REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

JOSE FRANCISCO E. GONZALES, doing business under the name and style, KOLONWEL TRADING,
Petitioner,

-versus-

BUREAU OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9748

Members:

DEL ROSARIO, *P.J., Chairperson, and* **MANAHAN,** *JJ.*

Promulgated:
NOV 20 2020 2:12pm

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DECISION

DEL ROSARIO, P.J.:

This is a Petition for Review filed by petitioner Jose Francisco E. Gonzales, doing business under the name and style, Kolonwel Trading, on January 10, 2018, claiming for a tax refund in the amount of ₱105,056,919.64,[1] representing alleged Final Withholding Value-Added Tax (FWVAT) withheld and remitted to the Bureau of Internal Revenue (BIR) by the Bureau of Fire Protection (BFP) on its payments made to the Joint Venture of Kolonwel Trading and Hubei Jiangnan Special Automobile Co. Ltd. ("Joint Venture") in December 2015 and May 2016.

THE PARTIES

Petitioner is of legal age, Filipino citizen, married and with business address at 1582 E. Remigio Street, Sta. Cruz, Manila. He is doing business as a sole proprietor under the name and style Kolonwel Trading.[2]

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[1] In petitioner's Manifestation filed on January 1, 2020, petitioner alleges that the total amount of ₱105,056,919.64 claim for FWVAT stated in its Petition for Review and Memorandum should actually be ₱115,056,919.64.

[2] Par. 1, the Parties, Petition for Review, CTA Docket, p. 10.

Respondent BIR, is a government agency tasked to administer the implementation of Philippine tax laws and regulations, which includes the duty to collect taxes from taxpayers.[3]

THE FACTS

Petitioner alleges the following:

(i) In August 2014, BFP sought the procurement of 469 fire trucks with an approved budget for the contract of ₱2,589,000,000.00;

(ii) Petitioner, in partnership with the manufacturer Hubei Jiangnan Special Automobile Co., Ltd. of China, (the Joint Venture), participated in the bidding, and was eventually awarded the contract, having offered ₱2,577,275,000.00, which is considered the best/lowest price;

(iii) The delivery of the contracted 469 units of fire trucks was completed in February 2016;

(iv) BFP withheld five percent (5%) FWVAT of ₱65,084,821.43 in December 2015 from payments made to the Joint Venture, and ₱49,972,098.21 in May 2016 for its subsequent payment;

(v) On the basis of the Tax Expenditure Subsidy Program of the Annual General Appropriation Act (GAA) for FY 2010 to 2014, BFP's procurement of fire trucks was not supposed to have been subjected to FWVAT;

(vi) As BFP withheld final Value-added Tax (VAT) from its payments to the Joint Venture, petitioner was constrained to file a claim for refund before the BIR on July 19, 2017;[4] and,

(vii) Respondent has not acted on the claim, and considering that the two (2)-year prescriptive period from the time of payment of first tranche of FWVAT was about to expire,[5]

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[3] Par. 2, the Parties, Petition for Review and admitted in par. 2 of respondent's Answer, CTA Docket, pp. 10 and 172.
[4] Statement of Facts, Petition for Review; CTA Docket, p. 11, 13, 14.
[5] Petition for Review, CTA Docket, p. 14.

petitioner filed the present Petition for Review on January 10, 2018.[6]

On February 8, 2018, respondent filed his Answer with the following Special and Affirmative Defenses:[7]

1. The petition is premature considering that petitioner's claim for tax refund of the alleged erroneously collected FWVAT in the total amount of ₱105,056,919.64 is still pending investigation with Revenue District Office No. 30, Revenue Region No. 6, Manila;

2. Petitioner is not the proper party to file a claim for refund considering that, pursuant to the Contract of Agreement, the contracting parties are BFP, represented by Chief Supt. Ariel A. Barayuga, and the Joint Venture of Kolonwel Trading and Hubei Jiangnan Special Automobile Co. Ltd., a corporation duly organized under the laws of the Philippines, with principal address at 675 Sabino Pandilla Street, Binondo, Manila, represented by Mr. Peter Go Cheng;

3. Under the Contract of Agreement, the Joint Venture is required to deliver and supply fire trucks to the BFP. Hence, it cannot be said that the BFP is the importer of said fire trucks as the true importer of the same is the Joint Venture;

4. Section 12 of the E-VAT law, which amends Section 114(C) of the National Internal Revenue Code (NIRC), provides for the withholding of final VAT on government payments;

5. Tax refunds are in the nature of tax exemptions. Accordingly, the claimants of those refunds bear the burden of proving the factual basis of their claims, and of showing, by words too plain to be mistaken, that the legislature intended to exempt them;

6. A claim for refund is construed strictly against the claimant and should not be allowed unless proven explicitly and categorically; and,

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[6] CTA Docket, pp. 10-21.
[7] CTA Docket, pp. 172-177, 174.

7. Allegations regarding the basis of the tax refund do not *ipso facto* merit the grant thereof.

Petitioner filed his Pre-Trial Brief on May 2, 2018,[8] while respondent filed his Pre-Trial Brief on May 7, 2018.[9] The Pre-Trial was held on July 17, 2018.[10] The parties filed their Joint Motion to Admit [Joint Stipulation of Facts and Issues] on August 23, 2018.[11] In the Resolution dated September 3, 2018, the parties' Joint Motion was granted and their Joint Stipulation of Facts and Issues was admitted.[12] Thereafter, the Pre-Trial Order was issued on October 12, 2018.[13]

Both parties presented their respective testimonial and documentary evidence.

On April 2, 2019, petitioner presented his witness, Mr. Peter Go Cheng, who testified on direct examination by way of Judicial Affidavit, and was subjected to cross examination.[14] Petitioner filed his Formal Offer of Documentary Exhibits on April 15, 2019,[15] with respondent's Comment/Opposition filed on May 10, 2019.[16] In the July 9, 2019 Resolution, Exhibits P-1, P-1-A, P-1-E, P-1-I, P-1-J, P-1-GG, P-2, P-3, P-4, P-15 and P-15-A, were admitted, but Exhibits P-1-B, P-1-C, P-1-D, P-1-F, P-1-G, P-1-H, P-1-K, P-1-L, P-1-M, P-1-N, P-1-O, P-1-P, P-1-Q, P-1-R, P-1-S, P-1-T, P-1-U, P-1-V, P-1-W, P-1-X, P-1-Y, P-1-Z, P-1-AA, P-1-BB, P-1-CC, P-1-DD, P-9 to P-13 and P-14 were denied for petitioner's failure to present their originals for comparison.[17]

Respondent, on the other hand, presented Revenue Officer Rachelle O. Villanueva on July 16, 2019, who testified by way of a Judicial Affidavit.[18] Thereafter, respondent posted its Formal Offer of Evidence on July 22, 2019, which was received by the Court on July 30, 2019,[19] with petitioner's comment thereon filed on August 28,

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[8] CTA Docket, pp. 186-190.
[9] CTA Docket, pp. 191-194.
[10] CTA Docket, pp. 207-210.
[11] CTA Docket, pp. 217-224.
[12] CTA Docket, pp. 226-227.
[13] CTA Docket, pp. 240-245.
[14] CTA Docket, pp. 469-472.
[15] CTA Docket, pp. 478-485.
[16] CTA Docket, pp. 486-487.
[17] CTA Docket, pp. 498-501.
[18] Minutes of hearing held on July 16, 2019; CTA Docket, pages after page 501.
[19] CTA Docket, pp. 507-511.

2019.[20] Respondent's formally offered documentary exhibits consisting of Exhibits R-1 to R-6-A were admitted in the Court's September 19, 2019 Resolution.[21]

With the filing of respondent's Memorandum on October 28, 2019,[22] and the admission of petitioner's Memorandum, filed on November 13, 2019,[23] the case was submitted for decision on December 4, 2019.[24]

On January 1, 2020, petitioner filed a Manifestation stating that the total amount of ₱105,056,919.64 claim for FWVAT refund mentioned in his Petition for Review and Memorandum should actually be ₱115,056,919.64.[25]

In the Resolution dated January 28, 2020, the Court directed respondent to file his comment on the aforesaid Manifestation within ten (10) days from notice.[26] In view of the pending incident, the Court's Resolution dated December 4, 2019, insofar as it submitted the case for decision, was recalled and set aside.[27]

After the filing of respondent's Comment on February 6, 2020,[28] the Court issued a Resolution dated February 26, 2020[29] noting the petitioner's Manifestation and respondent's Comment, stating that the same shall be considered in resolving the case, and submitting anew the case for decision.[30]

THE ISSUE

Whether or not petitioner is entitled to a refund of creditable value-added tax in the aggregate amount of ₱105,056,919.64[31] or as

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[20] CTA Docket, pp. 515-516.
[21] CTA Docket, pp. 523-524.
[22] CTA Docket, pp. 525-531.
[23] CTA Docket, pp. 532-545.
[24] CTA Docket, p. 548.
[25] CTA Docket, unpaginated.
[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] Stipulated Issues, Joint Stipulation of Facts and Issues, CTA Docket, pp. 220-224, 221.

subsequently manifested by petitioner, the amount of ₱115,056,919.64.[32]

THE PARTIES' ARGUMENTS

Petitioner argues that: (i) the importation of the fire trucks was subject to tax exemption by way of Tax Expenditure Subsidy; (ii) BFP is the procuring entity, the ultimate importer, the source of funds and the final end-user of the fire trucks; and, (iii) the present Petition for Review was filed due to the inaction of the BIR.[33]

Respondent counter-argues that petitioner is not entitled to a refund of alleged illegally or erroneously collected FWVAT based on the following: (i) the procurement/importation of fire trucks under the Contract between BFP and the Joint Venture is taxable; (ii) the importer of the subject fire trucks was petitioner, as evidenced by sales invoices and the delivery receipts issued by Kolonwel Trading as seller to BFP as buyer; (iii) Kolonwel Trading even declared the same as "Sale to Government" in its quarterly VAT return for 2015 and 2016 and claimed as VAT input the VAT paid in the importation; and, (iii) tax refund is construed *strictissimi juris* against the taxpayer claimant.[34]

THE COURT'S RULING

Timeliness of the filing of the administrative and judicial claims

Petitioner claims that the two (2)-year period provided in Section 229 of the NIRC of 1997, as amended,[35] is about to lapse without

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[32] *Supra*, Note 25.
[33] CTA Docket, pp. 535-545.
[34] Respondent's Memorandum, CTA Docket, pp. 525-531.
[35] SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* - no suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any respondent's action on his claim for refund. Thus, petitioner was constrained to file the present Petition for Review on January 10, 2018.

Sections 204(C) and 229 of the NIRC of 1997, as amended, provide for the period within which a claim for refund of internal revenue taxes which are erroneously, illegally and wrongfully collected must be filed. Section 204 applies to administrative claims for refund, while Section 229 to judicial claims for refund,[36] *viz.:*

> "**SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*** – The Commissioner may-
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> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamped that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: ***Provided, however,*** **That a return filed showing an overpayment shall be considered as a written claim for credit or refund.**" *(Boldfacing supplied)*
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> "**SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.***- No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, **until a claim for refund or credit has been duly filed with the Commissioner**; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment**: *Provided, however,* That the Commissioner may, even without a written claim therefore, refund or credit any tax,

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supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

[36] *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.),* G.R. No. 231581, April 10, 2019.

> where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." *(Boldfacing supplied)*

Pursuant to the aforequoted provisions, to be entitled to a refund of erroneously or illegally collected tax, the following requisites must be complied with:

1. The tax has been erroneously or illegally collected, or the penalty has been collected without authority, and/or any sum has been excessively or in any manner wrongfully collected; and,

2. The administrative and judicial claims for refund or credit has been filed within two (2) years from the date of payment of tax, or penalty, regardless of any supervening cause that may arise after payment.

The Supreme Court has consistently ruled that a claim for refund or credit with the BIR and the subsequent appeal to this Court must be filed within two (2) years from the date of payment of the tax[37] and that the judicial claim may not be maintained until a claim for refund or credit has been duly filed with the CIR.[38]

An "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property not subject to taxation or by some officer having no authority to levy the tax.[39] From the plain text of Section 229 of the NIRC of 1997, as amended, it is clear that what can be refunded or credited is a tax that is "erroneously, illegally, excessively or in any manner wrongfully collected." In short, there must be a wrongful payment because what is paid, or part of it, is not legally due.[40]

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[37] *CBK Power Company Limited vs. Commissioner of Intemal Revenue,* G.R. Nos. 193383-84, January 14, 2015 and *Commissioner of Intemal Revenue vs. CBK Power Company Limited,* G.R. Nos. 193407-08, January 14, 2015.
[38] *Commissioner of Intemal Revenue vs. Goodyear Philippines, Inc.,* G.R. No. 216130, August 3, 2016.
[39] *Commissioner of Intemal Revenue vs. Pilipinas Shell Petroleum Corporation,* G.R. No. 188497, April 25, 2012.
[40] *Commissioner of Intemal Revenue vs. San Roque Power Corporation,* G.R. No. 187485, February 12, 2013.

While both parties stipulated that petitioner timely filed a claim for refund,[41] **the Court could not, however, determine the timeliness of filing of petitioner's judicial claim in the absence of competent proof as to the date of payment of the tax sought to be refunded in this case**. Nonetheless, the timeliness of petitioner's judicial claim not having been disputed, the Court opts to confine itself to the determination of whether petitioner is entitled to a refund as the importation of fire trucks is subject to tax exemption.

Importation of fire trucks <u>and</u> their subsequent sale involve two (2) different transactions subject to separate VAT payments

To begin with, records disclose that the relationship between BFP and petitioner is one where BFP was a procuring entity of government that sought to purchase fire trucks <u>and</u> the Joint Venture (with petitioner as member thereof) was the awardee of the contract to supply fire trucks to BFP.

The Contract Agreement between the parties outlines such relationship, *viz.*:

> "CONTRACT AGREEMENT
> **<u>PROCUREMENT</u>** OF 244 UNITS 1000 GALLONS CAPACITY AND 225 UNITS 500 GALLONS CAPACITY FIRETRUCKS
>
> KNOW ALL MEN BY THESE PRESENTS:
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> That this Contract of Agreement made and executed by and between:
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> The BUREAU OF FIRE PROTECTION, a government agency created by virtue of DIGL Act of 1990 with office address at BFP National Headquarters Building, Agham Road, Brgy. Bagong Pag-asa, Quezon City represented herein by its Officer in Charge, CHIEF SUPT ARIEL A BARAYUGA, CEO VI BFP, who is authorized to represent and bind said office in this Contract, herein after referred to as the FIRST PARTY;
>
> AND
>
> JOINT VENTURE OF KOLONWEL TRADING AND HUBEI JIANGNAN SPECIAL AUTOMOBILE CO. LTD., **<u>a corporation duly organized under the laws of the Philippines</u>** with principal

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[41] Par. 5, Stipulated Facts, Joint Stipulation of Facts and Issues, CTA Docket, p. 221.

business address at 675 Sabino Pandilla St., formerly Gandara St., Binondo Manila, represented by its Bidder, Mr. PETER GO CHENG, to act for and in behalf of the joint venture, herein referred as the SECOND PARTY.

WITNESSETH THAT:

WHEREAS, the funding source is the Government of the Philippines (GOP) through the BFP Special Account in the General Funds (SAGF) under the General Appropriations Act (GAA) for FY 2010, 2011, 2012, and 2013 and Regular Appropriations in the GAA for FY 2014 in the amount of Two Billion Five Hundred Eighty Nine Million Pesos (Php2,589,000,000.00) **for the Supply and Delivery of** 244 units 1,000 Gallons Capacity and 225 units 500 Gallons Capacity **Firetrucks**. Accordingly, Chief Administrative Officer, Director for Comptrollership issued a Certificate of Availability of Funds with CAF No. 2014-041 dated 22nd day of August 2014;

WHEREAS, the DILG granted authority to the BFP National Headquarters to conduct the Procurement of 1000 gallons capacity Firetrucks and 500 gallons capacity Firetrucks in its Resolution No. 09 (G) s. 2014 and Department Order No. 2014-986 dated July 23, 2014;

WHEREAS, the BFP BAC Resolution No. 2015-PBM-01 dated 8th day of January 2015, recommended the award of the PROJECT in favor the SECOND PARTY **for the Procurement** of two hundred forty four (244) units 1000 gallons capacity and two hundred twenty five (225) units 500 gallons capacity Firetructs after having been declared as "Responsive" in the post qualification stage;

"WHEREAS, **the SECOND PARTY is willing to supply, deliver and comply with the requirements of the FIRST PARTY**;

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ARTICLE I-SCOPE OF CONTRACT

1. The **SECOND PARTY binds itself to deliver the** two hundred forty four (244) units gallons capacity and two hundred twenty five (225) units 500 gallons capacity **Firetrucks to the BFP** National Headquarters, addressed to the FIRST PARTY, BFP National Headquarters Building, Agham Road, Brgy Bagong Pag-asa, Quezon City, Philippines;

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ARTICLE II – CONTRACT PRICE

1. As a consideration for the faithful performance and satisfactory accomplishment of all obligations of the SECOND PARTY under this contract the FIRST PARTY shall pay to the SECOND PARTY the total contract price of Two Billion Five Hundred

> Seventy Seven Million Two Hundred Seventy Five Thousand Pesos (Php2,577,275,000.00) **for the procurement of** two hundred forty four (244) units 1000 gallons capacity and two hundred twenty five (225) units 500 gallons capacity **Firetrucks**; and
>
> 2. **All fees, taxes and other similar charges, imposed by the Philippine Government Except GAA exemption covering taxes and duties on the procurement of two hundred forty four (244) units 1000 gallons capacity and two hundred twenty five (225) units 500 gallons capacity Firetrucks shall be on the account of the SECOND PARTY**; xxx.[42] (Boldfacing and underscoring supplied)

When the fire trucks arrived in the country, VAT on importation was paid in the amount of ₱40,539,183.00;[43] the fire trucks were delivered by the Joint Venture to BFP; and BFP, pursuant to the Contract Agreement, paid the Joint Venture. In accordance with existing regulations, BFP withheld five percent (5%) final VAT on its payments to the Joint Venture in the amount of ₱115,056,919.64.[44]

Interestingly, while petitioner is insisting that the BFP erred in withholding final VAT on its payments to the Joint Venture, he anchors his claim for refund on the **alleged exemption of BFP from taxes and duties on importation of fire trucks as provided in the GAA for the fiscal year 2014** (Republic Act No. 10633).

To put the case in its proper perspective, the Court finds it worthy to briefly discuss the stark difference between the VAT implication of a sale and supply of goods and VAT implication of importation of goods.

Sections 105, 106(A) and 107 (A) of the NIRC of 1997, as amended, specifically provide the imposition of VAT separately on sale of goods or properties and on importation of goods:

> "SECTION 105. Persons Liable. — Any person who, in the course of trade or business, **sells**, barters, exchanges, leases goods or properties, renders services, and any person who **imports** goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code." *(Boldfacing supplied)*
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> "SECTION 106. **Value-added Tax on Sale of Goods or Properties**. —

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[42] Exhibit P-1-GG, CTA Docket, pages in between p. 54 and p. 55.
[43] Exhibit P-1-L, CTA Docket, p. 35.
[44] Exhibits P-1-I and P-1-J, CTA Docket, pp. 31 and 32.

(A) Rate and Base of Tax. — There shall be levied, assessed and collected on **every sale, barter or exchange of goods or properties**, a value-added tax equivalent to ten percent (10%) [now 12%] of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor." *(Boldfacing supplied)*

"SECTION 107. **Value-added Tax on Importation of Goods**. —

(A) In General. — There shall be levied, assessed and collected on **every importation of goods** a value-added tax equivalent to ten percent (10%) [now 12%] based on the total value used by the Bureau of Customs in determining tariff and customs duties, plus customs duties, excise taxes, if any, and other charges, **such tax to be paid by the importer prior to the release of such goods from customs custody**: Provided, That where the customs duties are determined on the basis of the quantity or volume of the goods, the value-added tax shall be based on the landed cost plus excise taxes, if any." *(Boldfacing supplied)*

<u>VAT on Sale of Goods</u>

Every sale, barter or exchange, or transaction deemed as sale of goods or properties in the Philippines, shall be subject to VAT, except those that fall within the enumeration of VAT-exempt transactions as provided in Section 109 of the NIRC of 1997, as amended, and those exempt from VAT under special laws.

For a sale transaction to be subject to twelve percent (12%) VAT, the following must exist:

(i) There must be sale, barter or exchange, or transaction deemed as sale, of goods or properties;

(ii) The sale, barter or exchange, or transaction deemed as sale occurred in the Philippines; and,

(iii) The same was made in the course of trade or business.

VAT, being an indirect tax, may or may not be passed on by the seller to the purchaser. When the seller chooses to pass on the VAT to the purchaser, the seller remains liable for output VAT, albeit the burden thereof was shifted to the purchaser. The seller is, however, precluded from passing on the VAT to a purchaser who is specifically exempt from indirect tax.

VAT on Importation of Goods

Every importation of goods into the Philippines shall be subject to VAT, unless specifically exempt under Section 109 of the NIRC of 1997, as amended, or under special laws. The VAT on importation shall be paid by the importer prior to the release of the imported goods from customs custody.

Importer refers to any person who brings goods into the Philippines, whether or not made in the course of his trade or business. It includes non-exempt persons or entities who acquire tax-free imported goods from exempt persons, entities or agencies.[45]

The VAT paid on importation can be claimed by the importer as input VAT, which is creditable against its output VAT liability.

VAT Implication of Petitioner's Sale of Fire Trucks to BFP

The transaction involved in the present case is the sale, supply and delivery by the Joint Venture of fire trucks to BFP pursuant to their Contract Agreement. Thus, the Court shall proceed to discuss the VAT implication of aforesaid transaction, including the propriety of subjecting the payments made by BFP to the Joint Venture on account of said sale to FWVAT in the amount of ₱115,056,919.64.

As the present case does not involve a claim for refund of VAT paid on importation in the amount of ₱40,539,183.00, the Court finds no reason to belabor on the VAT implication of the importation of fire trucks, whether the importer was the Joint Venture or BFP. The matter on the VAT implication of the importation of fire trucks (including the GAA provision on BFP's Tax Expenditure Subsidy Program) has absolutely no relevance in the resolution of the issue of **whether or not BFP erroneously subjected to FWVAT its payments to the Joint Venture for the supply of fire trucks.**

Petitioner argues that BFP was not correct in withholding five percent (5%) final VAT and in remitting the amount thereof to the BIR.

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[45] Section 4.107-1 (b) of Revenue Regulations No. 16-05.

In support of his contention, petitioner cites as basis Section 15, General Provisions, of the GAA for the fiscal year 2014, which states:

> "Sec. 15. National Internal Revenue Taxes and Import Duties. **The amounts pertaining to the following taxes and duties shall be considered as both revenue and expenditure of the government**, and are deemed automatically appropriated:
>
> (a) National internal revenue taxes and import duties payable or assumed by departments, bureaus and offices of the National Government, including Constitutional Offices enjoying fiscal autonomy and State Universities and Colleges to the Government arising from foreign donations, grants and loans;
>
> (b) Non-cash tax transactions of the following national government agencies: (i) the BTr for documentary stamp taxes on foreign and domestic securities issued; (ii) the DND and PNP on importations of military hardware, software, munitions, arms and equipment; (iii) **Bureau of Fire Protection <u>on importations</u> of fire fighting equipment, rescue equipment, and personal protective gears**; (iv) the DOTC for the Metro Rail Transit Line 3 System incurred starting FY 1997 in accordance with the provisions of the Build-Lease-Transfer Agreement executed thereon; and (v) other tax obligations assumed by the National Government pursuant to a valid build-operate and transfer agreement and any of its variants; and
>
> (c) Tax expenditure subsidies granted by the Fiscal Incentives Review Board to GOCCs, the AFP Commissary and Exchange Service, the PNP Service Store System, and the Procurement Service Exchange Marts, in accordance with E.O. No. 93, s. 1986, as amended, including those for tax obligations assumed by GOCCs pursuant to a valid agreement." *(Boldfacing supplied)*

It is petitioner's theory that: (i) the **importation of fire trucks by petitioner was made on behalf of BFP and in representation of BFP** which merits entitlement under the Tax Expenditure Subsidy provided in the GAA; (ii) such **importation was tax exempt**, the tax meant for such importation having been appropriated under the national budget; (iii) the **taxes pertaining to the importation** are considered both "revenue and expenditure" of the government, and, as such, the BFP was not correct in retaining final withholding VAT there being appropriation for such purpose in the national budget; (iv) the GAA is a law the provisions of which should be respected and implemented, and a different proposition may result to nonfeasance, or malfeasance; (v) the BFP and the BIR lack any discretion to set aside the pertinent provision of the GAA, and they have to apply the law as it is; and, (vi) there being an express exemption from tax under the law, the withholding by BFP of the FWVAT, and the **<u>subsequent</u>**

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remittance thereof to the BIR, are considered illegal and/or erroneous.[46]

The Court finds petitioner's arguments bereft of merit.

As oft-repeated, the use of BFP funds in the importation of fire trucks does not alter the relationship between petitioner and BFP, as embodied in the Contract Agreement, *supra*. Such Contract Agreement "is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement."[47] Indeed, the terms of aforestated Contract are binding between the parties and constitute the law between them pursuant to Article 1159 of the Civil Code of the Philippines.[48] **Thus, petitioner remains to be a "supplier" of fire trucks while BFP stands as the procuring entity.**

Prescinding therefrom, Section 114 of the NIRC of 1997, as amended, provides:

> "SEC. 114. *Return and Payment of Value-added Tax.* —
>
> (A) In General. — Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: *Provided, however*, That VAT-registered persons shall pay the value-added tax on a monthly basis.
>
> Any person, whose registration has been cancelled in accordance with Section 236, shall file a return and pay the tax due thereon within twenty-five (25) days from the date of cancellation of registration: *Provided*, That only one consolidated return shall be filed by the taxpayer for his principal place of business or head office and all branches.
>
> (B) *Where to File the Return and Pay the Tax.* — Except as the Commissioner otherwise permits, the return shall be filed with and the tax paid to an authorized agent bank, Revenue Collection Officer or duly authorized city or municipal Treasurer in the Philippines located within the revenue district where the taxpayer is registered or required to register.

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[46] Petitioner's Memorandum, CTA Docket, pp. 540-541.
[47] Section 9, Rule 130, Rules of Court.
[48] Article 1159. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.

> (C) ***Withholding of Value-added Tax.* — The Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or -controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods and services which are subject to the value-added tax imposed in Sections 106 and 108 of this Code, deduct and withhold a final value-added tax at the rate of five percent (5%) of the gross payment thereof**: *Provided*, That the payment for lease or use of properties or property rights to nonresident owners shall be subject to ten percent (10%) withholding tax at the time of payment. For purposes of this Section, the payor or person in control of the payment shall be considered as the withholding agent.
>
> The value-added tax withheld under this Section shall be remitted within ten (10) days following the end of the month the withholding was made." *(Boldfacing supplied)*

Relatedly, Section 4.114-2 (a) of Revenue Regulations (RR) No. 16-05, as amended by RR No. 04-07, provides, *viz.:*

> "SEC. 4.114-2. Withholding of VAT on Government Money Payments and Payments to Non-Residents. —
>
> (a) **The government or any of its political subdivisions, instrumentalities or agencies including government-owned or controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods and/or of services taxed at twelve percent (12%) VAT pursuant to Secs. 106 and 108 of the Tax Code, <u>deduct and withhold a final VAT due at the rate of five percent (5%) of the gross payment thereof</u>**.
>
> **The five percent (5%) final VAT withholding rate shall represent the net VAT payable of the seller**. The remaining seven percent (7%) effectively accounts for the standard input VAT for sales of goods or services to government or any of its political subdivisions, instrumentalities or agencies including GOCCs in lieu of the actual input VAT directly attributable or ratably apportioned to such sales. Should actual input VAT attributable to sale to government exceeds seven percent (7%) of gross payments, the excess may form part of the sellers' expense or cost. On the other hand, if actual input VAT attributable to sale to government is less than seven percent (7%) of gross payment, the difference must be closed to expense or cost." *(Boldfacing and underscoring supplied)*

Sales to the government or any of its political subdivisions, instrumentalities or agencies including government-owned or controlled corporations (GOCCs), of goods and/or services are generally subject to the twelve percent (12%) VAT pursuant to Sections 106 and 108 of the NIRC of 1997, as amended, unless the sale transaction is specifically VAT-exempt or VAT zero-rated under the provisions of the NIRC or other special laws.

While government purchases are subject to twelve percent (12%) VAT, the government entity making the purchase is required to deduct and withhold a five percent (5%) final VAT based on its gross payment thereof. The five percent (5%) final VAT represents the net VAT that is payable by the seller of goods or services. The remaining seven percent (7%) would effectively account for the standard input VAT for the sale of goods/services to the government entity, in lieu of the actual input VAT directly attributable or ratably apportioned to such sale. The difference between the seven percent (7%) VAT and the actual input tax incurred may form part of the sellers' expense or cost or will be closed to expense or cost, as the case may be.

In the present case, the fire trucks were procured by BFP from the Joint Venture. **Unless expressly exempted by law**, the Joint Venture's **sale of fire trucks to BFP is subject to twelve percent (12%) VAT** pursuant to Sections 105 and 106 of the NIRC of 1997, as amended. The BFP, as a government agency, is mandated under Section 114(C) of the NIRC of 1997, as amended, and under Section 4.114-2 (a) of RR No. 16-05, as amended, to withhold five percent (5%) final VAT on its payments to the Joint Venture for the aforesaid sale of fire trucks.

Exemptions from VAT are granted by express provisions of the NIRC or under special laws. For instance, the exemption of the Armed Forces of the Philippines (AFP) from VAT on purchases of weapons, equipment and ammunitions is expressly provided under Republic Act (RA) No. 10349. Section 10 of RA No. 10349, amending RA No. 7898, provides:

> "SEC. 10. Insert three (3) sections after Section 16 of the same Act which shall now become the new Sections 17, 18 and 19 respectively, which shall read as:
>
> > 'SEC. 17. Exemption from Value-Added Tax and Customs Duties. — **The sale of weapons, equipment and ammunitions to the AFP**, which are directly and exclusively used for its projects, undertakings, activities and programs under the Revised AFP Modernization Act, **shall be exempt from the value-added tax**; Provided, That the importation of the same by the AFP shall likewise be exempt from the value-added tax and customs duties.'

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xxx xxx xxx" *(Boldfacing supplied)*

Under the aforequoted provision, sale of weapons, equipment and ammunitions to the AFP shall be exempt from VAT, subject to the condition that the same shall be directly and exclusively used for its projects, undertakings, activities and programs under the Revised AFP Modernization Act.

In the present case, petitioner failed to point to any similar or specific provision of law that exempt from twelve percent (12%) VAT the Joint Venture's sale of fire trucks to BFP.

The phrase ***"Except GAA exemption covering taxes and duties on the procurement"*** as stated in Article II-Contract Price of the Contract Agreement, and the very provision of ***Section 15 of the GAA*** relied upon by petitioner, which states that ***"the taxes and duties shall be considered as both revenue and expenditure of the government and are deemed automatically appropriated for non-cash tax transaction of BFP <u>on importation</u>"*** does not directly or indirectly grant exemption from twelve percent (12%) VAT on the Joint Venture's sale and supply of fire trucks to BFP.

Thus, the Court holds that the Joint Venture's sale of fire trucks to BFP is subject to twelve percent (12%) VAT pursuant to Section 106 of the NIRC of 1997, as amended. Needless to say, BFP correctly deducted and withheld the five percent (5%) final VAT based on its gross payments to the Joint Venture. Since the amount of FWVAT, which is subject of the present claim for refund, was not erroneously or illegally withheld by BFP on its payment to the Joint Venture, the same cannot be refunded to petitioner.

Of course, in petitioner's Memorandum,[49] petitioner reiterates that in view of BFP's express exemption under the Tax Expenditure Subsidy provision of the 2014 GAA, BFP's importation of fire trucks should not have been subjected to VAT; thus, **BFP's withholding and remittance of the FWVAT on importation of fire trucks by petitioner, acting in representation of BFP, was erroneous or illegal**.

Petitioner is mistaken.

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[49] CTA Docket, pp. 541.

As aforediscussed, the five percent (5%) FWVAT withheld by BFP does not pertain to the VAT paid on importation. For one, VAT on importation is paid directly to the BOC and is not among the payments subject to five percent (5%) FWVAT. For another, the tenor of petitioner's claim for refund reveals that it involves the five percent (5%) FWVAT withheld by BFP on its money payments to petitioner, not the VAT paid to the BOC.

Even *assuming arguendo* that petitioner is claiming refund of the VAT paid on importation of fire trucks and that even *assuming further* that the Tax Expenditure Subsidy provision of the 2014 GAA grants such exemption to petitioner, as agent of BFP, **there is nothing in the evidence submitted by petitioner which would prove that the VAT paid on importation of fire trucks (on behalf of BFP) amounted to ₱115,056,919.64**. Petitioner did not offer in evidence the supporting Import Entry and Internal Revenue Declarations (IERD) and/or Single Administrative Document (SAD), Statement of Settlement of Duties and Taxes (SSDT) to prove that petitioner paid to BOC, on behalf of BFP, the amount of ₱115,056,919.64, **representing VAT on importation of fire trucks**.

Only the documents substantiating the five percent (5%) FWVAT on BFP's payments to petitioner were offered in evidence by petitioner. Said BFP's money payments to petitioner, whether considered as: (i) payment by BFP to petitioner for acting in its behalf in making the importation of fire trucks, as insisted by petitioner; or, (ii) consideration for the supply and delivery of fire trucks by petitioner to BFP pursuant to the Contract Agreement, as found by the Court, are indeed subject to five percent (5%) FWVAT pursuant to Section 114 (C) of the NIRC of 1997, as amended, as implemented by Section 5.114-2(a) of RR No. 16-05, as amended by RR No. 04-07.

It is worth re-echoing a principle that the right of taxation is inherent in government. The State cannot strip itself of the most essential power of taxation by doubtful words. He who claims an exemption from the common burden must justify his claim by the **clearest grant of organic or state law**. It cannot be allowed to exist upon a vague implication.[50] Since tax refunds are in the nature of tax exemptions, these are deemed to be in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption. No less than the 1987 Constitution

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[50] *Commissioner of Internal Revenue vs. Marubeni Corporation*, G.R. No. 137377, December 18, 2001.

provides for the mechanism for granting tax exemptions. They certainly cannot be granted by implication or mere administrative regulation. **When an exemption is claimed, it must indubitably be shown to exist, for every presumption is against it, and a well-founded doubt is fatal to the claim.**[51]

Indeed, it was incumbent upon petitioner to show clearly the basis for claiming that he is entitled to a tax refund. The Court finds that petitioner miserably failed to do so.

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

I CONCUR:

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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.

ROMAN G. DEL ROSARIO
Presiding Justice

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[51] *Commissioner of Internal Revenue vs. Solidbank Corporation*, G.R. No. 148191, November 25, 2003.