REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

WELLS FARGO ENTERPRISE GLOBAL SERVICES, LLC-PHILIPPINES,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9481

Members:
UY, *Chairperson,*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

OCT 26 2020
10:18 a.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

This is a Petition for Review ("Petition") filed by petitioner, WELLS FARGO ENTERPRISE GLOBAL SERVICES, LLC-PHILIPPINES, against respondent, COMMISSIONER OF INTERNAL REVENUE ("CIR"), praying that this Court render judgment ordering the refund of Php17,246,607.88 representing petitioner's excess and unutilized input value added taxes ("VAT") attributable to its zero-rated sales for the period April to December 2014.[1]

The Parties

Petitioner is the duly licensed Philippine branch office of Wells Fargo Enterprise Global Services, LLC, a company duly organized and existing under the laws of the State of Delaware, United States of America. It is a duly registered VAT taxpayer with Tax Identification Number 008-725-483-000. It has its principal office in the Philippines at the Wells Fargo, Center, 1180 Wells Fargo Drive, Mckinley Hill Cyberpark, Taguig City. It is duly authorized, under its license issued by the Securities and Exchange Commission ("SEC"), to engage in providing administrative, back office, call

[1] See Summary of the Case in the Pre-Trial Order, Records, Vol. 2, p. 594.

center, information technology, support, training, and other allied services related to the foregoing services. It is registered with the Philippine Economic Zone Authority ("PEZA") as a PEZA Information Technology ("IT") Enterprise as shown by its PEZA Certificate of Registration No. 14-097, and as shown by a PEZA Certification, it is qualified for VAT zero-rating for its transactions with local suppliers of goods, properties, and services.

Respondent is the head of the Bureau of Internal Revenue ("BIR"), vested with the power and authority to grant a refund of, or to issue a tax credit certificate ("TCC") for unutilized input VAT attributable to zero-rated sales.

The Facts

For the period April to December 2014, petitioner filed its Quarterly VAT Returns, as follows:[2]

EXHIBIT	QUARTERLY VAT RETURN	DATE FILED	CLOSE OF TAXABLE QUARTER
"P-45"[3]	2nd Quarter 2014	25 July 2014	30 June 2014
"P-46"[4]	3rd Quarter 2014	27 October 2014	30 September 2014
"P-47"[5]	4th Quarter 2014	26 January 2015	31 December 2014
"P-48"[6]	4th Quarter 2014 (Amended)	5 February 2016	

On 12 May 2016, petitioner filed with the BIR an application for refund of its unutilized input VAT attributable to its zero-rated sales for the period April to December 2014 in the total amount of Php17,246,607.88. Petitioner alleges that said application for refund was filed with complete supporting documents in accordance with ***Revenue Memorandum Circular No. 54-2014 ("RMC 54-14").***

Due to respondent's inaction on said application for refund, petitioner filed the instant Petition on 7 October 2016.[7]

On 24 October 2016, Summons was issued to respondent,[8] prompting him to file his Answer via registered mail.[9]

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[2] See Petition, Records, Vol. 1, p. 11.
[3] Records, Vol. 2, pp. 758-765.
[4] *Id.*, at pp. 766-771.
[5] *Id.*, at pp. 772-773.
[6] *Id.*, at pp. 774-775.
[7] Records, Vol. 1, p. 11.
[8] *Id.*, at pp. 225-226.
[9] *Id.*, at pp. 227-231.

On 21 November 2016, this Court issued a Notice of Pre-Trial Conference, setting the Pre-Trial Conference on 7 March 2017, at 9:00 a.m.[10] Respondent filed his Pre-Trial Brief on 23 January 2017[11] while petitioner filed its own on 3 March 2017.[12]

On 6 March 2017, this Court cancelled and reset the Pre-Trial Conference previously scheduled on 7 March 2017 to 9 May 2017.[13] Due to the failure of respondent's counsel to appear on the 9 May 2017 setting, the Pre-Trial Conference was reset for the last time to 1 August 2017.[14]

On 1 August 2017, this Court dismissed the instant Petition due to the failure of petitioner's counsel to timely appear for the scheduled Pre-Trial Conference.[15] On 10 August 2017, petitioner filed a Motion for Reconsideration (of the Resolution dated August 1, 2017),[16] which was granted by this Court.[17]

On 6 February 2018, the Pre-Trial Conference ensued.[18] Following the submission on 21 February 2018 of the parties' Joint Stipulation of Facts and Issues,[19] a Pre-Trial Order issued on 12 April 2018.[20]

On 26 February 2019, petitioner presented its witness, Christy Miller Long.[21] On 28 March 2019, petitioner presented its remaining witnesses, Siegfred A. Sobito and Enrique Juan C. Vera. Respondent also manifested during the hearing that he will no longer present any evidence for his cause.[22]

On 6 May 2019, petitioner filed its Formal Offer of Evidence with Motion to Admit Secondary Evidence via registered mail,[23] to which respondent interposed no objections.[24] In a Resolution, dated 1 July 2019, this Court admitted all of petitioner's Exhibits except for its Exhibit "P-44."[25]

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[10] *Id.*, at pp. 233-234.
[11] *Id.*, at pp. 245-249.
[12] *Id.*, at pp. 525-538.
[13] See Resolution, dated 6 March 2017, Records, Vol. 2, pp. 539-540.
[14] Records, Vol. 2, pp. 542-546.
[15] *Id.*, at pp. 547-549.
[16] *Id.*, at pp. 550-560.
[17] See Resolution, dated 5 October 2017, Records, Vol. 2, pp. 564-569.
[18] Records, Vol. 2, pp. 571-572.
[19] *Id.*, at pp. 573-580.
[20] *Id.*, at pp. 593-602.
[21] *Id.*, at pp. 659-661.
[22] *Id.*, at pp. 662-664.
[23] Records, Vol. 1, pp. 739-798.
[24] See Comment (To Petitioner's Formal Offer of Evidence), Records, Vol. 2, pp. 801-803.
[25] Records, Vol. 2, pp. 808-816.

On 7 August 2019, respondent filed a Motion for Extension of Time to File Memorandum,[26] which was granted by this Court.[27] On 22 August 2019, respondent filed his Memorandum via registered mail.[28]

On 20 August 2019, petitioner filed a Motion for Additional Time to File Memorandum,[29] which was granted by this Court in a Resolution, dated 25 September 2019.[30] On 7 October 2019, petitioner filed its Memorandum.[31]

On 14 October 2019, this Court issued a Resolution submitting the instant Petition for decision.[32]

Hence, this Decision.

The Issue[33]

> WHETHER PETITIONER IS ENTITLED TO A REFUND OF ITS EXCESS AND UNUTILIZED INPUT VAT ATTRIBUTABLE TO ITS ZERO-RATED SALES FOR THE PERIOD APRIL TO DECEMBER 2014 IN THE AMOUNT OF PHP17,246,607.88.

Arguments of the Parties

Petitioner's Arguments[34]

Petitioner avers that it complied with the requisites for a grant of input VAT refund, as follows:

a) Petitioner is a VAT-registered person;
b) Petitioner is engaged in zero-rated sales under ***Section 108 (B) (2) of the Tax Code***;
c) Petitioner incurred creditable input VAT attributable to its zero-rated sales; and
d) Petitioner deducted the excess input taxes being claimed for refund from its total available input tax in its quarterly VAT returns for the third and fourth quarters of taxable year 2014. These have not been carried over to the succeeding quarters and have not been applied against any output tax liability.

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[26] *Id.*, pp. 817-819.
[27] See Resolution, dated 23 August 2019, Records, Vol. 2, pp. 820-821.
[28] Records, Vol. 2, pp. 822-827.
[29] *Id.*, at pp. 829-841.
[30] *Id.*, at pp. 842-843.
[31] *Id.*, at pp. 844-881.
[32] *Id.*, at pp. 882-883.
[33] See Issues in the Pre-Trial Order; Records, Vol. 2, p. 595.
[34] See Memorandum, Records, Vol. 2, pp. 853-877.

Respondent's Counter-Arguments[35]

Respondent argues that petitioner is not entitled to an input VAT refund due to the following reasons:

a) Petitioner failed to demonstrate that the tax was erroneously or illegally collected. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not refundable. It is incumbent upon petitioner to prove that it complied with ***Section 204 (C) of the Tax Code***;
b) Petitioner's claim for refund was not fully substantiated by proper documents; and
c) Tax refunds are in the nature of tax exemptions. Hence, it should be construed *strictissimi juris* against the person or entity claiming the same.

The Ruling of the Court

The instant Petition lacks merit.

Requisites for a VAT refund claim.

To be entitled to an input VAT refund, compliance with ***Section 112 of the Tax Code*** is necessary, *viz*:

> "***Section 112. Refunds or Tax Credits of Input Tax. -***
>
> ***(A) Zero-rated or Effectively Zero-rated Sales. -*** Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the

[35] See Memorandum for Respondent, Records, Vol. 2, pp. 824-825.

transactions, it shall be allocated proportionately on the basis of the volume of sales.

xxx xxx xxx

(C) Period within which Refund or Tax Credit of Input Taxes shall be Made.- In proper cases, the Commissioner shall grant a refund or issue a tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."

Interpreting the above provisions, jurisprudence laid down the following requisites necessary for a successful claim of input VAT refund, to wit:

As to the timeliness of the filing of the administrative and judicial claims:

1. The claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[36]

2. That in case of full or partial denial of the refund claim or failure on the part of the Commissioner to act on the said claim within a period of one hundred twenty (120) days, the judicial claim has been filed with this Court, within thirty (30) days from receipt of the decision or after the expiration of the said one hundred twenty (120)-day period.[37]

With reference to the taxpayer's registration with the BIR:

1. The taxpayer is a VAT -registered person.[38]

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[36] Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 155732, 27 April 2007; San Roque Power Corporation v. Commissioner of Internal Revenue, G.R. No. 180345, 25 November 2009; and AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 182364, 3 August 2010.

[37] Steag State Power, Inc. (Formerly State Power Development Corporation) v. Commissioner of Internal Revenue, G.R. No. 205282, 14 January 2019; Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue, G.R. No. 168950, 14 January 2015.

[38] Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 155732, 27 April 2007; San Roque Power Corporation v. Commissioner of Internal Revenue, G.R. No. 180345, 25 November

<u>In relation to the taxpayer's output VAT:</u>

1. The taxpayer is engaged in zero-rated or effectively zero-rated sales;[39]

2. For zero-rated sales under ***Sections 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2)***, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with Bangko Sentral ng Pilipinas ("BSP") rules and regulations.[40]

<u>As regards the taxpayer's input VAT being refunded:</u>

1. The input taxes are not transitional input taxes;[41]

2. The input taxes are due or paid;[42]

3. The input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be direcdy and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[43] and

4. The input taxes have not been applied against output taxes during and in the succeeding quarters.[44]

It should also be emphasized that in claims for input VAT refunds before this Court, which are litigated *de novo,* party-litigants must prove every minute aspect of their case.[45] Consequently, petitioner is bound to show full compliance with each of the above mentioned requisites.

2009; and AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 182364, 3 August 2010.

[39] *Ibid.*

[40] *Ibid.*

[41] *Ibid.*

[42] *Ibid.*

[43] Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 155732, 27 April 2007; and San Roque Power Corporation v. Commissioner of Internal Revenue, G.R. No. 180345, November 25, 2009.

[44] Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 155732, 27 April 2007; San Roque Power Corporation v. Commissioner of Internal Revenue, G.R. No. 180345, 25 November 2009; and AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 182364, 3 August 2010.

[45] Edison (Bataan) Cogeneration Corporation v. Commissioner of Internal Revenue, et al., G.R. Nos. 201665 and 201668, 30 August 2017; Commissioner of Internal Revenue v. Philippine National Bank, G.R. No. 180290, 29 September 2014; Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc., G.R. No. 197515, 2 July 2014; Dizon v. Court of Tax Appeals, et al., G.R. No. 140944, 30 April 2008; Atlas Consolidated Mining and Development Corporation v. Commissioner of ***Internal Revenue,***

Petitioner timely filed both its administrative and judicial claims for input VAT refund.

For the first requisite, the administrative claim for refund must be filed before the BIR within two (2) years from the close of the taxable quarters when the zero-rated or effectively zero-rated sales were made.

The present Petition allegedly involves claims for refund of excess and unutilized input VAT attributable to zero-rated sales made within the period April to December 2014 (*i.e.,* 2nd to 4th Quarters of 2014). Consequently, the deadline to file petitioner's administrative claims for input VAT refund are as follows:

QUARTERLY VAT RETURN	CLOSE OF TAXABLE QUARTER	DEADLINE TO FILE ADMINISTRATIVE CLAIM FOR REFUND
2nd Quarter 2014	30 June 2014	30 June 2016
3rd Quarter 2014	30 September 2014	30 September 2016
4th Quarter 2014	31 December 2014	31 December 2016

Considering that petitioner filed its application for input VAT refund for the period April to December 2014 on 12 May 2016,[46] the administrative claim for refund before the BIR was timely made.

With respect to the second requisite, the judicial claim must be filed within thirty (30) days from the receipt of the denial of the administrative claim for refund or from the expiration of the one hundred twenty (120)-day period provided in ***Section 112 (C) of the Tax Code***, whichever comes first. As respondent did not act upon the administrative claim for refund, the one hundred twenty (120) plus thirty (30)-day period ("120+30-day period") is in effect, as follows:

G.R. No. 145526, 16 March 2007; and Commissioner of Internal Revenue v. Manila Mining Corporation, G.R. No. 153204, 31 August 2005.

[46] See Petition, Records, Vol. 1, p. 11; See Annex "F" of the Petition, Records, Vol. 1, pp. 61-65; See Exhibit "P-1", Records, Vol. 1, pp. 320-324; See Exhibit "P-70", Records, Vol. 2, p. 626; See Exhibit "P-71", Records, Vol. 2, pp. 627-629.

Date of Filing of the Administrative Claim for Refund	End of One Hundred Twenty (120) Days within which Respondent is Required to Act	End of Thirty (30) Days from the Expiration of the One Hundred Twenty (120) Days
12 May 2016	9 September 2016	9 October 2016

As petitioner filed the instant Petition on 7 October 2016, the judicial claim for input VAT refund was also timely filed. Thus, the first and second requisites for input VAT refund have been complied with by petitioner.

Petitioner is VAT-registered.

The third requisite to successfully claim an input VAT refund requires that a taxpayer-claimant must be VAT registered. Petitioner complied with this requirement, as shown by its BIR Certificate of Registration with OCN 9RC0000401293,[47] which includes VAT as one of its tax types.

As a PEZA-registered entity, petitioner's local purchases of goods, properties, and services destined for consumption within the PEZA Ecozone are subject to zero percent (0%) VAT.

Before going to the other requisites for VAT refund, it is necessary to tackle first the 8th requisite (*i.e.,* whether the input VAT passed on to petitioner is attributable to zero-rated or effectively zero-rated sales). Petitioner claims that the input VAT passed on to it by its local suppliers are attributable to its zero-rated sales under ***Section 108 (B) (2) of the Tax Code***.[48]

This is misplaced.

As shown by the pieces of evidence adduced, petitioner is a PEZA-registered entity operating in a PEZA Ecozone. Following the Cross-Border Doctrine and Destination Principle under the Philippine VAT system, petitioner's local purchases of goods, properties, and services are subject to zero percent (0%) VAT. Consequently, no input VAT can be passed on to petitioner for its local purchases destined for consumption within the PEZA Ecozone. Accordingly, as petitioner cannot be charged input VAT on its local

[47] See Annex "B" of the Petition, Records, Vol. 1, p. 42.
[48] (B) *Transactions Subject to Zero Percent (0%) Rate* - The following services performed in the Philippines by VAT- registered persons shall be subject to zero percent (0%) rate:
xxx xxx xxx
(2) Services other than those mentioned in the preceding paragraph, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

purchases of goods, properties, and services, petitioner cannot claim any input VAT for refund.

In ***Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue ("Coral Bay Case")***,[49] the Supreme Court had the occasion to rule that a PEZA-registered enterprise is not entitled to claim an input VAT refund as no input VAT can be passed on by its local supplier of goods and services on its purchases, as follows:

> "The petitioner's insistence, that [Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc ("*Toshiba*")] is not applicable because Toshiba Information Equipment (Phils) Inc., the taxpayer involved thereat, was a PEZA-registered entity during the time subject of the claim for tax refund or credit, is unwarranted. The most significant difference between *Toshiba* and this case is that Revenue Memorandum Circular No. 74-99 was not yet in effect at the time Toshiba Information Equipment (Phils) Inc. brought its claim for refund. Regardless of the distinction, however, *Toshiba* actually discussed the VAT implication of PEZA-registered enterprises and ECOZONE-located enterprises in its entirety, which renders *Toshiba* applicable to the petitioner's case.
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> Prior to the effectivity of RMC 74-99, the old VAT rule for PEZA-registered enterprises was based on their choice of fiscal incentives, namely: (1) if the PEZA-registered enterprise chose the 5% preferential tax on its gross income in lieu of all taxes, as provided by Republic Act No. 7916, as amended, then it was VAT-exempt; and (2) if the PEZA-registered enterprise availed itself of the income tax holiday under Executive Order No. 226, as amended, it was subject to VAT at 10% (now, 12%). Based on this old rule, *Toshiba* allowed the claim for refund or credit on the part of Toshiba Information Equipment (Phils) Inc.
>
> This is not true with the petitioner. With the issuance of RMC 74-99, the distinction under the old rule was disregarded and the new circular took into consideration the two important principles of the Philippine VAT system: ***the Cross Border Doctrine and the Destination Principle.*** Thus, *Toshiba* opined:
>
>> 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

[49] G.R. No. 190506, 13 June 2016, citing Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc., G.R. No. 150154, 9 August 2005.

> 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.
>
> According to the old rule, Section 23 of Rep. Act No. 7916, as amended, gives the PEZA-registered enterprise the option to choose between two sets of fiscal incentives: (a) The five percent (5%) preferential tax rate on its gross income under Rep. Act No. 7916, as amended; and (b) the income tax holiday provided under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, as amended.
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> x x x x
>
> ***This old rule clearly did not take into consideration the Cross Border Doctrine essential to the VAT system or the fiction of the 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 latter'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.***

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.'*** Thus, *Toshiba* has discussed that:

> 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.**

It is important to note herein that respondent Toshiba is located within an ECOZONE. An ECOZONE or a Special Economic Zone has been described as –

. . . [S]elected areas with highly developed or which have the -Q potential to be developed into agro-industrial, industrial, tourist, recreational, commercial, banking, investment and financial centers whose metes and bounds are fixed or delimited by Presidential Proclamations. An ECOZONE may contain any or all of the following: industrial estates (IEs), export processing zones (EPZs), free trade zones and tourist/recreational centers.

The national territory of the Philippines outside of the proclaimed borders of the ECO ZONE shall be referred to as the Customs Territory.

Section 8 of Rep. Act No. 7916, as amended, mandates that the PEZA shall manage and operate the ECOZONES as a separate customs territory; **thus, creating the fiction that the ECOZONE is a foreign territory. As a result, sales made by a supplier in the Customs Territory** to a purchaser in the ECOZONE **shall be treated as an exportation from the Customs Territory.** Conversely, sales made by a supplier from the ECOZONE to a purchaser in the Customs Territory shall be considered as an importation into the Customs Territory."
(Emphasis and underscoring, Ours)

As explained in the ***Coral Bay Case***, prior to the effectivity of ***Revenue Memorandum Circular No. 74-99 ("RMC 74-99")***, the previous rule was that if a PEZA-registered enterprise was under the five percent (5%) preferential tax regime, it was VAT-exempt, but if said enterprise was under the Income Tax Holiday regime, it would be subject to VAT. With the issuance of ***RMC 74-99***, this distinction became obsolete as the said issuance took into consideration the two important principles of the Philippine VAT system: the Cross-Border Doctrine and the Destination Principle.

Under the Destination Principle, goods and services are taxed only in the country where these are consumed. In connection with the said principle, the Cross-Border Doctrine mandates that no VAT shall be imposed to form part of the cost of the goods destined for consumption outside the territorial border of the taxing authority. Hence, actual export of goods and services from the Philippines to a foreign country must be free of VAT, while those destined for use or consumption within the Philippines shall be imposed with VAT. Export processing zones are to be managed as a separate customs territory from the rest of the Philippines and, thus, for tax purposes are effectively considered as foreign territory. For this reason, sales by persons from the

Philippine customs territory to those inside the export processing zones are already taxed as exports.[50]

Following these principles, sales of goods, properties, and services by a VAT-registered supplier from the custom territory to a PEZA-registered enterprise shall be treated as export sales. Consequently, these sales are subject to VAT at zero percent (0%) rate. Accordingly, no output VAT shall be shifted to or passed on to PEZA-registered enterprises, and no input VAT should be paid by PEZA-registered entities from its purchases. As no input VAT can be passed on to PEZA-registered enterprises by VAT-registered local suppliers, it necessarily follows that these entities are not entitled to input VAT refund from its purchases of goods and services. Rather, it is the local suppliers of goods and services which are entitled to claim refund on the input VAT incurred in their purchases directly attributable to their zero-rated sales of goods to PEZA-registered entities.

A perusal of PEZA Certificate of Registration No. 14-097[51] readily shows that petitioner is registered as an "ECOZONE IT ENTERPRISE at the "MCKINLEY HILL CYBERPARK, UPTOWN BONIFACIO and MCKINLEY WEST." Applying the above disquisition, the local purchases of goods, properties, and services, which are destined to be consumed within the said PEZA IT Ecozone, by petitioner, a PEZA-registered enterprise, should be free of VAT. Consequently, no input VAT can be passed on to petitioner from said purchases. As no input VAT can be passed on to petitioner, it necessarily follows that petitioner cannot claim refund on the input VAT it paid to its local supplier of goods, properties, and services. To reiterate, it is petitioner's local suppliers of goods and services which may claim refund of the input VAT they incurred in their purchases attributable to their zero-rated sales to petitioner.

Sales of goods or properties between PEZA-registered entities are VAT-exempt.

This Court also notes that a portion of the input VAT sought to be refunded by petitioner corresponds to input VAT paid for petitioner's purchase of capital goods from Wells Fargo Philippines Solutions, Inc ("WFPSI"), another PEZA-registered IT enterprise.[52] Petitioner posits that this sales transaction is subject to VAT since it is not one of the registered activities of WFPSI. Per petitioner, only income actually gained or received by a PEZA-registered enterprise from its registered activities are entitled to the fiscal incentives under the law. As this sales transaction is subject to VAT

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[50] Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. Nos. 141104 & 148763, 8 June 2007, citing Commissioner of Internal Revenue v. Seagate Technology (Philippines), G.R. No. 153866, 11 February 2005.

[51] See Exhibit "P-70", Records, Vol. 2, p. 626.

[52] See Exhibit "P-72", Records, Vol. 2, pp. 630-647.

(and which resulted in input VAT being passed on to petitioner), petitioner should be allowed to refund the input VAT it paid for this sales transaction.[53]

Again, this is erroneous.

Sales of goods or properties by a PEZA-registered enterprise to another PEZA-registered entity are exempt from VAT under ***Section 5 (3) of RMC 74-99***,[54] *viz*:

> (3) Sale of Goods, by a PEZA Registered Enterprise, to Another PEZA Registered Enterprise (i.e., Intra ECOZONE Sales of Goods). — 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.

VAT exempt transactions pertain to transactions which cannot be subjected to output VAT by the seller. Accordingly, no input VAT can be passed on to the buyer in these transactions. As these transactions are not subject to VAT, a VAT-registered buyer cannot claim input VAT from these purchase transactions as credit despite being issued a VAT invoice or receipt.[55]

The very reason for this VAT exemption is that the sales of goods or properties were consummated outside of the customs territory. As such, these sales are outside of the coverage of the Philippine VAT system. Following this, petitioner cannot claim input VAT refund on its purchases of capital goods from WFPSI, another PEZA-registered enterprise.

<u>Petitioner can claim refund from its supplier of goods, properties and services that charged input VAT in its purchases.</u>

Article 22 of the New Civil Code of the Philippines provides that "[e]very person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him." This is known as the principle of unjust enrichment. This doctrine applies in this case, considering that petitioner was made to bear the burden of taxation when the ***Tax Code***, administrative issuances, and judicial pronouncements particularly exempt it from such.

[53] See Memorandum, Records, Vol. 2, pp. 864-871.
[54] RMC 74-99, 15 October 1999.
[55] Commissioner of Internal Revenue v. Cebu Toyo Corporation, G.R. No. 149073, 16 February 2005.

In the ***Coral Bay Case***, the Supreme Court ruled that this Court "was correct in holding that the petitioner's proper recourse was not against the Government but against the seller who had shifted to it the output VAT following RMC No. 42-03, which provides:

> In case the supplier alleges that it reported such sale as a taxable sale, the substantiation of remittance of the output taxes of the seller (input taxes of the exporter-buyer) can only be established upon the thorough audit of the suppliers' VAT returns and corresponding books and records. It is, therefore, imperative that the processing office recommends to the concerned BIR Office the audit of the records of the seller."

Hence, petitioner is not without recourse. It may still recover the amount it paid for input VAT from its supplier of goods and services who imposed the same in its purchases.

Given the above discussions, the Court deems it unnecessary to tackle the other issues raised in the Petition.

WHEREFORE, in view of the foregoing, the present Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

I CONCUR:

ERLINDA P. UY
Associate Justice

(Inhibited)
MA. BELEN M. RINGPIS-LIBAN
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.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

Pursuant to *Section 13 of Article VIII 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice