REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

WELLS FARGO ENTERPRISE GLOBAL SERVICES, LLC-PHILIPPINES, Petitioner,	CTA CASE NO. 9849
	Members:
- versus -	**CASTAÑEDA, JR.**, *Chairperson, and* **BACORRO-VILLENA, *JJ.***
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 27 2021 2:30 p.m.

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RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is petitioner Wells Fargo Enterprise Global Services, LLC-Philippines' (**petitioner**'s) Motion for Reconsideration[1] (**MR**) filed on 26 February 2021. The MR assails this Court's Decision[2] dated 08 February 2021 (**assailed Decision**) in the above-captioned case. The pertinent portion of the assailed Decision reads:

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

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1 Division Docket, Volume III, pp. 1409-1424.
2 Id., pp. 1389-1408.

Petitioner argues that the Court erred in denying its claim for refund by not considering its transactions with other Philippine Economic Zone Authority (**PEZA**) registered enterprises to be subject to Value-Added Tax (**VAT**). Petitioner contends further that: (1) the Court failed to realize that the transactions involved were not related to its registered activities; and, (2) the principles laid down by the Supreme Court in *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.), Inc.*[3] (**Toshiba**) and *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue*[4] (**Coral Bay**) are inapplicable to the present case. Lastly, petitioner claims that it only paid VAT on the subject transactions as it relied on certain Bureau of Internal Revenue (**BIR**) Rulings rendered at the behest of other entities allegedly, similarly situated with petitioner.

We resolve.

The present motion offers a rehash of petitioner's previous arguments albeit, emphasizing on the inapplicability of *Toshiba* and *Coral Bay* to the case at bar. Despite its assertions, petitioner both over-simplifies and over-complicates the principles established by the Supreme Court in the mentioned cases. In *Toshiba*, the Supreme Court ruled:

> ...
>
> The rule that any sale by a VAT-registered supplier from the Customs Territory to a PEZA-registered enterprise shall be considered an export sale and subject to zero percent (0%) VAT was clearly established only on 15 October 1999, upon the issuance of RMC No. 74-99. Prior to the said date, however, whether or not a PEZA-registered enterprise was VAT-exempt depended on the type of fiscal incentives availed of by the said enterprise. This old rule on VAT-exemption or liability of PEZA-registered enterprises, followed by the BIR, also recognized and affirmed by the CTA, the Court of Appeals, and even this Court, cannot be lightly disregarded considering the great number of PEZA-registered enterprises which did rely on it to determine its tax liabilities, as well as, its privileges.
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> ...
>
> This old rule clearly did not take into consideration the Cross Border Doctrine essential to the VAT system or the fiction of the

3 G.R. No. 150154, 09 August 2005.
4 G.R. No. 190506, 13 June 2016.

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 tatter'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.**[5]

...

Toshiba explains further:

...

This Court agrees, however, that PEZA-registered enterprises, which would necessarily be located within ECOZONES, are VAT-exempt entities, not because of Section 24 of Rep. Act No. 7916, as amended, which imposes the five percent (5%) preferential tax rate on gross income of PEZA-registered enterprises, in lieu of all taxes; but, rather, because of Section 8 of the same statute which establishes the fiction that ECOZONES are foreign territory.[6]

...

Following this, the Supreme Court in *Coral Bay* declared:

...

Furthermore, Section 8 of Republic Act No. 7916 mandates that 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"...

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5 Supra at note 3; Citation omitted and emphasis supplied.
6 Id.

> ...
>
> ...As such, the purchases of goods and services by the petitioner that were destined for consumption within the ECOZONE should be free of VAT; hence, no input VAT should then be paid on such purchases, rendering the petitioner not entitled to claim a tax refund or credit...[7]
>
> ...

It is clear from the foregoing that both *Toshiba* and *Coral Bay* do not make any distinction between transactions which are part of the PEZA-registered entity's registered activity. In fact, in *Coral Bay*, the transactions subject of that case was entered into by Coral Bay even before it received its PEZA-registration. Nevertheless, the Supreme Court declared its purchase of capital goods to be VAT-exempt due to the reason that it held office inside the ECOZONE (a foreign territory by fiction of law) deeming its purchases as export.

Going further, although it is true that both *Toshiba* and *Coral Bay* dealt with purchases from a non-PEZA or ECOZONE enterprise for consumption within the ECOZONE, PEZA-registered entities remain to be exempt from the payment of VAT by virtue of Section 24[8] of the PEZA Law. Thus, there is no reason why such exemption should be disregarded in cases where the parties to the transaction are both PEZA-registered or within an ECOZONE.

As cited by petitioner, the intra ECOZONE sale of goods remains exempt from VAT pursuant to Section 5(3)[9] of Revenue Memorandum Circular (**RMC**) No. 74-99[10], while Section 2 thereof states that this

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7 Supra at note 4.

8 **SEC. 24.** Exemption from National and Local Taxes.- Except for real property taxes on land owned by developers, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu thereof, five percent (5%) of the gross income earned by all business enterprises within the ECOZONE shall be paid and remitted as follows:

a. Three percent (3%) to the National Government;
b. Two percent (2%) which shall be directly remitted by the business establishments to the treasurer's office of the municipality or city where the enterprise is located.

9 SEC. 5 – *Tax Treatment of Sales By A PEZA Registered Enterprise.* –

...

(3) *Sale of Goods, by a PEZA Registered Enterprise, to Another PEZA Registered Enterprise...* – Its sale of goods or property to another zone enterprise shall be *exempt* from VAT, pursuant to Sec. 109(q), NIRC, in relation to Sec. 24, R.A. 7916, as implemented by Sec. 1, Rule VIII, PART V, of the PEZA implementing rules and regulations.

...

10 Tax Treatment of Sales of Goods, Property and Services Made by a Supplier from the Customs Territory to a PEZA Registered Enterprise; and Sale Transactions Made by PEZA Registered Enterprises Within and Without the ECOZONE.

exemption extends to "the registered enterprise's operations within the ECOZONE". However, nowhere does it state that such sales should be part of the enterprise's registered activity. Rather, RMC No. 74-99 unconditionally makes the exemption applicable to the registered enterprise's operations within the ECOZONE, in general.

Interestingly, it is only with the enactment of the Corporate Recovery and Tax Incentives for Enterprises Act[11] (**CREATE**), which took effect on 11 April 2021, that conditions such as those suggested by petitioner were imposed for the exercise of tax incentives, to wit:

> ...
> Section 295. *Conditions of Availment.* –
> ...
>
> (D) The VAT exemption on importation and VAT zero-rating on local purchases shall only apply to goods and services directly and exclusively used in the registered project or activity by a registered business enterprise.
> ...

As a result thereof, Section 2, PART II of the CREATE's Implementing Rules and Regulations provide that "gross income earned" as the tax-base of registered enterprise's Special Corporate Income Tax (**SCIT**) should only cover revenues "derived from the registered project or activity."

Prior to CREATE, a provision of similar import cannot be found in either the National Internal Revenue Code (**NIRC**) of 1997[12], as amended, PEZA Law, or RMC No. 74-99. This much is certain.

With the above disquisition, the Court does not see the necessity of belaboring itself with a repeated discussion on the last issue raised by petitioner as the same has already been considered and explained by this Court in the assailed Decision. At this point, it is more than clear that petitioner is not entitled to the VAT refund claimed.

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11 Republic Act No. 11534.
12 Republic Act No. 8424.

WHEREFORE, the foregoing considered, petitioner Wells Fargo Enterprise Global Services, LLC-Philippines' Motion for Reconsideration filed on 26 February 2021 is hereby **DENIED** for lack of merit. Accordingly, this Court's Decision dated 08 February 2021 is **AFFIRMED**.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

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