REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

WELLS FARGO ENTERPRISE GLOBAL SERVICES, LLC-PHILIPPINES, *Petitioner,*	**CTA Case No. 9617**
	Members:
	CASTAÑEDA, JR., *Chairperson,* and **MANAHAN,** *JJ.*
- versus –	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAR 1 1 2019 1:10 p.m.

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DECISION

CASTAÑEDA, JR., *J.:*

Before this Court is a claim for refund via a Petition for Review[1] filed on May 19, 2017, by petitioner Wells Fargo Enterprise Global Services, LLC–Philippines, in the amount of Twenty-Eight Million Five Hundred Fifty-One Thousand Thirty-Five Pesos and Sixty-Nine Centavos (₱28,551,035.69) representing unutilized input value-added tax (VAT) attributable to its zero-rated sales for the taxable year January to December 2015. gr

[1] Docket (Vol. I), pp. 10-28.

THE FACTS

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. It is a duly registered VAT taxpayer with Tax Identification Number 008-725-483-000. It has its principal office in the Philippines at the Wells Fargo Center, 1180 Wells Fargo Drive, McKinley Hill Cyberpark, Taguig City. [2] It is also registered with the Philippine Economic Zone Authority (PEZA) as an Ecozone IT Enterprise at the McKinley Hill Cyberpark with Certificate of Registration No. 14-097[3] dated July 1, 2014.

Petitioner is engaged in providing administrative back office, call center, information technology, support, training and other allied services related to the foregoing services.[4]

On the other hand, respondent Commissioner of Internal Revenue (CIR) is the government official charged with the administration and enforcement of national internal revenue laws, including the granting of refunds and tax credits of taxes erroneously or illegally collected. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

During taxable year 2015, petitioner filed with the Bureau of Internal Revenue (BIR) its Quarterly VAT returns in the aggregate amount of ₱28,551,035.69, broken down as follows:

<table>
<tr><th>QUARTER TY 2015</th><th>DATE FILED</th><th>CLOSE OF QUARTER</th><th>INPUT VAT CLAIMED</th></tr>
<tr><td>1st (Exh. "P-76")</td><td>April 27, 2015</td><td>March 31, 2015</td><td>₱ 6,870,228.09</td></tr>
<tr><td rowspan="2">2nd (Exh. "P-77" and "P-78)</td><td>July 24, 2015</td><td rowspan="2">June 30, 2015</td><td rowspan="2">7,409,086.47</td></tr>
<tr><td>July 30, 2015</td></tr>
<tr><td>3rd (Exh. "P-79")</td><td>October 27, 2015</td><td>September 30, 2015</td><td>6,990,727.45</td></tr>
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[2] Par. 1, Jointly Stipulated Facts, Joint Stipulation of Facts and Issue (JSFI), Docket (Vol. II), p. 769.
[3] Exhibit "P-108".
[4] Exhibit "P-4".

4th (Exh. "P-80")	January 25, 2016	December 31, 2015	7,280,993.68
TOTAL			₱28,551,035.69

Thereafter, on February 24, 2017, petitioner filed an administrative claim for refund, via an Application for Tax Credits/Refunds (BIR Form No. 1914)[5] and a Letter re: Application for Tax Refund[6] dated February 10, 2016, with BIR Revenue District Office (RDO) No. 44 for its alleged excess unutilized input VAT for the period January to December 2015 in the amount of ₱28,551,035.69.

On May 19, 2017, petitioner received a letter[7] dated April 11, 2017 from Regional Director Glen A. Geraldino of BIR Revenue Region No. 8, denying its application for VAT refund. Thus, on June 19, 2017, petitioner elevated its case to this Court via a Petition for Review.

Then, on August 18, 2017, respondent filed, through registered mail, his Answer[8] interposing the following Special and Affirmative Defenses, viz.:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

4. Respondent reiterates and repleads the preceding paragraphs of the Answer as part of his Special and Affirmative Defenses which are discussed hereunder:

5. Petitioner's claim for refund or issuance of tax credit certificate was denied in accordance with the provisions of RMC No. 74-99, Section 106(A)(2)(a)(5) of the Tax Code and RMO No. 50-2007.

6. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable.

7. Petitioner's claim for refund or issuance of tax credit in the amount of ₱28,551,035.69 representing its alleged excess and unutilized input VAT for taxable year 2015 were not fully

[5] Exhibit "1".
[6] Exhibit "1-B".
[7] Exhibit "2".
[8] Docket (Vol. I), pp. 285-287.

substantiated by proper documents, such as sales invoices and official receipts, pursuant to Revenue Regulations No. 7-95 in relation to Section 113 and 237 of the 1997 Tax Code.

8. In an action for refund/credit, the burden of proof is on petitioner to establish its right to claim for refund and failure to adduce sufficient proof is fatal to the claim for tax refund/credit.

9. It is incumbent upon the latter to show that it has complied with the provisions under Section 204 (C) in relation to Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund.

10. Claims for refund are construed strictly against petitioner since the same partakes the nature of exemption from taxation ***(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)*** and as such, they are looked upon with disfavor ***(Western Minolco Corp, vs. Commissioner of Internal Revenue, 124 SCRA 1211)***."

On August 29, 2017, a Notice of Pre-Trial Conference[9] was issue by this Court, setting the case for pre-trial conference on September 14, 2017 at 1:30 p.m. and, also, ordering both parties to submit their respective pre-trial briefs.

However, on September 8, 2017, petitioner filed an Urgent Motion for the Resetting of Pre-Trial Conference[10] on the ground that it was not able to coordinate with its witnesses for the taking of their respective direct testimonies and that one of its witnesses needs adequate time to make travel arrangements since she holds office in the State of North Carolina, Unites States of America. Thus, having no objection from respondent, this Court, in an Order[11] dated September 14, 2017, granted petitioner's plea for the resetting of the pre-trial conference on October 26, 2017 at 1:30 pm.

On September 11, 2017, respondent filed, through a licensed private courier service, his Respondent's Pre-Trial Brief[12] while

[9] *Ibid*, pp. 289-290.
[10] *Id.*, pp. 291-294.
[11] *Id.*, p. 302.
[12] *Id.*, pp. 296-299.

petitioner, on the other hand, submitted its Pre-Trial Brief[13] on October 23, 2017.

Afterwards, in a Submission[14] filed on October 23, 2017, petitioner attached the Judicial Affidavits of its intended witnesses, namely: Mr. Siegfred A. Sorbito, Tax Accountant at Wells Fargo Enterprise Global Services, LLC–Philippines;[15] Mr. Enrique Juan C. Vera, Assistant Secretary at Wells Fargo Enterprise Global Services, LLC–Philippines;[16] and, Ms. Christy Miller Long, Strategic Planning Manager at Wells Fargo Bank, N.A.,[17] pursuant to the Judicial Affidavit Rule[18] in relation to CTA Circular No. 01-2013 dated July 1, 2013, as amended by CTA En Banc Resolution No. 15-2013 dated September 24, 2013.

During the pre-trial conference, this Court issued an Order[19] dated October 26, 2017, granting the parties a period of fifteen (15) days within which to file their joint stipulation of facts and issues. Complying thereon, a Joint Stipulation of Facts and Issue[20] was submitted by the parties on November 10, 2017.

On December 1, 2017, a Pre-Trial Order[21] was issued by this Court which deemed, among others, the pre-trial as terminated and, further, set the initial presentation of evidence for the petitioner on December 11, 2017 at 9:00 a.m.

Thereafter trial ensued.

On January 19, 2017, petitioner filed, through a licensed private courier service, a Submission[22] attaching therewith a Supplement to the Judicial Affidavit of Siegfred A. Sorbito dated January 18, 2017.

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[13] Docket (Vol. II), pp. 644-660.
[14] Docket (Vol. I), pp. 304-309.
[15] Docket (Vol. II), pp. 310-346.
[16] *Ibid*, pp. 347-355.
[17] *Id.*, pp. 356-367.
[18] A.M. No. 12-8-8-SC which took effect on January 1, 2013.
[19] Docket (Vol. II), p. 768.
[20] *Ibid*, pp. 769-771.
[21] *Id.*, pp. 779-787.
[22] *Id.*, pp. 808-809.

Then, on February 6, 2018, petitioner filed a Formal Offer of Evidence[23], formally offering Exhibits "P-1" to "P-113-A", inclusive of sub-markings, as its documentary evidence. Consequently, in Resolution[24] dated March 21, 2018, this Court admitted all of petitioner's exhibits except for Exhibit "P-101", for petitioner's failure to correspond the document offered with that of the document identified. With the admission of the said exhibits, petitioner was deemed to have rested its case. Thus, the initial presentation of evidence for the respondent was set on April 11, 2018 at 8:30 a.m., as previously scheduled.

During the initial presentation of evidence for the respondent,[25] petitioner manifested its oral motion for reconsideration for the denied Exhibit "P-101". Having no objection from respondent, this Court granted petitioner's motion. Furthermore, respondent also manifested that he has no witness to present in the present case, which was then noted by this Court. After which, the parties were given a period of thirty (30) days within which to file their respective memoranda.

In compliance therewith, petitioner filed, through registered mail, its Memorandum[26] on June 11, 2018, while respondent, on the other hand, failed to submit his memorandum, as per Records Verification Report[27] dated June 20, 2018.

Accordingly, in a Resolution[28] dated June 29, 2018, the present case was deemed submitted for decision.

THE ISSUE

As stipulated upon by the parties, the sole issue[29] to be resolved is whether petitioner is entitled to a refund of its excess and unutilized input VAT attributable to its zero-rated sales for the period January to December 2015 in the amount of ₱28,551,035.69. *fr*

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[23] *Id.*, pp. 869-889.
[24] Docket (Vol. III), pp. 1162-1164.
[25] Minutes of the Hearing, *ibid*, p. 1165.
[26] Docket (Vol. III), pp. 1177-1223.
[27] *Ibid*, p. 1225.
[28] *Id.*, p. 1226.
[29] Jointly Stipulated Issue, JSFI, Docket (Vol. II), p. 770.

Petitioner's Arguments

Petitioner mainly insists that it is entitled to refund the unutilized input VAT payments on its domestic purchases, attributable to its zero-rated sales, for the period January to December 2015, for having complied with the requisites of VAT refund. Petitioner claims that it has satisfactorily shown that (1) it is a VAT-registered entity; (2) it is engaged in zero-rated or effectively zero-rated sales for the period January to December 2015; (3) its unapplied and unutilized input VAT for the period January to December 2015 arose from its purchases of taxable goods and services, which are properly substantiated by VAT invoices and/or official receipts issued in accordance with Sections 113 and 237 of the Tax Code, and are directly attributable to its zero-rated sales; (4) that the unapplied and unutilized input VAT for the period January to December 2015 which does not constitute transitional input taxes, have not been carried over, and have not been applied against output taxes, during and in the succeeding taxable quarters; and (5) it had timely filed its administrative claim and the subject petition for review within the prescribed periods.

Respondent's Counter-Arguments

On the other hand, respondent asserts that petitioner's claim for refund or issuance of tax credit certificate should be denied in accordance with the provisions of Revenue Memorandum Circular (RMC) No. 74-99, Section 106(A)(2)(a)(5) of the Tax Code and Revenue Memorandum Order No. 50-2007. Respondent also insist that petitioner's claim for refund or issuance of tax credit in the amount of ₱28,551,035.69 representing its alleged excess and unutilized input VAT for taxable year 2015 were not fully substantiated by proper documents, such as sales invoices and official receipts, pursuant to Revenue Regulations No. 7-95 in relation to Section 113 and 237 of the Tax Code. Thus, considering that claims for refund are construed strictly against the taxpayer-claimant since the same partakes the nature of exemption from taxation, claims for such are looked upon with disfavor.

THIS COURT'S RULING

After due consideration of the arguments, this Court finds the present Petition bereft of merit.

This Court shall determine first whether or not the Petition for Review was timely filed. The pertinent provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, are Sections 112 (C) and 204 (C) which respectively reads, *viz.:*

> "**SEC. 112.** *Refunds or Tax Credits of Input Tax.* –
>
> x x x
>
> (C) Period within which Refund or Tax Credit of Input Taxes shall be Made. – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.
>
> x x x."
>
> "**SECTION 204.** *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may–
>
> x x x
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use

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> and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.
>
> x x x."

Based above, Section 112 (C) of the NIRC of 1997, states that respondent has one hundred twenty (120) days from the date of submission of complete supporting documents within which to act on the administrative claim for tax refund/credit. Thereafter, the taxpayer may, in case of an adverse ruling or inaction thereof, elevate the matter via a Petition for Review to this Court within thirty (30) days from receipt of the adverse decision or after the lapse of the 120-day period.

Notably, in cases of inaction, the 120+30 day period is mandatory. As propounded by the Supreme Court in the consolidated cases of *Commissioner of Internal Revenue vs. San Roque Power Corporation, Taganito Mining Corporation vs. Commissioner of Internal Revenue, Philex Mining Corporation vs. Commissioner of Internal Revenue*[30], "[t]he law is clear, plain, and unequivocal: 'x x x the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes **within one hundred twenty (120) days** from the date of submission of complete documents.' Following the well-settled *verba legis* doctrine, this law should be applied exactly as worded since it is clear, plain, and unequivocal."

Also, in the case of *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership (Mindanao II)*[31], the Supreme Court concluded that (1) it is only the administrative claim that must be filed within the two-year prescriptive period; and (2) the two-year prescriptive period begins to run from the close of the taxable quarter when the relevant sales were made. *ge*

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[30] G.R. Nos. 187485, 196113 and 197156, February 12, 2013.
[31] G.R. No. 191498, January 15, 2014.

Nonetheless, a summary of the rules on prescriptive periods involving claims for the refund of input VAT was provided in *Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue and Mindanao I Geothermal Partnership v. Commissioner of Internal Revenue*[32], as follows:

> "Summary of Rules on Prescriptive Periods Involving VAT
>
> We summarize the rules on the determination of the prescriptive period for filing a tax refund or credit of unutilized input VAT as provided in Section 112 of the 1997 Tax Code, as follows:
>
> (1) An administrative claim must be filed with the CIR within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.
>
> (2) The CIR has 120 days from the date of submission of complete documents in support of the administrative claim within which to decide whether to grant a refund or issue a tax credit certificate. The 120-day period may extend beyond the two-year period from the filing of the administrative claim if the claim is filed in the later part of the two-year period. If the 120-day period expires without any decision from the CIR, then the administrative claim may be considered to be denied by inaction.
>
> (3) A judicial claim must be filed with the CTA within 30 days from the receipt of the CIR's decision denying the administrative claim or from the expiration of the 120-day period without any action from the CIR.
>
> (4) All taxpayers, however, can rely on BIR Ruling No. DA- 489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in Aichi on 6 October 2010, as an exception to the mandatory and jurisdictional 120+30 day periods."

Going to the present case, petitioner's claim pertains to its alleged unapplied and unutilized input VAT attributable to its zero-rated sales on purchases of capital goods, and input VAT on local

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[32] G.R. Nos. 193301 and 194637, March 11, 2013.

purchases of goods and services, other than capital goods, in the amount of ₱28,551,035.69, for taxable year 2015. Counting from March 31, 2015 (end of 1st quarter of taxable year 2015), June 30, 2015 (end of 2nd quarter of taxable year 2015), September 30, 2015 (end of 3rd quarter taxable year 2015) and December 31, 2015 (end of 4th quarter taxable year 2015), petitioner had until March 31, 2017, June 30, 2017, September 30, 2017 and December 31, 2017, respectively, within which to file its claim for refund in the administrative level. Thus, having filed a claim for refund or issuance of a tax credit certificate with the BIR RDO No. 44 of Makati on February 24, 2017, petitioner's administrative claim for refund was seasonably filed within the two (2) year prescriptive period.

As to its judicial claim, petitioner had thirty (30) days from May 19, 2017, the date when it received the decision denying petitioner's administrative claim, within which to file its judicial appeal. Considering that petitioner filed its judicial claim with this Court on June 19, 2017,[33] then, the same was timely filed and within the prescriptive period.

That having been settled, this Court shall now address the question of whether petitioner has sufficiently established the factual and legal bases for its application for refund/credit of input VAT.

Foremost, the issue presented to this court is not novel.

In fact, the Supreme Court in the case of *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue*[34] (hereinafter referred to as *"Coral Bay"*), citing *Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils) Inc.*[35], had the occasion to rule that, to wit:

> "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

[33] June 18, 2017 falls on a Sunday.
[34] G.R. No. 190506, June 13, 2016.
[35] GR. No. 150154, August 9, 2005.

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.

x x x

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, 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."***

From the foregoing, prior to the effectivity of RMC No. 74-99, the old VAT rule for PEZA-registered enterprises was based on their choice of fiscal incentives, namely: (1) if the PEZA-registered enterprise chose the 5% preferential tax on its gross income in lieu of all taxes, as provided by Republic Act No. 7916, as amended, then it was VAT-exempt; and (2) if the PEZA-registered enterprise availed itself of the income tax holiday under Executive Order No. 226, as amended, it was subject to VAT at 10% (now, 12%). However, now, with the issuance of RMC No. 74-99, the distinction under the old rule was disregarded and the new circular took into consideration the two important principles of the Philippine VAT system: the Cross-Border Doctrine and the Destination Principle.

According to the Destination Principle, goods and services are taxed only in the country where these are consumed. In connection with the said principle, 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. Hence, actual export of goods and services from the Philippines to a foreign country must be free of VAT, while those destined for use or consumption within the Philippines shall be imposed with [*12%*] VAT. Export processing zones are to be managed as a separate customs territory from the rest of the Philippines and, thus, for tax purposes, are effectively considered as foreign territory. For this reason, sales by persons from the Philippine customs territory to those inside the export processing zones are already taxed as exports.[36]

Relative thereto, sales of goods, properties and services by a VAT-registered supplier from the custom territory to an Ecozone enterprise shall be treated as export sales. Said sales therefore, shall be subject to VAT at zero percent (0%) rate. Accordingly, no output VAT shall be shifted to or passed on to PEZA-registered enterprises; which, obviously, no input VAT shall be paid by PEZA-registered enterprises from said purchases as a result. There being no input VAT paid by PEZA-registered enterprises, it necessarily follows that they are not entitled to refund, or issuance of tax credit certificate from their purchases of goods and services.

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[36] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. Nos. 141104 & 148763, June 8, 2007; citing *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, G.R. No. 153866, February 11, 2005.

Again, Petitioner is registered as an Ecozone IT Enterprise at the McKinley Hill CyberPark, a PEZA-registered IT Park/Ecozone pursuant to PEZA Resolution No. 00-411, as amended, in relation to Republic Act No. 7916[37], as amended. Accordingly, applying the foregoing discussion, the purchases of goods and services by petitioner that were destined for consumption within the IT Park/Ecozone should be free of VAT; hence, no input VAT therefore should be paid on such purchases, thereby rendering petitioner as not entitled to claim tax refund or credit.

Furthermore, sales of goods or property by a PEZA-registered enterprise to another PEZA-registered enterprise (i.e., Intra Ecozone Sales of Goods) shall also be exempt from VAT.[38] An exemption means that the sale of goods, properties or services and the use or lease of properties 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, properties or services shall not bill any output tax to his customers because 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.[39]

As a result, petitioner is not entitled to any input tax on its purchases of goods from other PEZA-registered enterprises considering that the same are VAT-exempt transactions.

With regard to petitioner's contention that the incentives granted by the PEZA apply only to registered operations of the Ecozone enterprise, thus, making RMC No. 74-99 inapplicable in this case, this Court reiterates that for as long as the PEZA-registered purchaser is located and operating within the Ecozone, sellers from the Customs Territory cannot pass on any output VAT to it for any sale of goods or services destined for consumption within the Ecozone.

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[37] "An Act Providing for the Legal Framework and Mechanisms for the Creation, Operation, Administration, and Coordination of Special Economic Zones in the Philippines, Creating for this Purpose, the Philippine Economic Zone Authority (PEZA), and for Other Purposes", dated February 21, 1995.

[38] Revenue Memorandum Circular No. 74-99 dated October 15, 1999.

[39] *Commissioner of Internal Revenue vs. Cebu Toyo Corporation*, G.R. No. 149073, February 16, 2005.

This is clear from Section 8[40] of Republic Act No. 7916, as amended, which mandates that the PEZA shall manage and operate the Ecozone as a separate customs territory. The provision thereby establishes the fiction that an ECOZONE is a foreign territory separate and distinct from the customs territory. Accordingly, the sales made by suppliers from a customs territory to a purchaser located within an Ecozone will be considered as exportations. Following the Philippine VAT system's adherence to the Cross-Border Doctrine and Destination Principle, the VAT implications are that "no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority".[41]

Moreover, it also bears stressing that all claims for input VAT by PEZA-registered companies, regardless of the type or class of PEZA-registration, which involves invoices/receipts issued after the effectivity of RMC No. 74-99, shall be denied. Considering that petitioner's claim for refund pertains to input VAT on its domestic purchases of goods and services from January to December 2015, which is long after the effectivity of RMC No. 74-99, petitioner is therefore not entitled to refund of VAT.

However, all is not lost for petitioner. Parenthetically, Article 22[42] of the Civil Code of the Philippines embodies the principle that no person may unjustly enrich oneself at the expense of another *(Nemo cum alteris detrimento locupletari potest)*. Verily, there is unjust enrichment when (1) a person is unjustly benefited, and (2) such benefit is derived at the expense of or with damages to another.[43] The said principle is equally true in the field of taxation, particularly in cases involving claims for refunds.

In the case of *Coral Bay*[44], the Supreme Court ruled that if petitioner had paid the input VAT, petitioner's proper recourse was not against the government but against the seller who had shifted to it the output VAT following RMC No. 42-03, which provides:

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[40] "**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."

[41] Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue, G.R. No. 190506, June 13, 2016; citing Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils) Inc., G.R. No. 150154, August 9, 2005.

[42] "**Article 22.** Every 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."

[43] *Grandteq Industrial Steel Products, Inc., et al. vs. Edna Margallo,* G.R. No. 181393, July 28, 2009.

[44] Supra No. 33.

> In case the supplier alleges that it reported such sale as a taxable sale, the substantiation of remittance of the output taxes of the seller (input taxes of the exporter-buyer) can only be established upon the thorough audit of the suppliers' VAT returns and corresponding books and records. It is, therefore, imperative that the processing office recommends to the concerned BIR Office the audit of the records of the seller.
>
> In the meantime, the claim for input tax credit by the exporter-buyer should be denied without prejudice to the claimant's right to seek reimbursement of the VAT paid, if any, from its supplier.

We should also take into consideration the nature of VAT as an indirect tax. Although the seller is statutorily liable for the payment of VAT, the amount of the tax is allowed to be shifted or passed on to the buyer. However, reporting and remittance of the VAT paid to the BIR remained to be the seller/supplier's obligation. Hence, the proper party to seek the tax refund or credit should be the suppliers, not the petitioner.[45]

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

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

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[45] *Ibid.*

I CONCUR:

CATHERINE T. MANAHAN
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.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice