REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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WELLS FARGO ENTERPRISE GLOBAL SERVICES, LLC-PHILIPPINES Petitioner,	**CTA EB No. 2087** (CTA Case No. 9617)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR.,** **UY,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** and **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE Respondent.	***Promulgated:*** JUL 07 2021 1:05pm

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RESOLUTION

UY, *J.*:

For resolution is petitioner's ***Motion for Reconsideration*** filed on January 4, 2021,[1] without respondent's comment despite due notice.[2]

In the said *Motion*, petitioner moves for the reconsideration of the Court *En Banc*'s Decision promulgated on December 14, 2020, the dispositive portion of which reads:

> "**WHEREFORE,** in light of the foregoing considerations, the *Petition for Review* is **DENIED** for lack of merit. Accordingly, the assailed Decision dated March 11, 2019 and Resolution dated May 31, 2019, both

[1] EB Docket, pp. 1195 to 1203.
[2] Records Verification Report dated February 16, 2021, EB Docket, p. 1213.

rendered by the Court in Division in CTA Case No. 9617 are **AFFIRMED**.

SO ORDERED."

Petitioner's arguments:

In its *Motion for Reconsideration*, petitioner maintains its argument that the Court erred when it relied on the cases of *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue*[3] (Coral Bay case) and *Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.) Inc.*[4] (Toshiba case) cases in ruling against petitioner's claim for refund.

According to petitioner, this Court erred in ruling against its refund claim by relying on the *Coral Bay* case and the *Toshiba* case, which highlight the application of the Cross-Border Doctrine and Destination Principle under Section 3 of Revenue Memorandum Circular (RMC) No. 74-99.

Allegedly, the factual scenario, the legal provisions, and the issue involved in the *Coral Bay* case and the *Toshiba* case are different from those involved in petitioner's case as said cases involved sales from the customs territory to a PEZA registered enterprise, hence the Cross-Border Doctrine and Destination Principle. These cases did not involve the question, crucial to the resolution of this case, of whether or not the sale by a PEZA registered company to another PEZA registered company that is not within its PEZA registered activity is subject to VAT.

On the other hand, petitioner contends that its case involves the following:

a) the input VAT that it incurred and which it is claiming refund for, relates to its purchase of capital goods from Wells Fargo Philippine Solutions Inc. (WFPSI), a PEZA registered entity, which is a transaction outside WFPSI's registered activities pursuant to its Registration Agreement with PEZA;

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[3] G.R. No. 190506, June 13, 2016.
[4] G.R. No. 150154, August 9, 2005.

b) the transaction covers a sale between two ECOZONE enterprises governed by Section 5(3) of Revenue Memorandum Circular (RMC) No. 74-99 and does not relate to a sale by a VAT registered supplier from the customs territory to an ECOZONE enterprise, which is considered as an indirect exportation under Section 3 of RMC No. 74-99.

Thus, the *Coral Bay* and *Toshiba* cases cannot be made to apply to the present case because they involved a type of transaction different from that involved in the present case, and most important, the provision of RMC No. 74-99 and the statutory basis applied so that the transaction involved in those cases was ruled as not subject to VAT are totally difference from those applicable to the present case.

Lastly, petitioner argues that Section 5(3) of RMC No. 74-99 (which applies to a sale between two PEZA registered enterprises) itself requires that a sale must pertain to a registered activity to be VAT exempt.

THE COURT *EN BANC'S* RULING

Petitioner's *Motion for Reconsideration* lacks merit.

Notably, the arguments raised by petitioner are not new to justify the reconsideration sought as these are mere rehash of arguments already considered by the Court in Division and the Court *En Banc.* Thus, there is no compelling reason to warrant the reconsideration of this Court's assailed Decision.

Nevertheless, We find it necessary to clarify the argument of petitioner that the Court *En Banc* relied on the cases of *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue*[5] (Coral Bay case) and *Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.) Inc.*[6] (Toshiba case) cases in ruling against petitioner's claim for refund in the assailed Decision dated December 14, 2020.

We quote the pertinent portion of the assailed Decision wherein this Court mentioned the Coral Bay case and Toshiba case, to wit:

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[5] G.R. No. 190506, June 13, 2016.

[6] G.R. No. 150154, August 9, 2005.

> "Contrary to petitioner's assertion, the Court in Division did not commit a reversible error when it applied the *Coral bay* case citing the *Toshiba* case to explain the principle and application of the destination principle and cross border doctrine adhered to by the Philippine VAT system, and the VAT implication 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."[7]

Clearly the foregoing discussion was in response to petitioner's claim that the Court in Division erred in citing the Coral Bay case and Toshiba case. To the mind of the Court *En Banc,* the reference by the Court in Division of the Coral Bay and Toshiba cases was merely to explain the application of the destination principle and cross border doctrine adhered to by the Philippine VAT system, but it was not the basis for the denial of petitioner's subject refund claim.

For clarity, We quote the basis for the denial of petitioner's refund claim was thoroughly explained in Our assailed Decision dated December 14, 2020, to wit :

> "***The sale of goods or properties Between PEZA-registered entities are VAT-exempt.***
>
> Sections 8 and 24 of Republic Act (R.A.) No. 7916, as amended by RA No. 8748 or "*The Special Economic Zone Act of 1995*" read as follows:
>
> > "SECTION 8. ECOZONE to be Operated and Managed as Separate Customs Territory. – **The ECOZONE shall be managed and operated by the PEZA as separate customs territory**.
> >
> > The PEZA is hereby vested with the authority to issue certificates of origin for products manufactured or processed in each ECOZONE in accordance with the prevailing rules of origin, and the pertinent regulations of

[7] EB Docket, p. 1185.

> the Department of Trade and Industry and/or the Department of Finance." (*Emphasis supplied*)
>
> SECTION 24. *Exemption from National and Local Taxes.* – Except for real property taxes on land owned by developers, **no taxes, local and national, shall be imposed on business establishment operating within the ECOZONE**. xxx" (*Emphasis supplied*)

Based on the foregoing provisions, the PEZA shall manage and operate export processing zones (i.e., *ecozones)* as a separate customs territory. Hence, for purposes of taxation, ecozones are considered as foreign territory separate and distinct from the customs territory.

Relative thereto, Section 5(3) of RMC No. 74-99 issued on October 15, 1999, provides for the VAT treatment of sales of goods and services by a PEZA registered enterprise to another PEZA registered enterprise within and without the ecozone as follows:

> "SECTION 5. Tax Treatment of Sales Made by A PEZA Registered Enterprise. –
>
> xxx xxx xxx
>
> 3) **Sales of Goods, by a PEZA Registered Enterprise, to Another PEZA Registered Enterprise (i.e., Intra ECOZONE Sales of Goods). <u>– Its sale of goods or property to another zone enterprise shall be exempt from VAT</u>, pursuant to Sec. 109(q), NIRC, in relation to Sec. 24, R.A. 7916, as implemented by Sec.1, Rule VIII, PART V, of the PEZA implementing rules and regulations.** (*Emphasis and underscoring supplied)*

Based on the foregoing, the sale of goods by a PEZA registered entity to another PEZA entity (or Intra Ecozone Sales of Goods), is exempt from VAT. Notably, there is no distinction made as to whether or not the goods are to be used for a PEZA-registered activity.

Hence, a determination thereon becomes immaterial as the exemption is not dependent thereon.

The VAT exemption of PEZA-registered enterprises flows from the legal fiction establishing Ecozones as foreign territories under Section 8 of RA No. 7916, as amended and not by virtue of the special tax incentives granted to them under Section 24 of the same law. Such being the case, it is not essential that the sale of goods to PEZA-registered enterprises be directly connected to its registered activities.

To stress, what is vital is that the PEZA-registered enterprise purchasing the goods is located and operating within the Ecozone. For as long as the PEZA-registered purchaser is located and operating within the Ecozone, sellers from another Ecozone, or from the Customs Territory, cannot pass on any output VAT for any sale of goods or services destined for consumption within the Ecozone.

To reiterate, the exemption referred to above, means that the sale of goods or property is not subject to VAT (output tax) and the buyer is not allowed any tax credit on VAT (input tax) previously paid. The person making the exempt sale of goods or properties shall not bill any output tax to his VAT-exempt customers because the said transaction is not subject to VAT. Thus, a VAT-registered purchaser of goods, properties or services that is VAT-exempt, is not entitled to any input tax on such purchases despite the issuance of a VAT invoice or receipt.

In the instant case, We agree with the findings of the Court in Division that petitioner's purchases of capital goods from WFPSI, another PEZA-registered entity, are VAT exempt. Petitioner, as a PEZA-registered entity, should not have paid input VAT on such purchases of goods from a PEZA-registered supplier, because such purchases are VAT-exempt, that is, it cannot be subjected to output VAT by the seller and no input VAT can be passed on to the buyer in the transaction, regardless of whether or not, the purchase is directly connected to its PEZA-registered activities.

> Thus, petitioner cannot claim input VAT refund on its purchases of capital goods from WFPSI, another PEZA-registered entity."[8] (*Citations omitted*)

With the afore-quoted disquisitions, We finds no cogent reason to reconsider and modify Our Decision dated December 14, 2020.

WHEREFORE, in light of the foregoing considerations, petitioner's *Motion for Reconsideration* is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[8] EB Docket, pp. 1183 to 1185.

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice