REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FORT BONIFACIO DEVELOPMENT CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5694

COMMISSIONER OF INTERNAL REVENUE AND REVENUE DISTRICT OFFICER, REVENUE DISTRICT NO. 44, TAGUIG & PATEROS, BUREAU OF INTERNAL REVENUE,
Respondents.

Promulgated:
SEP 29 2000

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DECISION

This is a judicial claim for refund or tax credit in the amount of ₱269,340,469.45, with legal interest, representing value-added taxes paid by the Petitioner covering the fourth quarter of 1996.

The facts and issues are undisputed.

Petitioner is a domestic corporation duly registered and existing under the laws of the Republic of the Philippines, with office address at Bonifacio Centre, NDCP Compound, Fort Bonifacio, Taguig, Metro Manila. It owns, develops and sells parcels of land known as the Fort Bonifacio Global City located within Fort Bonifacio, Taguig, Metro Manila. The land was formerly a part of the Fort Bonifacio military reservation covered under Special Patent No. 3596. On February 8, 1995, it was sold by the National Government to the Petitioner, pursuant to Republic Act No. 7227 and Executive Order

No. 40, dated December 8, 1992. It is now covered under Original Certificate of Title No. SP-001 of the Registry of Deeds for the Province of Rizal. Petitioner commenced development of the land in May 1996.

On September 18, 1996, Petitioner duly registered itself as a value-added tax ("VAT", for short) taxpayer (Exhibit "B") in accordance with Republic Act No. 7716 which took effect on January 1 of the same year, extending the coverage of the VAT system to real property held primarily for sale to customers or held for lease in the ordinary course of trade or business. The latter law amended the National Internal Revenue Code ("Tax Code", for brevity) as earlier amended by Executive Order No. 273 which took effect on January 1, 1988.

In October 1996, Petitioner started selling lots within the Fort Bonifacio Global City to interested buyers. For the fourth quarter ended December 31, 1996, Petitioner derived the total amount of P3,498,888.713.60 from its sales and lease of lots, on which the output VAT payable to the Bureau of Internal Revenue ("BIR", for brevity) was P318,080,792.14. Petitioner paid the latter amount in three modes, one, through cash payments totalling P269,340,469.45, second, by applying a part of its alleged total transitional/presumptive input tax credit of P5,698,200,256.00, to the extent of P28,413,783.00, which is the portion earmarked by Petitioner to two specific lots sold by it and third, by utilizing its regular input tax credit of P20,326,539.69 on purchases of goods and services for the quarter.

Based on the book value of its beginning inventory of real properties totalling ₱71,227,503,200.00, which was submitted to the BIR on November 19, 1998, and by virtue of the provisions of Section 105 of the Tax Code granting 8% transitional input tax credit on beginning inventory of goods, materials and supplies for persons becoming liable to VAT, Petitioner alleged that it is entitled to the abovesaid sum of P5,698,200,256.00 as creditable input tax.

On October 8, 1998, Petitioner filed with the BIR a claim for refund or tax credit of the cash payments of P269,340,469.45 mentioned above, based on Section 105 of the Tax Code in relation to Section 100 thereof, as amended by Republic Act No. 7716, on the ground that no 8% transitional or presumptive input tax credit on its beginning land inventory was taken into account in making the payment, except for the amount of P28,413,783.00 corresponding to the two lots referred to above, resulting in erroneous payment or illegal collection of said amount of ₱269,340,469.45.

Allegedly due to the inaction of the Respondents on its claim for refund and the fact that in accordance with Section 230 (now, Section 229) of the Tax Code, the same is about to prescribe upon the lapse of two years reckoned from its earliest date of payment on November 22, 1996, Petitioner instituted the instant Petition on November 19, 1998.

At bar, Petitioner reasserts its stance *a quo* that pursuant to Section 105, in relation to Section 100, of the Tax Code, it is clearly entitled to an input tax credit on the beginning inventory of its real properties it submitted to the BIR equivalent to 8% of the value thereof or in the total amount of P5,698,200,256.00.

According to Petitioner, the value-added tax it paid for the fourth quarter of 1996 in the amount of P269,340,469.45 is more than offset by the total amount of transitional input tax credit of P5,698,200,256.00 to which it is entitled by virtue of said Sec. 105, in relation to Sec. 100, of the NIRC, as amended.

In their Answer, Respondents disagreed to Petitioner's contention and asserted, inter alia, that Petitioner failed to comply with Revenue Regulations No. 7-95, which has the force and effect of law, implementing Section 105 of the Tax Code, as amended by Executive Order No. 273, requiring an inventory, as of December 31, 1995, improvements, such as buildings, roads, drainage systems and other similar structures, in the case of real estate dealers, such as the Petitioner, showing the quantity, description, and amount thereof, to be filed with the Revenue District Office not later than January 31, 1996, in order to avail of the presumptive input tax credit.

Respondents further stated in their memorandum that Petitioner is not legally entitled to any transitional input tax credit, whether it be the 8% presumptive or actual input tax credit in respect of its inventory of land brought into the VAT regime beginning January 1, 1996, for the following reasons, to quote:

> 1. VAT free acquisition of the raw land. - Petitioner purchased and acquired, from the Government, the aforesaid raw land under a VAT-free sale transaction. The Government, as a vendor was tax-exempt and accordingly did not pass on any VAT or sales tax as part of the price and paid therefor by the Petitioner.
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> 2. No transitory input tax on inventory of land is allowed. - Section 105 of the Code, as amended by RA No. 7716, and as implemented by Section 4.105-1 of Revenue Regulations No. 7-95, expressly provides that no transitional input tax credit shall be allowed to real estate dealers in respect of their beginning inventory of land brought into the VAT regime beginning January 1, 1996 (supra). Likewise, the Transitory Provisions [(a) (iii)] of Revenue Regulations No. 7-95 categorically states that "for real estate dealers, the presumptive input tax of 8% of the book value of improvements constructed on or after January 1, 1988 (the effectivity of E.O. 273) shall be allowed." For purposes of subparagraph (i)(ii) and (iii) above, an inventory as of December 31, 1995 of such goods or properties and improvements showing the quantity, description, and amount should be filed with the RDO not later than January 31, 1996. It is admitted that Petitioner filed its inventory listing of real properties on September 19, 1996 or almost nine (9) months late in contravention to the requirements in Revenue Regulations No. 7-95.

Elucidating on the background and nature of the Philippine VAT Law, Respondents defended the validity of Revenue Regulations No. 7-95, in this wise:

> Section 4.105-1 of Revenue Regulations No. 7-95, implementing Section 105 of the Code in respect of transitory input tax credits, is not contrary to any law nor the Constitution. On the contrary, it is consistent with the Canon of the Value Added Tax System, which is of international application, that transitory input tax credit shall only be recognized and allowed provided the inventory of goods of properties brought into the transition from non-VAT to VAT regime have previously been purchased subject to the VAT or to any form of sales tax which accordingly had been passed on as a part of the buyer's invoiced price or acquisition cost. Conversely, where no VAT or any form of sales tax which accordingly had been passed on as part of the buyer's invoiced price or acquisition cost of the inventory, no transitory input tax credit shall be recognized or allowed when the same is brought into the VAT regime, during the transition of the business from non-VAT to VAT, is to prevent the cascading of the VAT or sales tax in the subsequent turnover of inventories, in order to avoid imposition of a tax against tax or VAT against VAT and thus prevent double taxation of the inventory, since the VAT is only intended as a tax on the value added on every turnover of the inventory until it reaches the ultimate consumer against whom the full burden or cost of the tax is indirectly passed on as a part of his acquisition cost.
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> The Philippine VAT law, particularly in connection with the transitory input tax credit, adheres to the aforesaid internationally accepted practice that transitory input tax credit shall only be allowed provided any form of business tax had been paid and passed-on as part of the invoice price or acquisition cost of the inventory and such inventory is brought into the VAT regime by its owner. Thus, if no such tax forms part of the inventory cost, no transitory input tax credit shall be allowed when the same is brought into the VAT regime as the taxpayer's transitory beginning inventory.

Respondents explained that Petitioner, as a real estate dealer, was exempt from sales tax or any form of percentage tax under the old Tax Code. What it paid was only the old real estate dealers fixed tax. Hence, it should not be entitled to any transitional input tax. In support thereof, Respondents cited Section 17 of Revenue Regulations No. 5-87, which implemented the first VAT law under Executive Order No. 237 effective January 1, 1988, where business subject to VAT as of January 1, 1988 were not accorded the benefit of any transitory input tax credit on their beginning inventory of land brought into the VAT regime on even date, notwithstanding that the same were used in the business or trade of the taxpayer.

In riposte to Respondents' arguments, Petitioner in its memorandum assailed as invalid and ineffective Revenue Regulations No. 7-95, insofar as it limits the input tax credit to 8% of the value of the "improvements". It pointed out that Section 105 of the Tax Code, as amended, explicitly provides that the input tax credit shall be equivalent to 8% of the value of the "beginning inventory of goods, materials and supplies"; that the Respondents are without authority to extend the statute beyond its terms or to limit the scope of the statute to less than what it provides; and that per BIR regulations, the repeated use of the word "presumptive" strongly indicates that the input tax is imputed without necessarily having been paid, hence, it is presumed to have been paid on goods or properties which were heretofore not subject to VAT.

As regards the late filing of the beginning inventory of properties of the Petitioner on September 19, 1996 which allegedly was in contravention of the provisions of Revenue Regulations No. 7-95 requiring such filing to be done not later than the 31st of January, 1996, Petitioner contended the following arguments, to wit:

> 4.11.b. It will be noted that the afore-quoted provision does not fix a date when the required inventory should be filed. Thus, in fixing the **arbitrary date** of January 31, 1996 for the filing of the inventory, Revenue Regulations No. 7-95 again expanded the provisions of the NIRC. Applying the authorities already cited earlier, the provision in the aforesaid Revenue Regulations fixing a specific date for the filing of the required inventory is **null and void**.
>
> 4.11.c. In this connection, it should be pointed out that under Revenue Regulations No. 6-97, which amended Revenue Regulations No. 7-95, there is no longer any deadline fixed for the filing of the required inventory (see Sec. 5 of Revenue Regulations No. 6-97).

4.11.d. It will be further noted in Section 105 that the **determinative date** is when the taxpayer **becomes liable to the value-added tax** or **elects to be a VAT-registered person.** In the instant case, the petitioner registered as a VAT taxpayer only on **September 18, 1999** (EXH. "E"). Likewise, it became liable to pay the VAT only when it started selling lots in **October 1996** (Exh. "X", Stipulation, par. 1.06, at pp. 2-3; TSN, June 3, 1999, at p. 32). Clearly, the filing by petitioner of the required inventory on **September 19, 1996** is in accordance and in compliance with the provisions of Section 105.

4.11.e. It is not also amiss to point out that the inventory submitted by petitioner to Revenue District No. 44 on September 16, 1996 was **accepted**. At no time thereafter did respondents ever inform petitioner that the said inventory was not timely filed, except on January 27, 1999, or more than two (2) years later, when they served on petitioner their Answer to the petition in this case.

4.11.f. In any case, in its transmittal letter to the BIR, petitioner explained that the land sold to it by BCDA was delivered only on February 29, 1996. Petitioner further explained in its letter that it transferred its principal office to Bonifacio Centre, NDCP Compound, Fort Bonifacio, Taguig, Metro Manila, a location within the territorial jurisdiction of Revenue District No. 44, Taguig-Pateros, with which it filed the inventory (EXHS. "C", "C-1").

Based on the foregoing facts and disquisition of the parties, this Court is simply confronted with the sole legal issue of:

Whether or not Petitioner is entitled to its claim for refund/tax credit in the amount of ₱269,340,469.45, representing value-added taxes which it had paid for the fourth quarter of 1996, on the ground that it has earned a total input tax credit of ₱5,698,200,256.00, by virtue of Section 105 of the Tax Code, as amended by Republic Act No. 7716.

We rule in the negative. Petitioner is not automatically entitled to the 8% transitional input tax allowed under Section 105 of the Tax Code. Its position that such tax is statutorily presumed or imputed based solely on its inventory of real properties, is more apparent than real. To sanction Petitioner's interpretation of said section would plainly lead to a violation of statutory principles and the rule on uniformity in taxation which is duly enshrined in our Constitution.

It is to be noted that the subject matter of transitional input tax was initially dealt with under Sections 104 and 105 of the Tax Code, as amended by Executive Order No. 237 effective January 1, 1988, to quote:

> "**SEC. 104.** ***Tax Credits.*** - (a) *Creditable input tax.* - x-x-x
>
> 'Input tax' means the value-added tax paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchases of goods or services from a VAT-registered person. **It shall also include the transitional input tax determined in accordance with Section 105 of this Code and other transitional input taxes as prescribed by regulations.**
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> x x x x x x x x x
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> **SEC. 105.** ***Transitional input tax credits.*** - A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall, **subject to the filing of an inventory as prescribed by regulations, be allowed input tax on his beginning inventory of goods, materials and supplies equivalent to 8% of the value of such inventory or the actual value-added tax paid on such goods, materials and supplies, whichever is higher, which shall be creditable against the output tax**.
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> (Underscoring and emphasis supplied)

Under the succeeding amendatory law on VAT, Republic Act No. 7716 which became effective on January 1, 1996, the definition of "input tax" in Section 104 was substantially reiterated while Section 105 was left untouched. Bearing significance to Petitioner's taxability as a VAT person, said law included for the first time real properties under the term "goods" which are subject to VAT; and it also defined what is meant by VAT, both under Sections 99 and 100 thereof, respectively, to wit:

SECTION 1. Section 99 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:

"**SEC. 99.** ***Persons Liable.*** - x-x-x

"The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of this Act.

x-x-x x-x-x x-x-x

SECTION 2. Section 100 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:

"**SEC. 100.** *Value-added tax on sale of goods or properties.* - x-x-x

"(1) **The term `goods or properties' shall mean all tangible and intangible objects which are capable of pecuniary estimation and shall include:**

"(A) Real properties held primarily for sale to customer or held for lease in the ordinary course of trade or business;

(Underscoring and emphasis supplied)

As defined under the above Section 104 of the Tax Code, an "input tax" means the VAT paid by a VAT-registered person in the course of his trade or business on importation of goods or services from a VAT-registered person; and that such tax shall *include the transitional input tax* determined in accordance with Section 105 of the Tax Code, *supra.*

Applying the rule on statutory construction that particular words, clauses and phrases should not be studied as detached and isolated expressions, but the whole and every part of the statute must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole[1], the phrase "transitional input tax" found in Section 105 should be understood to encompass goods, materials and supplies which are subject to VAT, in line with the context of "input tax" as defined in Section 104, most especially that the latter includes, and immediately precedes, the former under its statutory meaning. Petitioner's contention that the 8% transitional input tax is statutorily presumed to the extent that its real properties which have not been subjected to VAT are entitled thereto, would directly contradict "input tax" as defined in Section 104 and would invariably cause disharmony.

Further, inasmuch as the factual milieu of herein case happened during the effectivity of Republic Act No. 7716 where no change on Section 105 came about, this Court deems it imperative to delve both into the antecedents of Section 105, the focal provision at bar, in order to ascertain the true intent of the legislature in its enactment, most especially in the light of the contrary interpretation adopted by the Respondent over it.

> The rule is that a statute should be so construed not only to be consistent with itself but also to harmonize with other laws on the same subject matter, as to form a complete, coherent and intelligible system. The rule is expressed in the maxim, *interpretare et concordare legibus est optimus interpretandi*, or every statute must be so construed and harmonized with other statutes as to form a uniform system of jurisprudence. Statutes in *pari materia* should be construed together to attain the purpose of an express national policy. For the assumption is that whenever the legislature enacts a law it has in mind the previous statutes relating to the same subject matter, and in the absence of any express repeal or amendment the new statute is deemed enacted in accord with the legislative policy embodied in those prior statues. x-x-x **(Statutory Construction by Agpalo, 3rd ed., pp. 209-210; citations omitted)**

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[1] Aisporma vs. Court of Appeals, 113 SCRA 459

A cursory examination of the transitory provisions of Executive Order No. 273 under Section 25 thereof provides some clues crucial to unraveling the present controversy, to quote:

> **SEC. 25.** ***Transitory provisions.*** - (a) All VAT-registered persons shall be allowed transitional input taxes which can be credited against output tax in the same manner as provided in Section 104 of the National Internal Revenue Code as follows:
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> 1) **The balance of the deferred sales tax credit account as of December 31, 1987 which are accounted for in accordance with regulations prescribed therefor;**
>
> 2) **A presumptive input tax equivalent to 8% of the value of the inventory as of December 31, 1987 of materials and supplies which are not for sale, the tax on which was not taken up or claimed as deferred sales tax credit; and**
>
> 3) **A presumptive input tax equivalent to 8% of the value of the inventory as of December 31, 1987 of goods for sale, the tax on which was not taken up or claimed as deferred sales tax credit.**
>
> **Tax credit prescribed in paragraphs (2) and (3) above shall be allowed only to a VAT-registered person who files an inventory of the goods referred to in said paragraphs as provided in regulations.**
>
> (Underscoring and emphasis supplied)

It is to be observed that the above transitory provisions dwelt on the mechanics for the allowance of transitional input taxes mentioned in Section 104 of the Tax Code, *supra*, which in turn, discussed of the same transitional input tax dealt under Section 105, *supra*. All three provisions thus are interrelated and treats on the same subject of transitional input taxes.

Under paragraphs 2 and 3 of the then transitory provisions, a presumptive input tax equivalent to 8% of the value of the inventory as of December 31, 1987 of materials and supplies which were not for sale and of goods for sale was allowed - only on the condition that the taxes on such inventory have not been taken up or claimed as deferred sales tax credit. This revelation is a contributory factor in this Court's position that the 8% transitional input tax should not be viewed as an outright grant or presumption without need of prior taxes having been paid.

The simple instance in the aforesaid paragraphs of requiring the tax on the materials, supplies or goods comprising the inventory to be currently unutilized as deferred sales tax credit before the 8% presumptive input tax can be enjoyed readily leads to the inevitable conclusion that such 8% tax cannot be just granted to any VAT liable person if he has no priorly paid creditable sales taxes. Legislative intent thus clearly points to priorly paid taxes on goods, materials and supplies before a VAT-registered person can avail of the 8% presumptive input tax.

Most important of all, a cursory analysis of Section 105 itself in relation to Petitioner's position would, as above stated, result in constitutional infirmity. Under Article VI, Section 28, par. 1 of our 1987 Constitution, it is provided that the rule of taxation shall be uniform and equitable. The term "uniformity" requires that all subjects or objects of taxation, similarly situated, are to be treated alike or put on equal footing both in privileges and liabilities **(Juan Luna Subdivision vs. Sarmiento, 91 Phil. 371)**.

Granting *arguendo* that Petitioner is statutorily presumed to be entitled to the 8% transitional input tax as provided in Section 105, even without having previously paid any tax on its inventory of goods, Petitioner would be placed at a more advantageous position than a similar VAT-registered person who also becomes liable to VAT but who has actually paid VAT on his purchases of goods, materials and supplies. This is evident from the alternative modes of acquiring the proper amount of transitional input tax under Section 105, supra. One is by getting the equivalent amount of 8% tax based on the beginning inventory of goods, materials and supplies and the other is by the actual VAT paid on such goods, materials and supplies, whichever is higher.

As it is supposed to work, the transitional input tax should answer for the 10% output VAT liability that a VAT-registered person will incur once he starts business operations. While a VAT-registered person who is allowed a transitional input tax based on his actual payment of 10% VAT on his purchases can utilize the same to pay for his output VAT liability, a similar VAT-registered person like herein Petitioner, when allowed the alternative 8% transitional input tax, can offset his output VAT liability equally through such 8% tax even without having paid any previous tax. This obvious inequity that may arise could not have been the intention and purpose of the lawmakers in granting the transitional input tax credit. It is a rule of statutory construction that "when the language of a particular section of a statute admits of more than one construction, that construction which gives effect to the evident purpose and object sought to be attained by the enactment of the statute as a whole, must be followed" (Sanciangco vs. Roño 137 SCRA 671).

Evidently, Petitioner is not similarly situated both as to privileges and liabilities to that of a VAT-registered person who has paid actual 10% input VAT on his purchases of goods, materials and supplies. The latter person will not earn anything from his transitional input tax which, to emphasize, has been paid by him because the same will just offset his 10% output VAT liability. On the other hand, herein Petitioner will earn *gratis* the amount equivalent to 10% output VAT it has passed on to buyers for the simple reason that it has never previously paid any input tax on its goods. Its gain will be facilitated by herein claim for refund if ever granted. This is the reason why we do not see any incongruity in Section 4.105-1 of Revenue Regulations No. 7-95 as it relates to Section 105 of the 1996 Tax Code, contrary to the contention of Petitioner. Section

4.105-1 (*supra*), which bases the transitional input tax credit on the value of the improvements, is consistent with the purpose of the law as so discussed in Our earlier decided case entitled ***Fort Bonifacio Development Corporation vs. Commissioner of Internal Reveneu, et al, CTA Case No. 5665 promulgated on August 11, 2000***, and we quote:

> "Corollary to our findings that Petitioner was wrong in basing its transitional input tax credit on the book value of its real properties, is our firm conclusion that Respondent was correct in basing the 8% transitional input tax credit on the value of the improvements on the land such as buildings, roads, drainage systems and similar structures constructed on or after the effectivity of Executive Order 237, pursuant to the wordings of Section 4.105-1 of Revenue Regulations No. 7-95 (*supra*). Such basis is consistent with the purpose of the transitional input tax credit because when a real estate dealer puts up improvements on the real properties as those enumerated in Revenue Regulations No. 7-95, VAT is necessarily passed on to them either as part of the acquisition cost of the materials used in building the improvements or as part of the cost of the services rendered in building the same. So in the event those lots with improvements are sold by the dealers upon the effectivity of the E-VAT law or thereafter, the VAT passed on to them can be utilized to pay their output VAT liabilities. It is wrong therefore for the Petitioner to state that Section 4.105-1 of Revenue Regulations No. 7-95 is contrary to law, rather we find it to be consistent and in harmony with the law it seeks to implement."

WHEREFORE, in view of the foregoing, the instant claim for refund is hereby **DENIED** for lack of merit.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

(Dissenting)
AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge