REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CLARK WATER CORPORATION,
Petitioner,

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

Present:

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

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

OCT 05 2018 11:04 a.m.

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DECISION

CASTAÑEDA, JR., *J.*:

Before the CTA *En Banc* is the petition for review filed by petitioner Clark Water Corporation ("CWC") on March 24, 2017 assailing the November 23, 2016 Decision[1] and February 13, 2017 Resolution[2] promulgated by the CTA Third Division ("CTA Division") in the case entitled *"Clark Water Corporation. v. Commissioner of Internal Revenue,"* docketed as CTA Case No. 8865. The CTA Division denied CWC's petition for review and upheld respondent Commissioner of Internal Revenue

[1] *Rollo*, pp. 33- 48; Penned by Associate Justice (now Retired) Lovell R. Bautista and concurred in by Associate Justice Esperanza R. Fabon-Victorino and Associate Justice Ma. Belen M. Ringpis-Liban.
[2] *Id.*, pp. 50- 53; Penned by Associate Justice (now Retired) Lovell R. Bautista and concurred in by Associate Justice Esperanza R. Fabon-Victorino and Associate Justice Ma. Belen M. Ringpis-Liban.

(CIR)'s assessment for taxable year 2010 covering deficiency Income Tax and Value Added Tax (VAT) in the amount of Php3,889,507.56, consisting of the basic deficiency income tax and VAT with 25% surcharge, exclusive of deficiency and delinquency interests.

The dispositive portion of the November 23, 2016 Decision ("Assailed Decision") reads:

> "In view of the foregoing, the present Petition for Review is hereby **DENIED.** The assessment issued by respondent against petitioner for taxable year 2010 covering deficiency income tax and VAT is **UPHELD.** Accordingly, petitioner is hereby **ORDERED TO PAY** deficiency income tax and VAT in the total amount of **Three Million Eight Hundred Eighty Nine Thousand Five Hundred Seven and 56/100 Pesos (Php3,889,507.56),** inclusive of the 25% surcharge imposed under *Section 248(A)(1)(3) of the 1997 NIRC*, computed as follows:

TYPE OF TAX	BASIC	25% SURCHARGE	TOTAL
Income Tax	Php 944,706.66	Php 236,176.67	Php 1,180,883.33
Value Added Tax	2,166,899.39	541,724.85	2,708,624.24
TOTAL	**PHP 3,111,606.05**	**PHP 777,901.51**	**PHP 3,889,507.56**

> In addition, petitioner is also **ORDERED TO PAY:**
>
> 1. Deficiency interest at the rate of twenty percent (20%) *per annum* on the basic deficiency income tax and VAT computed from the dates indicated below until full payment thereof pursuant to *Section 249(B) of the 1997 NIRC:*

TYPE OF TAX	BASIC TAX	DEFICIENCY INTEREST COMPUTED FROM
Income Tax	Php 944,706.66	April 16, 2011
Value Added Tax	2,166,899.39	January 26, 2011

> 2. Delinquency interest at the rate of twenty percent (20%) *per annum* on the amount of Php3,889,507.56, representing the basic deficiency income tax and VAT and the corresponding 25% surcharge; and on the twenty percent (20%) deficiency interest which have accrued as aforestated in Item (1), computed from December 13, 2013 until full payment thereof pursuant to *Section 249(C) of the 1997 NIRC.*
>
> **SO ORDERED.**"

The dispositive portion of the February 13, 2017 Resolution ("Assailed Resolution") reads:

> "**WHEREFORE,** petitioner's Motion for Reconsideration (Re: Decision dated November 23, 2016 is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

Petitioner Clark Water Corporation ("CWC"), formerly "Clark Vivendi Water Corporation," is a domestic corporation duly organized and existing under Philippine laws, with registered principal office address at Depot 1901, Bicentennial Hill, Clark Freeport Zone, Clark Field, Pampanga.[3] It is authorized by the Securities and Exchange Commission ("SEC") to transact business in the Philippines under SEC Registration No. A199915674 dated October 1, 1999; is registered with the Bureau of Internal Revenue ("BIR")-Revenue District Office ("RDO") No. 21A, with Tax Identification No. 205-334-965-000; and is registered as a Clark Special Economic Zone ("CSEZ") enterprise, engaged in the operation and maintenance of water and sewerage system within the CSEZ.[4]

THE FACTS

The facts of the case as found by the CTA Division, as stated in the Assailed Decision:[5]

> "On April 12, 2011, petitioner filed its Annual Income Tax Return ('ITR') for CY 2010.
>
> On September 14, 2011, petitioner received Letter of Authority (LOA) No. 21A-2011-00000199/eLA201000057633 from the BIR-RDO No. 21A, authorizing Revenue Officer ('RO') Rachael Liwanag and Group Supervisor ('GS') Noel Miranda to examine petitioner's books of accounts and other accounting records of all internal revenue taxes for the period January 1, 2010 to December 31, 2010. Attached to the LOA is a list of business records and documents to be submitted to facilitate the early termination of the case.

[3] Assailed Decision, p. 2, *Rollo*, p.34.
[4] *Id.*
[5] *Id.*, pp- 3-7, *Rollo*, pp. 35-39.

On July 23, 2012, petitioner received a letter from the BIR-RDO No. 21A, requesting the reproduction of petitioner's master and transaction files in electronic form.

On May 29, 2013, petitioner received a copy of respondent's Notice for Informal Conference ('NIC'), with the following computation of deficiency taxes:

Income Tax	Php 121,020.84
VAT	4,033,763.88
EWT	16,906.41
Administrative Penalties	38,000.00
TOTAL	**PHP 4,209,691.13**

Petitioner replied to the NIC on June 11, 2013, stating that it deems reasonable to settle only the amount of Php175,927.84, broken down as follows:

Income Tax	Php 121,020.84
EWT	16,906.41
Administrative Penalties	38,000.00
TOTAL	**PHP 175, 927.84**

Hence, it questioned only the alleged deficiency VAT, claiming that the assessment lacked legal and factual basis.

Consequently, on June 18, 2013, petitioner filed Payment Forms or BIR Form No. 0605, and paid the following deficiency taxes:

KIND OF TAX	BASIC	INTEREST	SURCHARGE	COMPROMISE	TOTAL
Income Tax	Php 75,186.78	Php 33,834.06	Php -	Php 12,000.00	Php 121,020.84
EWT	11,823.67	7,094.20	-	3,000.00	21,917.87
Administrative Penalties	-	-	-	38,000.00	38,000.00
TOTAL	**PHP 87,010.45**	**PHP 40,928.26**	**PHP -**	**PHP 53,000.00**	**PHP 180,938.71**

On September 17, 2013, petitioner received a copy of respondent's Amended NIC, stating that the computation as to deficiency income tax was adjusted, as follows:

KIND OF TAX	BASIC	INTEREST	SURCHARGE	COMPROMISE	TOTAL
Amendment *per* Review	Php1,019,893.44	Php514,059.95	Php -	Php25,000.00	Php1,558,953.39
Income Tax-Paid on June 19, 2013	75,186.78	33,834.06	-	12,000.00	121,020.84
INCOME TAX-ADJUSTED NIC	**PHP 944,706.66**	**PHP 480,225.89**	**PHP -**	**PHP13,000.00**	**PHP1,437,932.55**

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On September 27, 2013, petitioner filed its reply to the Amended NIC.

On November 22, 2013, petitioner received a copy of the Preliminary Assessment Notice ('PAN') assessing it for deficiency income tax and VAT for CY 2010 in the total amount of Php5,479,568.98, inclusive of interest, penalties and surcharge:

KIND OF TAX	BASIC	INTEREST	SURCHARGE	COMPROMISE	TOTAL
Income Tax	Php 944,706.66	Php 488,098.44	Php -	Php 13,000.00	Php 1,445,805.10
VAT	2,166,899.39	1,300,139.64	541,724.85	25,000.00	4,033,763.88
TOTAL	**PHP 3,111,606.05**	**PHP 1,788,238.08**	**PHP 541,724.85**	**PHP 38,000.00**	**PHP 5,479,568.98**

On December 6, 2013, petitioner filed its protest to the PAN.

On December 27, 2013, petitioner received a copy of the Formal Letter of Demand ('FLD') and Final Assessment Notices ("FAN") for alleged deficiency income tax and VAT in the total amount of Php5,495,314.09,[6] broken down as follows:

KIND OF TAX	BASIC	SURCHARGE	COMPROMISE	TOTAL
Income Tax	Php 944,706.66	Php -	Php 13,000.00	Php 957,706.66
VAT	2,166,899.39	541,724.85	25,000.00	2,733,624.24
TOTAL	**PHP 3,111,606.05**	**PHP 541,724.85**	**PHP 38,000.00**	**PHP 3,691,330.90**

On January 13, 2014, petitioner filed its Protest to the FAN.

Due to the inaction of respondent on its Protest, petitioner was left with no recourse but to seek redress from the Court on August 11, 2014, through the present Petition for Review.

On September 12, 2014, respondent filed a Motion for Extension to File Answer, which was granted by the Court in its Order dated September 16, 2014.

On October 13, 2014, respondent filed her Answer, interposing the following Special and Affirmative Defenses, as summarized: (1) that the sales of petitioner to enterprises within

[6] The interest column was omitted in the break down. There is a column for Interest which states that: for Income Tax, interest is Php503,843.55, and for VAT, interest is Php1,300,139.64. Thus, the TOTAL column should state that for Income Tax is Php1,461,550.21, VAT is Php4,033,763.88, and the Total is Php5,495,314.09, Division Docket, Vol. 1, p. 352.

customs territory are considered technical importations, hence, subject to the twelve percent (12%) VAT; (2) that petitioner is liable for deficiency income tax for failure to pay customs duties and taxes due on sales made within customs territory; (3) that petitioner is liable for surcharge and interest imposed on the deficiency income tax and VAT; and (4) that compromise penalty was included only as a suggestion so that petitioner may avoid criminal prosecution.

Respondent and petitioner filed their respective Pre-trial Briefs on November 14, 2014 and November 24, 2014.

On December 19, 2014, the parties filed their Joint Stipulation of Facts and Issues ("JSFI"), thus, a Pre-Trial Order was issued on January 14, 2015.

On March 6, 2015, petitioner filed its Formal Offer of Evidence ("FOE") offering *Exhibits* 'P-1' to 'P-17' and 'P-19,' with sub-markings; which was resolved by the Court in its Resolution dated March 31, 2015, admitting *Exhibits* 'P-1,' 'P-2,' 'P-3,' 'P-4,' 'P-5,' 'P-6,' 'P-7,' 'P-8,' 'P-8.1,' 'P-8.2,' 'P-8.3,' 'P-8.4,' 'P-8.5,' 'P-8.6,' 'P-8.7,' 'P-8.8,' 'P-9,' 'P-9.1,' 'P-10,' 'P-11,' 'P-12,' 'P-13,' 'P-14,' 'P-15,' 'P-15.1,' P-16,' 'P-17,' 'P-19,' and 'P-19.1,' and denying *Exhibit* 'P-6-1,' for not being marked.

On May 29, 2015, respondent filed her FOE, offering *Exhibits* 'R-1' to 'R-9' and 'R-9-a,' which was resolved by the Court in its June 23, 2015 Resolution admitting *Exhibits* 'R-1' to 'R-8,' and denying *Exhibits* 'R-19' and 'R-19-a' for not being marked.

In compliance to the October 12, 2015 Resolution of the Court granting the parties a period of thirty (30) days from notice to file their respective memoranda, petitioner and respondent then filed their Memoranda on November 14, 2015 and November 16, 2015, respectively.

xxx xxx xxx."

On November 23, 2016, the Court Division denied the petition and upheld the assessment for taxable year 2010 covering deficiency income tax and VAT. *gr*

On February 13, 2017, the Court Division denied for lack of merit CWC's "Motion for Reconsideration (Re: Decision dated November 23, 2016."

On March 13, 2017, the Court *En Banc* granted the "Motion for Extension of Time to File Petition for Review" filed by CWC on March 9, 2017.[7] Within the period of extension, CWC timely filed its petition.

On April 27, 2017, the Court *En Banc* ordered CIR to file Comment. Per Records Verification dated July 6, 2017, counsel for CIR failed to file Comment on Petition for Review.

On July 17, 2017, the parties were directed to file their respective Memorandum. CWC filed its Memorandum within the period of extension granted. Per Records Verification dated September 22, 2017, counsel for CIR failed to file Memorandum.

On October 13, 2017, this case was submitted for decision.

ISSUE

WHETHER THE CTA DIVISION GRAVELY ERRED IN NOT RULING SQUARELY ON THE ISSUE OF PETITIONER'S PREFERENTIAL TAX RATE OF 5% ON ITS GROSS INCOME, IN LIEU OF ALL TAXES, FOR CY 2010.[8]

CWC respectfully submits that the CTA Division seriously erred in not applying the applicable law and regulations to the tax assessment subject of this case. It also submits that the CTA Division's ruling in its Decision and Resolution is contrary to law, and that the CTA Division's Decision completely contradicts the tax incentive granted by law to it.

CWC alleges that the CTA Division seriously erred in failing to squarely rule on the issue of its preferential rate of 5% on its gross income, in lieu of all national and local taxes *vis-a-vis* the 30% threshold on sales within the Customs Territory.

CWC submits that CIR's deficiency income tax and VAT assessments are devoid of any legal or factual basis. CWC argues that it is not subject to regular income tax and VAT on its sales to enterprises within the Customs

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[7] *Rollo*, p. 5-A.
[8] CWC's Memorandum, p. 7; *Rollo*, p. 74.

Territory for CY 2010 as it constituted only 7.65% of its total revenues for the year.

CWC alleges that there is no factual issue in this case. According to CWC, the issue brought by the parties for the CTA Division's resolution involves a legal interpretation of the applicable law and regulations with respect to petitioner's sales within the Custom's Territory. This is the reason why CWC did not present the receipts and invoices relating to its sales outside of CSEZ.

CWC does not dispute that it had sales transactions within the Customs Territory for CY 2010.

CWC submits that the CTA Division gravely erred in upholding CIR's erroneous application of the provisions of RMC No. 50-2007 to find CWC liable for deficiency income tax and VAT on its sale of services within the Customs Territory for CY 2010. In this regard, CWC submits that it is exempted from regular income tax and VAT as it is a duly-registered CSEZ Enterprise entitled to the preferential rate of 5% tax on its gross income, in lieu of all national and local taxes, pursuant to R.A. No. 7227,[9] as amended by R.A. No. 9400,[10] and Department of Finance ("DOF") Department Order ("DO") No. 03-08.[11]

THIS COURT'S RULING

The petition is denied.

CWC maintains its stand that since only 7.65% of its total sales for CY 2010 was derived on its sales of services to enterprises within the Customs Territory, which do not exceed the 30% threshold, such sale of service derived outside is not subject to regular income tax and VAT.

CWC cited Section 8 of DOF Department Order No. 003-08, which states:

"SECTION 8. *Other Tax and Fiscal Obligations.* — jc

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[9] *"AN ACT ACCELERATING THE CONVERSION OF MILITARY RESERVATIONS INTO OTHER PRODUCTIVE USES, CREATING THE BASES CONVERSION AND DEVELOPMENT AUTHORITY FOR THE PURPOSE, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES,"* March 13, 1992.

[10] *"AN ACT AMENDING REPUBLIC ACT NO. 7227, AS AMENDED, OTHERWISE KNOWN AS THE BASES CONVERSION AND DEVELOPMENT ACT OF 1992, AND FOR OTHER PURPOSES,"* Approved: March 20, 2007, Published in The Manila Times on April 4, 2007.

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

> A. If the Ecozone or Freeport Enterprise wants to avail of the incentives under the 5% special tax regime, it may generate income from sources outside the Ecozone or Freeport Zone or within the Customs territory of up to thirty percent (30%) of its total income from all sources, Provided, however, that if the income of an Ecozone or Freeport Enterprise exceeds said thirty percent (30%) threshold, then all of its income whether from the Zone or the Customs Territory shall be subject to the relevant internal revenue taxes under the National Internal Revenue Code of 1997, as amended."

CWC's contention lacks merit.

A reading of the above provision shows the following scenarios:

a.) If the Ecozone or Freeport Enterprise wants to avail of the incentives under the 5% special tax regime, it may generate income from sources outside the Ecozone or Freeport Zone or within the Customs territory of up to thirty percent (30%) of its total income from all sources; and

b.) If the income of an Ecozone or Freeport Enterprise exceeds said thirty percent (30%) threshold, then all of its income whether from the Zone or the Customs Territory shall be subject to the relevant internal revenue taxes under the National Internal Revenue Code of 1997, as amended.

The above provision should not be applied in isolation, but rather applied in harmony with the other provisions of the said DOF Department Order No. 03-08.

As stipulated by the parties[12] and as found in the records, the sales of services within the Customs Territory for CY 2010 amounted to Php18,057,494.94 or only 7.65% of the total sales. The instant case falls under scenario (a). In order to avail of the incentives under the 5% special tax regime, pertinent is Section 5 of DOF Department Order No. 03-05, which reads, as follows:

> SECTION 5. *The Special Five Percent (5%) Tax on Gross Income Earned (GIE). —*

[12] Division Docket, Vol. I, Joint Stipulation of Facts and Issue, p. 352.

a. For purposes of implementing the special 5% tax on Gross Income Earned, in lieu of national and local taxes, granted to Ecozone Enterprises and Freeport Enterprises in SSEZ, SFZ, CFZ, PPFZ, and MSEZ the following **shall apply**:

1. Gross Income Earned (GIE) shall refer to gross sales or gross revenue **derived from business activities within the subject Ecozone or Freeport,** net of sales discounts, sales returns and allowances minus cost of sales or direct costs but before any deduction for administrative, marketing, selling, and/or operating expenses or incidental losses during a given taxable year. Provided, that, in the case of financial enterprises within Freeports, gross income shall include interest income, gains from sales, and other income, net of costs of funds.

2. Only the following cost of sales/direct cost shall be allowed as deductions for purposes of calculating the GIE earned for the following Ecozone or Freeport enterprises/industries, to wit:

xxx xxx xxx

iii. Service Enterprises —

- Direct salaries, wages, or labor expenses, inclusive of training directly related to the registered activity;
- Service supervision salaries;
- Direct materials, supplies used;
- Depreciation of machinery, equipment used in the rendition of registered services, and of that portion of the building owned or constructed by the registered enterprise that is used exclusively in the rendition of the registered service;
- Rent and utility charges for buildings and capital equipment used in the rendition of registered services;
- Financing charges associated with fixed assets used in the registered service business the amount of which were not previously capitalized.

xxx xxx xxx

b. For purposes of implementing the 5% tax on Gross Income Earned, in lieu of national and local taxes, granted to PEZA Ecozone Enterprises in CSEZ, CFZ, MSEZ and JHSEZ, the relevant provisions of R.A. No. 7916, its Implementing Rules and Regulations, Circulars, Memoranda of Agreement with other government agencies, and all other relevant issuances of PEZA and of other government agencies relative to

> the implementation of the tax incentives under RA 7916, shall apply. *(Emphases Supplied.)*

Based on the foregoing provision, it is categorically stated that the gross income, which is the basis of the 5% special rate, refers to gross sales or gross revenue **derived from business activities within the subject Ecozone or Freeport**. We emphasize that, "For purposes of implementing the special 5% tax on Gross Income Earned, in lieu of national and local taxes, granted to Ecozone Enterprises and Freeport Enterprises in SSEZ, SFZ, CFZ, PPFZ, and MSEZ the following [provisions in Section 5 of DOF Department Order No. 03-05] **shall apply.**"[13] It is basic that the word "shall" means mandatory. Considering that the sale of services were derived in the Customs Territory, these sales were not included in the computation of the special 5% tax on Gross Income Earned, in lieu of national and local taxes, thus, the CIR is correct in imposing the relevant internal revenue taxes under the National Internal Revenue Code of 1997, as amended.

With respect to deficiency income tax assessment, this Court reiterates the finding of the CTA Division that CWC "failed to overcome, by sufficient evidence, the presumption of correctness of the deficiency income tax assessment."[14]

Anent the assessment of deficiency VAT, this Court agrees with the CTA Division that, "If the services are performed or rendered outside the freeport zone or within the custom's territory, such sale of services are considered as technical importations, thus subject to 12% VAT."[15] CIR based its assessment pursuant to the provisions of Section 108[16] of the 1997 NIRC and Revenue Regulations No. 1-95[17] as clarified in Q & A No. 7[18] of Revenue Memorandum Circular No. 50-2007[19] which provides, that in any *jc*

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[13] Section 5(a), DOF Department Order No. 03-05.
[14] Assailed Decision, p. 12, *Rollo*, p. 44.
[15] *Id.*
[16] SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* —
"(A) *Rate and Base of Tax.* — There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties: Provided, That the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%), after any of the following conditions has been satisfied:
xxx xxx xxx

"The phrase 'sale or exchange of services' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, xxx xxx xxx "
[17] SUBJECT : Rules and Regulations to Implement the Tax Incentives Provisions under Paragraphs (b) and (c) of Section 12, Republic Act No. 7227 Otherwise Known as the Bases Conversion and Development Act of 1992.
[18] Q7: What is the tax treatment for the income of Freeport Zone-registered enterprises derived from sources in the Customs Territory?
A7: Freeport Zone-registered enterprises may generate income from sources within the Customs Territory of up to thirty percent (30%) of its total income from all sources; provided, that should a Freeport Zone-registered enterprise's income from sources within the Customs Territory exceed thirty percent (30%) of its total income from all sources, then it shall be subject to the income tax laws of the Customs Territory; provided further, that **in any case, customs duties and taxes must be paid with respect to transactions, receipts, income and sales of articles to the Customs Territory and in the Customs Territory.** *(Emphasis Supplied.)*
[19] SUBJECT : Tax Treatment of Sale, Barter or Exchange of Goods or Properties or Sale or Exchange of Services Made by Suppliers from the Customs Territory to Registered Freeport Zone Enterprises in the Subic Freeport

case, customs duties and taxes must be paid with respect to transactions, receipts, income and sales to customs territory. We reiterate the CTA Division's finding that CWC "failed to present and offer evidence to prove that it is not liable to pay the assessed deficiency VAT, the presumption of correctness of the subject tax assessment remains."[20]

We also agree that, absent any clear showing that CWC consented to the compromise penalty, CWC is not liable to pay compromise penalty pursuant to RMO No. 01-90, as amended by RMO No. 19-07, compromise penalties are only amounts suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that the latter refuses to pay the same.[21]

This Court agrees with the CTA Division's imposition of surcharge pursuant to Section 248 (A) of the 1997 NIRC.[22] We reiterate that CWC "failed to pay both deficiency income tax and VAT within the time prescribed for its payment in the FAN, and to file any VAT return and pay the tax due thereon on the dates prescribed by law. Consequently, the 25% surcharge applies to both deficiency income tax and VAT of petitioner for CY 2010."[23]

CWC's contention that it should not be made pay the delinquency and deficiency interest in view of its honest belief in good faith that it is not liable to pay the tax assessed lacks merit. CWC cited the *case Commissioner of Internal Revenue v. St. Luke's Medical Center, Inc.*[24]

A reading of the St. Luke's case (*supra.*), shows that the Supreme Court ruled that SLMC is not liable to pay compromise penalty under Section 248 (A) of the 1997 NIRC, following the ruling of the Court in G.R. Nos. 195909 and 195960 *(Commissioner of Internal Revenue v. St. Luke's Medical Center, Inc.),*[25] where the imposition of surcharges and interest

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Zone (SFZ), the Clark Freeport Zone (CFZ), as well as the Poro Point Freeport Zone (PPFZ), and Vice Versa under Sections 12 and 15 of Republic Act No. 7227, as amended by Republic Act No. 9400.

[20] Assailed Decision, p. 13, *Rollo*, p. 45.

[21] Assailed Decision, pp. 13-14, *Rollo*, pp.45-46.

[22] SECTION 248. Civil Penalties. —

(A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:

(1) Failure to file any return and pay the tax due thereon as required under the provisions of this Code or rules and regulations on the date prescribed; or

(2) Unless otherwise authorized by the Commissioner, filing a return with an internal revenue officer other than those with whom the return is required to be filed; or

(3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; or

(4) Failure to pay the full or part of the amount of tax shown on any return required to be filed under the provisions of this Code or rules and regulations, or the full amount of tax due for which no return is required to be filed, on or before the date prescribed for its payment. *(Emphases Supplied.)*

[23] Assailed Decision, p. 15, *Rollo*, p. 47.

[24] G.R. No. 203514, February 13, 2017.

[25] G.R. Nos. 195909 & 195960, September 26, 2012.

under Sections 248 and 249 of the 1997 NIRC were deleted on the basis of good faith and honest belief on the part of SLMC that it is not subject to tax.

In *Commissioner of Internal Revenue v. St. Luke's Medical Center, Inc,*[26] although St. Luke's was found liable for deficiency income tax in 1998 under Section 27 (B) of the NIRC, it was not liable for surcharges and interest on such deficiency income tax under Sections 248 and 249 of the National Internal Revenue Code. St. Luke's has good reasons to rely on the letter dated 6 June 1990 by the BIR, which opined that St. Luke's is "a corporation for purely charitable and social welfare purposes" and thus exempt from income tax.

In this case, there is no circumstance which shows that CWC relied in good faith to an interpretation from the BIR which specifically opined that CWC's sales of services in the customs territory is subject to 5% special rate. Thus, this Court affirms the imposition of deficiency and delinquency interests as well as the surcharge.

Based on the foregoing discussions, this Court finds no reversible error to disturb the assailed Decision and Resolution of the CTA Third Division.

WHEREFORE, premises considered, the present Petition for Review filed by Clark Water Corporation is **DENIED**. Accordingly, the November 23, 2016 Decision and February 13, 2017 Resolution of the CTA Third Division in CTA Case No. 8865 are **AFFIRMED with MODIFICATION** in the computation of the deficiency interest and delinquency interests in view of the effectivity of Republic Act No. 10963 (TRAIN Law) on January 1, 2018 and the issuance of Revenue Regulations No. 21-2018[27] dated September 14, 2018.

The assessment issued by respondent against petitioner for taxable year 2010 covering deficiency income tax and VAT is **UPHELD**. Accordingly, petitioner is hereby **ORDERED TO PAY** deficiency income tax and VAT in the total amount of **Twelve Million Six Hundred Eighty-One Thousand One Hundred Seventy-Seven and 23/100 Pesos (Php12,681,177.23)**, inclusive of the 25% surcharge and deficiency and delinquency interests imposed under Sections 248(A)(1)(3) and 249(B) and (C) of the NIRC of 1997, as amended, respectively computed until December 31, 2017 as follows:[28] gr

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[26] G.R. Nos. 195909 & 195960, September 26, 2012.
[27] Regulations Implementing Section 249 (Interest) of the National Internal Revenue Code (NIRC) of 1997, as amended under Section 75 of the Republic Act (RA) No. 10963 or the "Tax Reform for Acceleration and Inclusion (TRAIN Law)".
[28] Section 6 of Revenue Regulations No. 21-2018 dated September 14, 2018.

	Income Tax	VAT	Total
Basic tax	₱ 944,706.66	₱ 2,166,899.39	₱ 3,111,606.05
25% Surcharge	236,176.67	541,724.85	777,901.51
Deficiency Interest 4/16/2011 to 1/15/2014[29] [1,006 days] (₱944,706.66 x 20% x 2.7562 yrs.) 1/26/2011 to 1/15/2014[30] [1,086 days] (₱2,166,899.39 x 20% x 2.9753 yrs.)	520,753.37	1,289,453.55	1,810,206.92
Total Amount Due as of January 15, 2014	**₱1,701,636.69**	**₱3,998,077.79**	**₱5,699,714.49**
Deficiency Interest 1/16/2014 to 12/31/2017 [1,446 days] (₱944,706.66 x 20% x 3.9616 yrs.) 1/16/2014 to 12/31/2017 [1,446 days] (₱2,166,899.39 x 20% x 3.9616 yrs.)	748,518.26	1,716,896.72	2,465,414.99
Delinquency Interest 1/16/2014 to 12/31/2017 [1,446 days] (₱1,701,636.69 x 20% x 3.9616 yrs.) 1/16/2014 to 12/31/2017 [1,446 days] (₱3,998,077.79 x 20% x 3.9616 yrs.)	1,348,255.70	3,167,792.05	4,516,047.75
Total Amount Due as of December 31, 2017	**₱3,798,410.66**	**₱8,882,766.56**	**₱12,681,177.23**

In addition, petitioner is liable to pay delinquency interest at the rate of 12%[31] on the total unpaid basic deficiency tax, surcharge and deficiency interest as of January 15, 2014 amounting to ₱1,701,636.69 for income tax and ₱3,998,077.79 for VAT, or in the aggregate amount of ₱5,699,714.49, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN).

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

[29] Exhibit "P-13", Records, Vol. I, p. 448.
[30] Exhibit "P-13", Records, Vol. 1, p. 449.
[31] Section 2 of Revenue Regulations No. 21-2018 dated September 14, 2018.

(On Leave)
ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice