REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

CLARK WATER CORPORATION,
Respondent.

CTA *EB* NO. 2379
(CTA Case No. 9519)

Present:

DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
APR 29 2024 4:10pm

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RESOLUTION

CUI-DAVID, J.:

Before this Court is respondent's *Motion for Reconsideration (Re: Decision dated February 17, 2023)*, with petitioner's *Comment/Opposition (Re: Petitioner's Motion for Reconsideration dated 07 March 2023)*, both filed through registered mail on March 7, 2023 and May 2, 2023, respectively, which was submitted for resolution on February 12, 2024.[1]

Respondent prays that the Court reconsider its Decision dated February 17, 2023 (assailed Decision), which disposed of the case as follows:

> **WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. The Decision dated June 17, 2020 and the Resolution dated October 30, 2020, of the

[1] Minute Resolution, *En Banc* Docket, unpaged.

Court's Second Division in CTA Case No. 9519, are **REVERSED and SET ASIDE.**

Accordingly, respondent is **ORDERED TO PAY** petitioner the aggregate amount of **₱8,995,448.28**, inclusive of the 25% surcharge, 20% deficiency interest, and 20% delinquency interest imposed under Sections 248(A)(3), 249(B) and (C) of the NIRC of 1997, as amended, respectively, computed until December 31, 2017, as follows:

Basic Deficiency VAT	₱4,069,505.69
Surcharge (25%)	1,017,376.42
Deficiency Interest (Jan. 26, 2015 to Oct. 31, 2016)	
[₱4,069,505.69 x 20% x 644/365 days]	1,436,033.79
Total Amount Due as of October 31, 2016	**₱6,522,915.90**
Deficiency Interest (Nov. 1, 2016 to Dec. 31, 2017)	
[₱4,069,505.69 x 20% x 426/365 days]	949,922.97
Delinquency Interest (Nov. 1, 2016 to Dec. 31, 2017)	
[₱6,522,915.90 x 20% x 426/365 days]	1,522,609.41
Total Amount Due as of December 31, 2017	**₱8,995,448.28**

In addition, respondent is **ORDERED TO PAY** petitioner delinquency interest at the rate of twelve percent (12%) per annum on the total unpaid amount due as of October 31, 2016, *i.e.*, ₱6,522,915.90, as determined above, or an amount of **₱2,144.52** per day, from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by RA No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by RR No. 21-2018.

SO ORDERED.

Respondent argues that the Court in Division correctly ruled that petitioner's Formal Letter of Demand/Final Assessment Notice (FLD/FAN) is void because it lacks an imperative demand for the payment of tax, and it failed to indicate the definite amount of respondent's alleged liability.

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Respondent submits that the Court *En Banc* erred in its conclusion that the 5% special tax may only apply to its income from sources within the Clark Freeport Zone (CFZ) even if respondent's income from sources outside the CFZ did not exceed the 5% threshold provided under the Department of Finance (DOF) Department Order (DO) No. 03-08.[2] The strained harmonization of Sections 5 and 8 of DO No. 03-08, effectively nullifying the provisions in Section 8, is erroneous and unnecessary. There is no need to harmonize Sections 5 and 8 of DO No. 03-08 because they deal with distinct subject matters. Section 8 provides the conditions by which an Ecozone or Freeport Enterprise will be qualified to avail of the 5% special tax regime under Section 15 of RA No. 7227 and Section 4 of DO No. 03-08. On the other hand, Section 5 of DO No. 03-08 deals with the manner by which the Ecozone or Freeport Enterprise's gross income shall be calculated for purposes of computing the special 5% tax.

Respondent further argues that the principle of "technical importation" does not apply to respondent's sales of services within the Customs Territory. Even assuming that respondent's sales of services to enterprises within the customs territory are considered "technical importations," the 12% value-added tax (VAT) on such technical importation should be collected from the buyer-importer from the customs territory and not from the seller from the Ecozone enterprise.

Moreover, respondent avers that the DOF's clear intent in drafting Section 8 of DO No. 03-08 was to set a limit on the maximum volume of local sales that may be generated by an Ecozone or Freeport Enterprise before it is disqualified from availing itself of the 5% special tax regime under RA No. 7227.

On the other hand, petitioner counters that the Court *En Banc* correctly ruled that the FLD/FAN contains a definite liability and due date. Petitioner insists that respondent is liable for deficiency VAT from its sales of services within the Customs Territory, citing Revenue Memorandum Circular (RMC) No. 50-2007.

We resolve.

The instant motion lacks merit.

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[2] RULES AND REGULATIONS TO IMPLEMENT REPUBLIC ACT NO. 9400, "AN ACT AMENDING REPUBLIC ACT NO. 7227, OTHERWISE KNOWN AS THE BASES CONVERSION AND DEVELOPMENT ACT OF 1992, AND FOR OTHER PURPOSES", February 13, 2008.

Anent the supposed invalidity of the FLD/FAN, respondent argues that there is no unequivocal demand for payment since petitioner "merely requested" respondent to pay the alleged deficiency VAT for the calendar year (CY) 2014. Without knowing the specific reckoning date when the deficiency or delinquency interest commences to run, the amount of tax liability remains indefinite.

The Court is unmoved by this stance. The Supreme Court, in *Commissioner of Internal Revenue v. Fitness by Design, Inc.*[3] (*Fitness By Design*), brushed aside the taxpayer's argument on the semantics between "request" and "demand" in disputing the FAN. Besides, the phrase "requested to pay" is merely lifted from the pro-forma FLD as attached in Annex B of Revenue Regulations No. 18-2013[4] and does not diminish, in any way, the essence of issuing the FLD, which is to demand payment of deficiency taxes.

Also, respondent ignored the comparisons made between the FANs in *Fitness By Design* and the present FLD/FAN, and the reasons We propounded as to why *Fitness By Design* is inapplicable in this case.

The Court *En Banc* reiterates that the FLD/FAN has a definite tax liability as only the interest is open to adjustment depending on when the tax liability is paid.[5] As discussed in the assailed Decision, this is a consequence of Section 249 of the National Internal Revenue Code (NIRC) of 1997, as amended, and is integral to the nature of interest, which is separate and distinct from the basic tax liability, accrues upon demand and capable of being computed upon the date of payment. The purpose of collecting interest is only to discourage delay in the payment of taxes due to the Government;[6] it does not affect the amount of basic *VAT liability* to be paid by respondent, as it remains the same regardless of the date of payment.

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[3] G.R. No. 215957, November 9, 2016.
[4] Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment. November 28, 2013; Concurring Opinion, CTA *EB* Case No. 2379, (Decision), February 17, 2023, [Per J. Bacorro-Villena, *En Banc*].
[5] *Commissioner of Internal Revenue v. Alphaland Makati Place, Inc.*, CTA *EB* Case No. 2292 (CTA Case No. 9609) (Resolution), February 8, 2024.
[6] *Philippine Refining Company (Now Known as "Unilever Philippines [PRC], Inc.") v. Court of Appeals, Court of Tax Appeals, and the Commissioner of Internal Revenue*, G.R. No. 118794, May 8, 1996.

Contrary to respondent's assertion, Section 8 of DO No. 03-08 must be read in connection with Section 5 of said DO because it is the basis of the computation and imposition of the special 5% tax, to wit:

> SEC. 5. *The Special Five Percent (5%) Tax on Gross Income Earned (GIE).* —
>
> a. For purposes of implementing **the special 5% tax on Gross Income Earned, in lieu of national and local taxes**, granted to Ecozone Enterprises and Freeport Enterprises in SSEZ, SFZ, CFZ, PPFZ, and MSEZ, the following **shall apply**:
>
> 1. **Gross Income Earned (GIE) shall refer to gross sales or gross revenue derived from business activities <u>within</u> the subject Ecozone or Freeport**, net of sales discounts, sales returns and disallowances minus cost of sales or direct costs but before any deduction for administrative, marketing, selling, and/or operating expenses or incidental losses during a given taxable year. Provided, that, in the case of financial enterprises within freeports, gross income shall include interest income, gains from sales, and other income, net of costs of funds. [*Emphases supplied*]

The foregoing provision clearly states that gross income earned (GIE) refers to gross sales or gross revenue derived from business activities within the subject Ecozone or Freeport. Foremost, the Court underscores in paragraph (a) of Section 5 of DO No. 03-08 that the said provision "shall apply" to implement the special 5% tax on GIE in SSEZ, SFZ, CFZ, PPFZ, and MSEZ.

Thus, respondent's sales of services derived in the Customs Territory are **not included** in the computation of the special 5% tax on GIE in lieu of national and local taxes, and they are subject to 12% VAT under the NIRC of 1997, as amended.

To recap, as discussed in the assailed Decision, Section 15 of Republic Act (RA) No. 7227,[7] as amended by RA No. 9400,[8] the law implemented by DO No. 03-08, provides that the "exportation and removal of goods from the territory of the CFZ to the other parts of the Philippine territory shall be subject to

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[7] Bases and Conversion Development Act of 1992.
[8] AN ACT AMENDING REPUBLIC ACT NO. 7227, AS AMENDED, OTHERWISE KNOWN AS THE BASES CONVERSION AND DEVELOPMENT ACT OF 1992, AND FOR OTHER PURPOSES.

... taxes under ... the National Internal Revenue Code of 1997, as amended, and other relevant tax laws of the Philippines."

In relation thereto, RMC No. 50-2007,[9] clarifying RA No. 9400, provides that "in any case, customs duties and taxes must be paid [by Freeport Zone-registered enterprises] concerning transactions, receipts, income and sales of articles to the Customs Territory and in the Customs Territory."

From the foregoing, it is stressed that respondent's sales outside the CFZ (or within the Customs Territory) for CY 2014 are not exempt from VAT payment.

The Court En Banc has already considered respondent's other arguments in the instant motion in the assailed Decision; thus, there is no need to belabor them anew. We thoroughly examined the amount of respondent's sales outside the CFZ, and even the independent certified public accountant discovered that the total amount of the latter's sales outside the CFZ is greater than that found by petitioner, which respondent admitted.

WHEREFORE, respondent's *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[9] Tax Treatment of Sale, Barter or Exchange of Goods or Properties or Sale or Exchange of Services Made by Suppliers from the Customs Territory to Registered Freeport Zone Enterprises in the Subic Freeport Zone (SFZ), the Clark Freeport Zone (CFZ), as well as the Poro Point Freeport Zone (PPFZ), and Vice Versa under Sections 12 and 15 of Republic Act No. 7227, as amended by Republic Act No. 9400, July 30, 2007.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice