[60]

Article 22 of the Civil Code provides that "[e]very person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him." This is known as the principle of unjust enrichment.

Regrettably, this Court cannot, on the one hand, entertain petitioner's judicial claim for refund under Section 112 of the NIRC of 1997, as amended, and on the other, grant the claim for refund based on unjust enrichment under Article 22 of the Civil Code. Petitioner's claim for refund under Section 112 of the NIRC of 1997, as amended, is bereft of legal mooring.

Moreover, it should be noted that the seller/supplier is statutorily liable for the payment of VAT although the burden of tax is allowed to be shifted or passed on to the buyer, being in the nature of an indirect tax. This, notwithstanding, reporting and remittance of the VAT paid to the BIR remained to be the seller/supplier's obligation. As such, the proper party to seek the tax refund or credit should be the petitioner's suppliers, assuming the VAT was properly remitted to the government, and not the petitioner.[61]

To be clear, this does not preclude petitioner from recovering the amount it paid for input VAT from its suppliers of goods and services who passed on the same.

---

60 Paragraph 52, Memorandum of Petitioner, Division Docket, Volume III, p. 1377.
61 *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue*, supra at note 48.

WHEREFORE, with the foregoing, the instant Petition for Review filed on 05 June 2018 by petitioner Wells Fargo Enterprise Global Services, LLC-Philippines is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

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

ATTESTATION

I attest 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's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice