REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Third Division

PTT PHILIPPINES TRADING CORPORATION, Petitioner,	**CTA CASE NO. 9132**
	Members:
- versus -	**UY**, *Chairperson*, **RINGPIS-LIBAN**, *and* **MODESTO-SAN PEDRO**, *JJ.*
COMMISSIONER OF CUSTOMS AND COMMISSIONER OF INTERNAL REVENUE, Respondents.	Promulgated: FEB 12 2020 10:54 a.m.

x - x

RESOLUTION

RINGPIS-LIBAN, J.:

Before this Court is Respondents' **Motion Reconsideration [re: Decision dated August 29, 2019]**, filed on September 24, 2019, with petitioner's **Comment/Opposition (To Respondent's Motion for Reconsideration dated 23 September 2019)**, filed on November 14, 2019.

In their Motion, Respondents move for the reconsideration of the Decision promulgated on August 29, 2019, in finding that Petitioner erroneously paid value-added tax (VAT) in its sale of diesel to a special economic zone territory, the dispositive portion of which reads as follows:

> **WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** in favor of petitioner the amount of **₱13,347,275.20** representing the illegally collected or erroneously paid VAT by petitioner on its importation of diesel fuel.
>
> **SO ORDERED**.

Respondents primarily argue that while it is undisputed that the sales were made to Clark Development Corporation (CDC), who in turn sold petroleum products to several locators in the Clark Special Economic Zone (CSEZ), CDC however is not a locator engaged in any registered activity to utilize the said diesel fuel. They also insist that Petitioner offered no evidence to show that the said petroleum products never left the freeport/economic zones.

On the other hand, in its comment, Petitioner claims that the status of CDC as an exempt entity has already been established by this Court in the Decision assailed by Respondent. In the same vein, the requirement of proof under Revenue Regulations (RR) No. 2-2012 has already been declared invalid and unconstitutional by the Supreme Court, which has also been elaborately discussed in the said Decision.

After due consideration, Respondents' Motion for Reconsideration is bereft of merit.

In the case of *Chevron Philippines Inc., vs. Commissioner of Internal Revenue*[1], the Supreme Court held that CDC is exempt from indirect taxes by virtue of Section 24 of Republic Act No. 7916[2], in relation to Section 15 of Republic Act No. 9400[3], *viz.*:

> "CDC was created to be the implementing and operating arm of the Bases Conversion and Development Authority to manage the Clark Special Economic Zone (CSEZ). **As a duly-registered enterprise in the CSEZ, CDC has been <u>exempt from paying direct and indirect taxes</u> pursuant to Section 24 of Republic Act No. 7916 *(The Special Economic Zone Act of 1995)*, in relation to Section 15 of Republic Act No. 9400 (Amending Republic Act No. 7227, otherwise known as the *Bases Conversion Development Act of 1992*)**.
>
> Inasmuch as its liability for the payment of the excise taxes accrued immediately upon importation and prior to the removal of the petroleum products from the customs house, **Chevron was bound to pay, and actually paid such taxes. But the status of the petroleum products as exempt from the excise taxes would be confirmed only upon their sale to CDC in 2007 (or, for that matter, to any of the other entities or agencies listed in Section 135 of the NIRC).** Before then, Chevron did not have any legal basis to claim the tax refund or the tax credit as to the petroleum products.

[1] G.R. No. 210836, September 01, 2015.

[2] 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.

[3] Amending Republic Act No. 7227, otherwise known as the Bases Conversion Development Act of 1992.

Consequently, the payment of the excise taxes by Chevron upon its importation of petroleum products was deemed illegal and erroneous upon the sale of the petroleum products to CDC. x x x.

x x x

The general rule applies here because Chevron did not pass on to CDC the excise taxes paid on the importation of the petroleum products, the latter being exempt from <u>indirect taxes</u> by virtue of Section 24 of Republic Act No. 7916, in relation to Section 15 of Republic Act No. 9400, not because Section 135(c) of the NIRC exempted CDC from the payment of excise tax.

Accordingly, conformably with Section 204(C) of the NIRC, *supra*, and pertinent jurisprudence, **<u>Chevron was entitled to the refund or credit of the excise taxes erroneously paid on the importation of the petroleum products sold to CDC</u>**." *(Emphases and underscoring supplied)*

As to Respondents' argument that there was no proof that the petroleum products sold to CDC remained in the freeport/economic zones, the same argument was already previously raised in their Answer[4] filed on December 1, 2015, and which also has been adequately discussed in the assailed Decision.

Again, RR No. 2-2012[5] has already been declared as null and void by the Supreme Court in the case of *Secretary of Finance Cesar B. Purisima and Commissioner of Internal Revenue Kim S. Jacinto-Henares vs. Representative Carmelo F. Lazatin and Ecozone Plastic Enterprises Corporation*[6], to wit.:

"II. RR 2-2012 is invalid and unconstitutional.

On the merits of the case, we rule that RR 2-2012 is invalid and unconstitutional because: a) it illegally imposes taxes upon FEZ enterprises, which, by law, enjoy tax-exempt status, and b) it effectively amends the law (*i.e.*, RA 7227, as amended by RA 9400) and thereby encroaches upon the legislative authority reserved exclusively by the Constitution for Congress.

[4] "7. It is provided under Section 3 of RR No. 2-2012 that no claim for refund shall be granted unless it is properly shown to the satisfaction of the BIR that petroleum products imported have been sold to a duly registered locator and have been utilized in the registered activity/ operation of the locator, or that such have been sold and have been used for international shipping or air transport operations, or that the entities to which the said goods were sold are statutorily zero-rated for VAT.", Docket (vol 1), p. 13S1.

[5] Tax Administration Treatment of Petroleum and Petroleum Products imported into the Philippines Including those Coming in Through Freeport Zones and Economic Zones and Registration of All Storage Tanks, Facilities, Depots and Terminals.

[6] G.R. No. 210588, November 29, 2016.

x x x

> As RR 2-2012, an executive issuance, attempts to withdraw the tax incentives clearly accorded by the legislative to FEZ enterprises, the petitioners have arrogated upon themselves a power reserved exclusively to Congress, in violation of the doctrine of separation of powers.
>
> In these lights, we hereby rule and declare that RR 2-2012 is null and void."

To reiterate, RR No. 2-2012 directly contravenes the tax exemptions granted to Petitioner under RA No. 7227, amended by RA No. 9400. Since RR No. 2-2012 is of no force and effect, Respondents' imposition of VAT on Petitioner's importation of diesel is without valid basis. Hence, the VAT payment made by Petitioner on the importation of diesel is erroneous and illegal.

Based on the foregoing discussions, this Court finds no compelling reason to reverse or modify the assailed Decision.

WHEREFORE, premises considered, Respondents' Motion Reconsideration [re: Decision dated August 29, 2019] is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice