REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Second Division

FISH2GO CORPORATION,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE and REGIONAL DIRECTOR GERRY O. DUMAYAS OF THE BUREAU OF INTERNAL REVENUE, REVENUE REGION 9A, CABAMIRO,
Respondent.

CTA CASE NO. 10286

Members:

RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:

MAR 14 2025 3:30 pm

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

The instant Petition for Review ("Petition") seeks (i) to void the 48-hour Notice, dated January 22, 2020, and the 5-day Value Added Tax ("VAT") Notice, dated January 29, 2020, issued by respondent for the taxable years ("TY") 2015, 2016, 2017, 2018, and 1st, 2nd, and 3rd quarters of TY 2019; (ii) a ruling that petitioner's sale of roasted bangus is VAT exempt; (iii) to enjoin respondent from collecting the alleged deficiency VAT in the amount of Php57,314,288.20, as embodied in the 5-day VAT Notice; and (iv) to lift all Closure Orders imposed by respondent against petitioner.[1]

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1 See Statement of the Case, Pre-Trial Order, *Rollo* Vol. III, at 963-964.

The Parties

Petitioner is a domestic corporation duly organized and existing under Philippine laws with the following primary purposes: a) to operate kiosks, food stalls, food counters and mini-restaurants, either as company-owned or as a franchisor; b) to produce, process or manufacture food, food stuff, and other related products for distribution to all its outlets; and c) to distribute all its products to supermarkets and other outlets. It has its principal office address at: "Sitio Buffalo, Brgy. Salitran IV, Dasmarinas City, Cavite".[2]

Respondent Commissioner of Internal Revenue ("CIR") is the duly appointed CIR mandated by law to enforce and implement the *National Internal Revenue Code, as amended ("NIRC")* and related statutes. He is sued in his capacity as the government entity who issued the assailed 48-Hour Notice and 5-day VAT Notice, as well as the Letter, dated March 2, 2020, which denied petitioner's protest against the aforementioned issuances, and Closure Orders, dated June 22, 2020. He holds office at the Bureau of Internal Revenue ("BIR") National Office Building, Diliman, Quezon City.[3]

Respondent Regional Director Gerry O. Dumayas is sued in his capacity as the Regional Director, BIR, Revenue Region 9A, CaBaMiRo, who issued the issued the assailed 48-Hour Notice and 5-day VAT Notice, as well as the Letter, dated March 2, 2020, which denied petitioner's protest against the aforementioned issuances.

The Facts

On October 28, 2019, Mission Order No. MSO2014 00002776, pursuant to Revenue Regional Special Order No. RR9A-317-2019, dated October 22, 2019, was issued by respondents authorizing: (i) Atty Jason C. Torres, (ii) Jesus D.S. Reyes, (iii) Angel Joseph S. Patricio, (iv) Alexis Nicolie R. Reyes, (v) Rey Alexander S. Whigan, (vi) Raymond C. Capacio, (vii) Derek M. Baradas, (viii) Gary I. Floresta, (ix) Maria Rona J. Uychutin, (x) William B. Landicho, (xi) Ferlle Ann R. Garcia, (xii) John Maxwell F. Mendoza, and (xiii) Nina Carla A. Lising to conduct surveillance against petitioner at its address at "Sitio Buffalo, Brgy. Salitran IV, Dasmarinas City, Cavite", and to do the following specific acts:[4]

a) Conduct inventory of unused Cash/Charge/Sales Invoices/ Delivery Receipts and Official Receipts, for TY 2015, 2016, 2017, 2018, and 1st, 2nd and 3rd quarters of TY 2019;

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2 Exhibit "P-2", *id.*, at 1045-1063.
3 See Statement of Facts and Issues, *id.*, at 964.
4 Exhibits "R-4", *BIR Records*, at 161-163.

b) Obtain the X and Z reading of POS/CRM machine for the same period, if there is any;

c) Validate the nature of Zero Rated Sales;

d) Determine Franchise Income earned by the subject taxpayer;

e) Check the compliance relative to existing VAT rules and regulations; and

f) Take proper action in case of violation of internal revenue laws, rules and regulations in the conduct of its business pursuant to the provisions of the *NIRC*.

On October 29, 2019, 13 BIR personnel from BIR, Revenue Region 9A, CaBaMiRo, armed with Revenue Regional Special Order No. RR9A-317-2019 visited and inspected FTG Fish Products, Inc., petitioner's commissary, located at "Block 7, Lot 6, Jose Abad Santos Avenue, Mangoville, Salitran IV, Dasmarinas City, 4114 Cavite".[5] Mr. John Maxwel F. Mendoza, one of respondents' revenue officers ("RO") who conducted a surveillance on FTG Fish Products, Inc.'s premises, testified that they could not find the location of the registered address of petitioner. As such, they requested the assistance of the Barangay to look for the place where petitioner actually conducted its business. This led them to Block 7, Lot 6, Jose Abad Santos Avenue, Mangoville, Salitran IV, Dasmarinas City, 4114 Cavite and this is the place where they actually conducted the surveillance.[6]

Thereafter, Ms. Nessie Uy, petitioner's Vice President for Finance and incorporator, met several BIR personnel at Revenue Region 9A's office. During the meeting, respondents' ROs insisted that petitioner's roasted bangus is VATable while Ms. Uy asserted that it is VAT exempt under *Section 109 of the NIRC* considering that roasting such bangus is a simple process and does not use any VATable ingredients or preservatives. Ms. Uy likewise alleged that the roasted bangus is also not marinated. She also challenged the ROs to bring the roasted bangus to a third party for testing to verify whether such product is marinated. Nonetheless, the ROs insisted that petitioner should pay VAT starting TY 2015 to the 3rd quarter of TY 2019. Moreover, according to Ms. Uy, she was presented by the ROs with a deficiency VAT computation in the amount of Php70,867,322.82 pertaining to TY 2013 to the 3rd quarter of TY 2019. Ms. Uy insisted that petitioner is not liable for such amount as its roasted bangus is VAT exempt. The ROs then threatened Ms. Uy that if such amount is not paid, they will be forced to issue a 48-hour Notice, and subsequently, a 5-day VAT Notice, which will eventually

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[5] Exhibit "P-27", *Rollo* Vol. III, at 1250-1283.
[6] Exhibit "R-31", *id.*, at 832-843.

culminate in the issuance of Closure Orders that will result in all of petitioner's stores, branches and head office being padlocked. Ms. Uy and the ROs then decided to have another meeting to discuss the VAT issue. In the subsequent meeting, per Ms. Uy, the ROs still insisted that petitioner is liable for VAT on its roasted bangus. This time, however, according to Ms. Uy, she was handed a different deficiency VAT computation in the total amount of Php57,314,288.20. Per Ms. Uy, the ROs initially proposed that petitioner should initially pay Php12,000,000.00 in order that petitioners' office and stores would not be padlocked. Ms. Uy noted that petitioner is not in a position to accede to such proposal as it was suffering from financial setbacks.[7]

On January 22, 2020, petitioner received the assailed 48-hour Notice.[8] On January 23, 2020, petitioner filed a Letter Explanation (Re: 48 Hour Notice dated 22 January 2020 [Fish2Go Corp.]) explaining why its office and stores should not be padlocked. Petitioner alleged that the 48-hour Notice violated its right to due process considering that it did not disclose the basis of the BIR's findings and since the assessment process was not complied with before the collection of alleged deficiency VAT. Further, it alleged that its roasted bangus is VAT-exempt under *Sec. 109 of the NIRC* since it is an agricultural product being sold in its original state which had undergone a simple process of roasting.[9]

On January 29, 2020, respondents issued the assailed 5-day VAT Notice. In said Notice, a mere computation of a deficiency VAT assessment was attached without any explanation as to how such computation was arrived at.[10] On January 30, 2020, petitioner filed a Letter Explanation and/or Protest (Re: Five (5) Day VAT Compliance Notice dated 29 January 2020 [Fish2Go Corporation]). In said submission, petitioner noted that the 5-day VAT Notice violated its right to due process as it did not provide the detailed findings of the ROs who conducted the surveillance that would have allowed petitioner to sufficiently address the alleged infractions contained in the 5-day VAT Notice. It also reiterated the arguments it raised in the Letter Explanation (Re: 48 Hour Notice dated 22 January 2020 [Fish2Go Corp.]) that its roasted bangus is VAT-exempt under *Sec. 109 of the NIRC,* and hence, should not be subjected to VAT.

On January 30, 2020, Mr. Harry Binos, petitioner's President, personally went to the BIR Regional Office to discuss the VAT issue with respondent Dumayas. He explained that petitioner is financially unable to settle the total VAT deficiency demanded by the BIR, and instead, is only able to pay Php3,000,000.00 in an installment basis. He explained that petitioner was not aware that its roasted bangus is already VATable as insisted by respondents. Respondent Dumayas then told Mr. Binos to come back the next

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7 Exhibit "P-28", *id.,* at 1284-1310.
8 Exhibit "P-8", *Rollo* Vol. III, at 1075.
9 Exhibit "P-10", *id.,* at 1078-1103.
10 Exhibit "P-11", *id.,* at 1104-1106.

day as he will discuss the matter first with his group. The next day, respondent Dumayas told Mr. Binos that the minimum payment that the BIR needs to receive from petitioner is a Php12,000,000.00 partial payment to keep the latter's business from being closed down. Mr. Binos noted that petitioner cannot pay such amount, and can only give Php6,000,000.00. However, respondents did not agree to this set-up. They instead decided to simply issue the Closure Orders against petitioner.[11]

On March 2, 2020, petitioner received a Letter denying petitioner's Letter Explanation and/or Protest (Re: Five (5) Day VAT Compliance Notice dated 29 January 2020 [Fish2Go Corporation]). Likewise, the said Letter, dated March 2, 2020, found petitioner liable for deficiency VAT in the amount of Php57,314,288.20.[12]

On June 24, 2020, Closure Orders were issued against petitioner's office and stores.[13]

On June 26, 2020, petitioner filed the instant Petition.[14]

On July 13, 2020, Summons were issued to respondents to file an Answer to the instant Petition.[15] On October 12, 2020, respondent filed his Answer.[16]

After a full-blown trial, on March 5, 2024, petitioner filed its Memorandum.[17] On the other hand, respondent did not file a Memorandum.[18]

On March 14, 2024, this Court submitted the instant case for Decision.[19]

Hence, this Decision.

The Issues

The following issues are for resolution by this Court: a) whether petitioner is liable for deficiency VAT in the amount of Php57,314,288.20 for TY 2015, 2016, 2017, 2018, and 1st, 2nd and 3rd TY of 2019; b) whether or not the 48-hour Notice and the

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11 Exhibit "P-27", *id.*, at 1250-1283.
12 Exhibit "P-1", *id.*, at 1042-1044.
13 Exhibit "P-13" and "R-20-series".
14 *Rollo* Vol. I, at 6-236.
15 *id.* at 237.
16 *id.* at 254-317.
17 *Rollo* Vol. IV, pp. 1480-1606.
18 *id.*, at 1607-1610.
19 *Rollo* Vol. IV.

5-day VAT Notice were issued in accordance with *Revenue Memorandum Order 03-2009 ("RMO 03-2009");* and c) whether or not the roasted bangus sold by petitioner is VATable under *Section 109 of the NIRC.*[20]

Arguments of the Parties

Petitioner's Arguments[21]

Petitioner avers that the surveillance conducted against petitioner is illegal and all findings, if any, are "fruit of a poisonous tree". The 48-hour Notice and the 5-day VAT Notice are void for not having complied with the guidelines as provided in *RMO 03-2009.* This is because the surveillance was conducted not on the premises of petitioner but of a different entity, FTG Fish Products, Inc.

Further, petitioner argues that the sale of its roasted bangus is VAT exempt under *Section 109 of the NIRC,* and as such, it is not liable for deficiency VAT in the amount of Php57,314,288.20. The roasted bangus of petitioner did not undergo a complex process prior to its sale to customers. It only undergoes the simple process of roasting prior to being sold to customers.

Per petitioner, *BIR Ruling Nos. 348-11,* dated September 28, 2011, and *283-15,* dated August 25, 2015, find no application in the case at bar and are contrary to *Section 109 of the NIRC.*

Petitioner claims that respondents violated its right to equal protection of the laws.

Respondents' Arguments[22]

Respondents, meanwhile argue that the conduct of the surveillance activities authorized under the Mission Order issued under *RMO 03-2009* is valid. The 48-hour Notice and the 5- Day VAT Notice were issued in accordance with law and the rules legitimately citing the violations and affording petitioner its right to due process. Respondents further argue that petitioner's roasted bangus is marinated, and as such, is not VAT-exempt.

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[20] See Issue, Pre-Trial Order, *Rollo* Vol. III at 966.
[21] See Memorandum (For Petitioner), *Rollo* Vol. IV at 1498-1603.
[22] See Answer, *Rollo* Vol. I, pp. 255-276.

The Ruling of the Court

The instant Petition is meritorious.

The Court has jurisdiction over the instant Petition.

Although not specifically raised as an issue in the instant case, this Court must first rule whether or not it has jurisdiction over the present controversy. Undoubtedly, this Court can take cognizance of the present controversy. Jurisdiction by this Court over the instant case is conferred by *Section 7(a)(1) of RA 1125*, to wit:

> ***SEC. 7. Jurisdiction.*** **-** The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided -
>
> > (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
> >
> > (1) ***Decisions of the Commissioner of Internal Revenue in cases involving*** disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or ***other matters arising under the National Internal Revenue Code*** or other laws or part of law administered by the Bureau of Internal Revenue;
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> (Emphasis and italics, Ours)

In the instant case, petitioner is appealing the Letter, dated March 2, 2020,[23] which effectively denied petitioner's protest of the 48-hour Notice and 5-day VAT Notice, and required petitioner to file the correct VAT returns, and reflect and pay the correct taxable sales/receipts and VAT for TY 2015, 2016, 2017, 2018, and 1st, 2nd and 3rd TY of 2019. In totality, the Letter, dated March 2, 2020, was issued by respondents pursuant to the CIR's power to suspend business operations of a taxpayer found under *Section 115 of the NIRC.* Clearly it is a decision of the CIR on other matters found in the *NIRC* other than an assessment or refund of internal revenue taxes referred to in the above cited provision that may be appealed before this Court. Accordingly, the said subject matter is within the jurisdiction of this Court and it may validly try the same as long as the appeal has been timely made.

In the present case, petitioner received the Letter, dated March 2, 2020, on the same date it was issued.[24] Under *Section 3, Rule 8 of the Revised Rules of the Court of Tax Appeals* ("*RRCTA*"), "[a] party adversely affected by a decision... of the Commissioner of Internal Revenue... may appeal to the

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23 Exhibit "P-1", *id.*, at 1042-1044.
24 Exhibit "P-1", *Rollo* Vol. III, at 1042-1044.

Court by petition for review filed within thirty days after receipt of a copy of such decision." Following this, petitioner had 30 days from receipt of the Letter, dated March 2, 2020 (*i.e.,* March 2, 2020), or until April 1, 2020, within which to file a judicial appeal before this Court. However, several issuances by the Supreme Court extended the deadline for filing the instant Petition for 30 calendar days counted from June 1, 2020, in light of the community quarantine imposed during the COVID-19 pandemic. These were *Administrative Circular No. 13-2020,* dated March 16, 2020, which extended the filing of petitions and appeals, and other Court submissions that fell due during the period from March 15, 2020 until April 15, 2020 for 30 calendar days counted from April 16, 2020; and *Administrative Circular No. 39-2020,* dated May 14, 2020, which extended the filing of petitions and appeals, and other Court submissions that fell due during May 31, 2020 before Courts in areas under Modified Enhanced Community Quarantine for 30 calendar days counted from June 1, 2020. As petitioner filed the instant Petition on June 26, 2020,[25] this Court properly assumed jurisdiction over the present case.

With the issue of jurisdiction settled, We shall now proceed to determine whether petitioner is entitled to the reliefs sought.

The 48-hour Notice and the 5-day VAT Notice are void as petitioner was not the subject of the surveillance and no factual bases were provided.

It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution.[26] Thus, while taxes are the lifeblood of the government, the power to tax has its limits, in spite of all its plenitude. Even as We concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure.[27]

[25] *Rollo* Vol. I, at 6-236.
[26] Commissioner of Internal Revenue vs. BASF Coating+ Inks Phils., Inc., G.R. No. 198677, November 26, 2014.
[27] Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc., G.R. No. 197515, July 2, 2014.

Simply put, the BIR's power to collect taxes must yield to the fundamental rule that no person shall be deprived of his/her property without due process of law. The rule is that taxes must be collected reasonably and in accordance with the prescribed procedure.[28]

Mission Order No. MSO2014 00002776, pursuant to Revenue Regional Special Order No. RR9A-317-2019, dated October 22, 2019, was issued by respondents authorizing BIR personnel to conduct surveillance against petitioner at its address at **"Sitio Buffalo, Brgy. Salitran IV, Dasmarinas City, Cavite"**.[29]

However, as duly admitted by respondents' witness, Mr. John Maxwell F. Mendoza, the ROs assigned to conduct surveillance against petitioner could not initially find the location of the registered address of petitioner. As such, they requested the assistance of the Barangay to look for the place where petitioner actually conducted its business. This led them to **Block 7, Lot 6, Jose Abad Santos Avenue, Mangoville, Salitran IV, Dasmarinas City, 4114 Cavite**, where they actually conducted the surveillance.[30]

Block 7, Lot 6, Jose Abad Santos Avenue, Mangoville, Salitran IV, Dasmarinas City, 4114 Cavite refers to the registered address of another corporation, FTG Fish Products, Inc.,[31] which is petitioner's commissary. Surveillance was thus not conducted by respondents against petitioner but entirely against another entity.

Accordingly, as the surveillance in the case at bar was inappropriately carried out, the notices issued (*i.e.,* 48-hour Notice, 5-day VAT Notice, Letter, dated March 2, 2020 and the Closure Orders) arising from such ineffective surveillance are null and void. As no surveillance of petitioner was conducted, the subject Notices are void.[32] Thus, the closure of petitioner's office, stores and branches were erroneously carried out.

Moreover, a perusal of the 48-hour Notice and the 5-day VAT Notice would show that the same did not provide the factual bases for the alleged infractions. These two documents simply alleged that petitioner committed certain infractions which resulted into a VAT deficiency but did not provide factual bases as to how such infractions were committed by petitioner. In *Commissioner of Internal Revenue v. Elric Auxiliary Services Corporation,*[33] the Court *En Banc* ruled that a 48-hour Notice and a 5-day VAT Notice must

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[28] Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation, etseq., G.R. Nos. 197945 and 204119-20, July 9, 2018.
[29] Exhibits "R-4", *BIR Records*, at 161-163.
[30] Exhibit "R-31", *Rollo* Vol. III, at 832-843.
[31] Exhibit "P-25", *Rollo* Vol. III at pp. 1230-1247.
[32] *Paymentwall, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 9727, July 28, 2020.
[33] CTA *EB* Case No. 1174, CTA Case No. 8315, March 3, 2016.

state factual bases. This is to allow a taxpayer to intelligently address the infractions contained in such notices. Without stating the factual bases of the issuance of the 48-hour Notice and 5-day VAT Notice, petitioner cannot intelligently address and refute such notices, which is an outright violation of its due process. Thus, said notices are null and void.

The 5-day Vat Notice is not supported by a prior assessment.

Furthermore, the deficiency VAT computation shown in the 5-day VAT Notice cannot be collected by respondents.

In *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.*,[34] the Supreme Court ruled that a taxpayer must be informed of the legal and factual bases of a deficiency tax assessment as it is a fundamental element of due process in the collection of taxes. This requirement must be embodied not only in a Preliminary Assessment Notice ("PAN"), but also in the Formal Letter of Demand ("FLD") / Final Assessment Notice ("FAN"). Thus, the issuance of these notices is indispensable. In case the BIR fails or effectively fails to observe this due process requirement, it shall have the effect of rendering the deficiency tax void.

In the 5-day VAT Notice, respondents sought to collect Php57,314,288.20 for TY 2015, 2016, 2017, 2018, and 1st, 2nd and 3rd TY of 2019. The records are bereft of any PAN or FLD/FAN being issued by respondents assessing such amount, however. Importantly, this case does not fall under any of the exceptions for the issuance of a PAN as enumerated in *Revenue Regulations* ("*RR*") *No. 12-99, as amended by RR No. 18-13*, or *Section 228 of the NIRC*. Thus, the 5-day VAT Notice is void,[35] and the deficiency VAT reflected in the same cannot be collected.

Petitioner's roasted bangus sold on a take-out basis is VAT-exempt.

Notwithstanding the above pronouncements that the 48-hour Notice, 5-day VAT Notice, Letter, dated March 2, 2020, and the Closure Orders are null and void, it is but proper to already rule whether petitioner's roasted bangus is VAT-exempt under *Section 109 of the NIRC*. This Court finds that such roasted bangus is VAT exempt under *Section 109 of the NIRC*.

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[34] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

[35] *Supra* note 32.

Section 109 (A) of the NIRC provides that the "sale or importation of agricultural and marine food products in their original state" is exempt from VAT. Further, the provision states that "products… shall be considered in their original state even if they have undergone the simple processes of preparation or preservation for the market, such as freezing, drying, salting, broiling, roasting, smoking or stripping."

In the same manner, *Section 4.109-1 (B) (a) of RR No. 16-2005* which implements *Section 109 (A) of the NIRC* clearly provides, to wit:[36]

> (A) In general. – 'VAT-exempt transactions' refer to the sale of goods or properties and/or services and the use or lease of properties that is not subject to VAT (output tax) and the seller is not allowed any tax credit of VAT (input tax) on purchases.
>
> 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.
>
> (B) Exempt transactions. –
>
> (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from VAT;
>
> (a) **Sale or importation of** agricultural and **marine food products in their original state,** livestock and poultry of a kind generally used as, or yielding or producing foods for human consumption; and breeding stock and genetic materials therefor.
>
> . . . .
>
> **Marine food products shall include fish** and crustaceans, such as, but not limited to, eels, trout, lobster shrimps, prawns, oysters, mussels and clams.
>
> Meat, fruit, **fish,** vegetables and other agricultural and marine food products classified under this paragraph **shall be considered in their original state even if they have undergone the simple processes of preparation or preservation for the market, such as freezing,** drying, **salting**, broiling, **roasting,** smoking or stripping, including those using advanced technological means of **packaging,** such as **shrink wrapping in plastics,** vacuum packaging, tetra-pack, **and other similar packaging methods.**
> (Emphasis, Ours)

Simply put, the sale of a marine product is VAT exempt even if it undergoes the simple process of preparation for the market, such as freezing, salting, roasting and packaging.

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[36] G.R. No. 128315, June 29, 1999

As duly testified upon by Harry Binos,[37] Michelle E. Evaristo,[38] and Ma. Rachel V. Parcon,[39] and as summarized in: (i) Detailed Fish2Go Boneless Bangus Process from Receiving to Cold Storage (Commissary),[40] (ii) Detailed Fish2Go Boneless Bangus Process from Storage (Store) to Customers,[41] (iii) Letter dated 29 July 2020 of Dr. Annabelle V. Briones, Director of the Industrial Technology Development Institute, DOST,[42] (iv) Process Verification Report Fish2Go Boneless Bangus Production Process (Receiving of Fresh Milkfish to Cold Storage),[43] (v) Process Verification Report Fish2Go Boneless Bangus Production Process (Frozen Boneless Milkfish to Customer Retailing),[44] (vi) Standard and Testing Division, Industrial Technology Development Institute, DOST Test Report No. ITDI-032020-OCS-0166-R1 with Customer's Name: Harry B. Binos/Fish2Go Corp. c/o Fish2Go Metro Corp.,[45] and (vii) Standard and Testing Division, Industrial Technology Development Institute, DOST Test Report No. ITDI-032020-OCS-0167 with Customer's Name: Harry B. Binos/Fish2Go Corp. c/o Fish2Go Metro Corp.,[46] the process of preparing petitioner's roasted bangus for sale to the market is simply, as follows: "The process and sale of roasted bangus starts with the delivery of the bangus from the suppliers, sorted and weighed, then chilled. Then, deboned the next day after delivery. After debon[ing] and clean[ing], the bangus is salted, then packed and [frozen]. The frozen bangus are then delivered to the stores. When in the stores, the frozen bangus are thawed. Then, stuffed with tomatoes and onions. Thereafter, the bangus are grilled and packed for sale to the customers." No preservatives, additives or coloring are applied on the bangus prior to freezing and roasting. Petitioner does not use any ingredients which are subject to VAT such as "soy sauce, artificial preservatives, monosodium, glutamate, sodium erythrobates and phosphates" which would make such roasted bangus VATable. Also, petitioner does not marinate its roasted bangus as there are no "marinades, preservatives, additives or coloring applied on the bangus prior to fishing and roasting." Petitioner only uses sea salt or sodium chloride as preservative, and no nitrite was detected in any of the tests conducted by the DOST. Petitioner simply adds diced onions and tomatoes prior to grilling, and the amount to be placed depends on the discretion of the person in charge of cooking. During grilling, the bangus is grilled for 7 to 10 minutes, or until milky white juice starts to ooze from the fish, and the cooking endpoint is again dependent on the discretion of the person cooking.[47]

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37 Exhibit "P-27".
38 Exhibit "P-39".
39 Exhibit "P-40".
40 Exhibit "P-15".
41 Exhibit "P-16".
42 Exhibit "P-17".
43 Exhibit "P-18".
44 Exhibit "P-19".
45 Exhibit "P-20".
46 Exhibit "P-21".
47 See also TSN dated May 9, 2023 and September 12, 2023.

Clearly, petitioner's roasted bangus has simply undergone the process of freezing and roasting without being marinated and without the use of preservatives (other than sea salt (*i.e.,* salting)) and additives before being sold to customers. Thus, it remains a marine food product in its original state subject to VAT exemption as long as it is sold through take out (because if it is served for dine-in purposes, then it will be subject to VAT on sale of services).

The fact that diced onions and tomatoes are added prior to grilling does not affect the roasted bangus' VAT exemption. In *BIR VAT Ruling No. 009-07,* dated June 21, 2007, the BIR opined that Andok's Lechon Manok sold through take out basis is VAT exempt. This applies although lemongrass is stuffed in the chicken similar to how diced onions and tomatoes are stuffed on the roasted bangus prior to being grilled.

More importantly, in *BIR VAT Ruling No. 107-2019,* dated October 4, 2021,[48] the BIR opined that the roasted bangus of Fish2Go Metro Corporation sold on a take-out basis is VAT exempt as it only undergone the simple process of preparation or preservation for the market such as freezing, drying, salting, broiling, roasting or stripping. As duly testified upon by Harry B. Binos[49] and as supported by: (i) Detailed Fish2Go Metro Corp.'s Boneless Bangus Process from Receiving to Cold Storage (Commissary),[50] (ii) Detailed Fish2Go Metro Corp.'s Boneless Bangus Process from Storage (Store) to Customers,[51] (iii) Process Verification Report Fish2Go Metro Corp. Boneless Bangus Production Process (Receiving of Fresh Milkfish to Cold Storage),[52] and (iv) Process Verification Report Fish2Go Metro Corp. Boneless Bangus Production Process (Frozen Boneless Milkfish to Customer Retailing,[53] petitioner and Fish2Go Metro Corp. are sister companies which employ the same commissary, FTG Fish Products, Inc., and use the same method for preparing their respective roasted bangus products. Having prepared the same product using the same processes, the VAT exemption recognized by the BIR on the roasted bangus of Fish2Go Metro Corp. should likewise apply on the roasted bangus of petitioner because there is no difference at all as to how these products are prepared. Respondents cannot be allowed to flipflop on their positions to the detriment of taxpayers.

Thus, this Court declares that petitioner's roasted bangus is VAT exempt as long as it is sold through take out method.

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48 Exhibit "P-31".
49 Exhibit "P-27".
50 Exhibit "P-32".
51 Exhibit "P-33".
52 Exhibit "P-34".
53 Exhibit "P-35".

ACCORDINGLY, the Petition for Review filed by petitioner **FISH2GO CORPORATION** is hereby **GRANTED.** The subject 48-hour Notice, 5-day VAT Notice, Letter, dated March 2, 2020, and the Closure Orders are declared **NULL and VOID.** Petitioner's sale of its roasted bangus is declared **VAT EXEMPT** as long as it is sold through take out method. Respondent is hereby **ENJOINED** from proceeding with the collection of the subject deficiency VAT in the amount of Php57,314,288.20.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CORAZON G. FERRER-FLORES
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.

MA. BELEN M. RINGPIS-LIBAN
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