REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CARWORLD, INC., *Petitioner*,	**CTA CASE NO. 9988**
	Members:
- versus -	**DEL ROSARIO**, *P.J.*, Chairperson, **MANAHAN**, and, **REYES-FAJARDO**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: OCT 26 2021 1:00 pm

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DECISION

DEL ROSARIO, P.J.:

Before the Court is the Petition for Review[1] filed by Carworld, Inc. on December 20, 2018 seeking the cancellation and withdrawal of the assessment issued by the Commissioner of Internal Revenue for alleged deficiency Value-Added Tax covering the period from July 1, 2013 to June 30, 2014 in the total amount of ₱27,702,765.35, inclusive of interest.[2]

THE PARTIES

Petitioner Carworld, Inc. is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office at Carworld Building, Gapan-Olongapo Road, Jose Abad Santos Avenue, San Jose, City of San Fernando, Pampanga, and duly registered with the Bureau of Internal Revenue (BIR) under Tax Identification Number 000-266-257-000.[3]

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[1] Docket, Vol. I, pp. 11-335.
[2] Docket, Vol. I, p. 33.
[3] Paragraph II (2), Petition for Review (PFR), Docket, Vol. I, pp. 11-12; Exhibit "P-1", Docket, Vol. III, pp. 1159 and 1164; Exhibit "P-2", Docket, Vol. III, p. 1170.

Respondent Commissioner of Internal Revenue[4] (CIR) is the duly appointed head of the BIR empowered to issue assessments, and cancel and abate tax liabilities pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and other tax laws, rules and regulations.

THE FACTS

For the period from July 1, 2013 to June 30, 2014 (Covered Period), petitioner reported in its quarterly VAT Returns, zero-rated sales totaling ₱162,762,848.73.[5] ₱132,197,577.97 of such zero-rated sales pertain to petitioner's sales to Carworld Subic, Inc. (CSI).[6]

During the Covered Period, CSI is an enterprise registered with Subic Bay Metropolitan Authority (SBMA),[7] with principal office at Lot C-8, Subic Bay Gateway Park, Phase I – Commercial Area, Subic Bay Freeport Zone, Philippines.[8] Its primary purpose is to engage in the importation, sale and distribution of motor vehicles, spare parts, accessories, batteries, tires and other related products, and in the rendition of services including, but not limited to, motor repairs, maintenance, and leasing (except financial leasing), and leasing of commercial spaces.[9]

On November 5, 2014, petitioner received Letter of Authority (LOA) No. eLA201100087123/LOA-124-2014-00000127[10] dated October 24, 2014 from the BIR Large Taxpayers Excise Audit Division 2, authorizing Revenue Officers (ROs) Resurrecion Ang, Teresa Divina Holgado, Criscela Lacsamana, Ali Hassan Jr. Lucman and Group Supervisor (GS) Ma. Luisa Lim to examine its books of accounts and other accounting records for all internal revenue taxes, including Documentary Stamp Tax and other taxes, for the Covered Period.[11]

On June 10, 2016, petitioner, through Alfie M. Adriano, its First Vice President and Chief Financial Officer, executed a Waiver of the Defense of Prescription Under the Statute of Limitations of the National

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[4] The incumbent CIR is Hon. Caesar R. Dulay.
[5] Exhibits "P-16 to 21", Docket, Vol. III, pp. 1380-1479.
[6] *Id.*
[7] Exhibits "P-24" and "P-25", Vol. III, pp. 1508-1509.
[8] Exhibit "P-22", Docket, Vol. III, p. 1483.
[9] Exhibit "P-22", Docket, Vol. III, p. 1482.
[10] Exhibit "P-3", Docket, Vol. III, p. 1171; Exhibit "R-1", BIR Records, p. 5.
[11] Paragraph II(A)(2), Amended Pre-Trial Order (PTO), Docket Vol. IV, p. 1731; Exhibit "P-3", Docket, Vol. III, p. 1171; Exhibit "R-5", BIR Records, not paginated (in between p. 615 and p. 619).

Internal Revenue Code, extending the period to assess and collect the taxes for the Covered Period until December 31, 2017.[12]

On July 3, 2017, petitioner received the Preliminary Assessment Notice (PAN) dated June 27, 2017.[13] On July 18, 2017, petitioner filed its Reply Letter[14] dated July 17, 2017 to the PAN and paid the assessed deficiency income tax, including interest and penalties, in the amount of ₱2,728,614.82.[15]

On October 18, 2017, petitioner received the Formal Letter of Demand (FLD)[16] and Audit Result/Final Assessment Notice Nos. ELTAD-II-VT-13-0059[17] and ELTAD-II-MC-13-0032[18] all dated October 13, 2017, assessing it of deficiency Value-Added Tax (VAT) and administrative penalty.[19]

On November 8, 2017, petitioner filed its Protest Letter[20] dated November 6, 2017 against the FLD.[21] Petitioner submitted additional documents in support of its arguments in the Protest Letter on January 4, 2018.[22]

On March 1, 2018, petitioner received the Final Decision on Disputed Assessment (FDDA) dated February 20, 2018.[23]

On March 22, 2018, petitioner filed with respondent its Request for Reconsideration of the FDDA.[24]

On November 26, 2018, petitioner received respondent's Reply to the Motion for Reconsideration on Final Decision on Disputed Assessment dated November 20, 2018 (Reply)[25] assessing it of deficiency VAT in the total amount of ₱27,702,765.35 and deleting the administrative penalty previously imposed, broken down as follows:

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[12] BIR Records, p. 518.
[13] Paragraph II(A)(3), Amended PTO, Docket, Vol. IV, p. 1731; Exhibit "P-4", Docket, Vol. III, pp. 1173-1179.
[14] Exhibit "P-9", Docket, Vol. III, pp. 1188-1211.
[15] Paragraph 7, PFR, Docket, Vol. I, p. 14; Exhibits "P-5" to "P-8-1", Docket, Vol. III, pp. 1180-1187.
[16] Exhibit "P-10", Docket, Vol. III, pp. 1212-1217; Exhibit "R-7", BIR Records, pp. 673-676.
[17] Exhibit "R-8", BIR Records, p. 672.
[18] Exhibit "R-8-a", BIR Records, p. 671.
[19] Paragraph II(A)(4), Amended PTO, Docket, Vol. IV, p. 1732.
[20] Exhibit "P-11", Docket, Vol. III, pp. 1218-1237.
[21] Paragraph 9, PFR, Docket, Vol. I, p. 15.
[22] Paragraph 10, PFR, Docket, Vol. I, p. 15; Exhibit "P-12", Docket, Vol. III, pp. 1238-1317.
[23] Paragraph II(A)(5), Amended PTO, Docket, Vol. IV, p. 1733; Exhibit "P-13", Docket, Vol. III, pp. 1321-1324; Exhibit "R-10", BIR Records, pp. 829-832.
[24] Paragraph II (A)(12), PFR, Vol. I, 16; Exhibit "P-14", Docket, Vol. III, pp. 1325-1376.
[25] Paragraph II(A)(6), Amended PTO, Docket, Vol. IV, p. 1733; Exhibit "P-15", Docket, Vol. III, pp. 1377-1379; Exhibit "R-12", BIR Records, pp. 949-951.

TAX TYPE	BASIC	INTEREST		TOTAL
VALUE ADDED TAX	15,863,709.43			15,863,709.43
INTEREST		10,900,272.02		10,900,272.02
		938,783.90		938,783.90
TOTAL	15,863,709.43	11,839,055.92	*	27,702,765.35

* July 1, 2014 to December 31, 2017
January 1, 2018 to June 30, 2018

Unsatisfied with respondent's Reply, petitioner filed the instant Petition for Review.

Summonses were served upon respondent on January 18, 2019 and the Office of the Solicitor General on January 24, 2019.[26]

On April 3, 2019, within the extended period,[27] respondent filed his Answer,[28] raising the following special and affirmative defense, *viz.*:

> 1) Petitioner is liable for the payment of deficiency VAT in the amount of ₱27,702,765.35, inclusive of interests and compromise penalty, for the period from July 1, 2013 to June 30, 2014;
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> 2) The source of the entire deficiency VAT assessment is petitioner's sales of vehicles in the total amount of ₱132,197, 577.97 to CSI, an entity registered with the SBMA, which were booked by petitioner as zero-rated sales;
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> 3) In Revenue Memorandum Circular (RMC) No. 50-2007,[29] the BIR clarified the tax treatment of sale of ordinary vehicles made by suppliers from the Customs Territory to registered Freeport Zone enterprises in the Subic Freeport Zone (SFZ), the Clark Freeport Zone, as well as the Poro Point Freeport Zone, and *vice versa*;
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> 4) The enumeration under Q5 of Section 3 of RMC No. 50-2007 contains territorial limitations that are consistent with the cross-border doctrine of the VAT system which was explained in

[26] Docket, Vol. I, pp. 336-337 and 347.
[27] Resolution dated March 12, 2019, Docket, Vol. I, p. 354.
[28] Docket, Vol. I, pp. 355-363.
[29] SUBJECT: Tax Treatment of Sale, Barter or Exchange of Good or Properties or Sale Exchange of Services Made by Suppliers from the Customs Territory of Registered Freeport Zone Enterprises in the Subic Freeport Zone (SFZ), the Clark Freeport Zone (CFZ) , as well as the Poro Point Freeport Zone (PPFZ), and Vice Versa under Sections 12 and 15 of Republic Act No. 7227, as amended by Republic Act No. 9400.

the same RMC citing *Commissioner of Internal Revenue vs. Seagate Technology (Philippines)*[30] and *Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc.*;[31]

5) Although the sale, barter or exchange of goods or properties into a Freeport Zone by suppliers/contractors from the Customs Territory are considered as "export sales" and are subject to zero percent VAT, the above-cited provision clearly provides that sale of ordinary cars, vehicles or automobiles, or specialized vehicles or other transport equipment to a special freeport zone enterprise shall be subject to zero percent VAT only if the said cars, vehicles, or automobiles are to be used exclusively within the subject Special Freeport Zone;

6) Cars, vehicles or automobiles which are not to be used exclusively within the subject Freeport Zone are excluded from the coverage of VAT zero-rating, and thus, subject to VAT at the regular rate of 12%;

7) The sale of said automobiles cannot be considered zero-rated sale as there is no proof that the automobiles sold by petitioner to CSI are being used exclusively within the SFZ;

8) The vehicles sold to CSI are not being used exclusively within SFZ considering that CSI, a dealer of Mitsubishi vehicles like Montero, Pajero, Strada, etc., sells the vehicles to its customers within and outside the SFZ, just like any other dealer of motor vehicles;

9) Sales subject to zero-rating, if any, should be the sales of CSI to qualified customers and not petitioner's sales to CSI;

10) As elaborated in RMC No. 50-2007, under the Cross Border Doctrine, the subject of the sale must be "destined for use or consumption" outside the Customs Territory to be subject to VAT zero-rating. To allow imposition of zero percent VAT on sales of vehicles which are not exclusively used within the subject SFZ would run contrary to the said doctrine as these vehicles may be possibly used in the Customs Territory,

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[30] G.R. No. 153866, February 11, 2005.
[31] G.R. No. 150154, August 9, 2005.

On July 31, 2019, the parties filed their Joint Stipulation of Facts and Issues[38] (JSFI) in compliance with the Court's directive at the Pre-Trial Conference.[39] With the approval of their JSFI, the Pre-Trial was deemed terminated.[40]

On September 3, 2019, petitioner presented its sole witness, Allan S. Laxina,[41] Head of the Corporate Tax Department of LausGroup Holdings, Inc.

On September 19, 2019, Petitioner's Formal Offer of Evidence[42] was filed. All of petitioner's offered exhibits were admitted in evidence in the Resolution dated November 12, 2019.[43]

On September 23, 2019, the Pre-Trial Order[44] was issued. Upon motion of petitioner,[45] an Amended Pre-Trial Order[46] was issued on January 28, 2020.

On September 15, 2020, respondent presented his sole witness RO Criscela Lacsamana.[47] On September 23, 2020, Respondent's Formal Offer of Evidence[48] was filed. All of respondent's offered exhibits were admitted in evidence in the Resolution dated November 6, 2020,[49] which also gave the parties thirty (30) days from notice thereof to file their memoranda.

On December 21, 2020, the parties filed their respective memoranda[50]. Thus, on January 11, 2021, the case was submitted for decision.[51]

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[38] Docket, Vol. II, pp. 1068-1092.
[39] Order dated July 11, 2019, Docket, Vol. II, pp. 1012-1016.
[40] Resolution dated August 14, 2019, Docket, Vol. II, p. 1103.
[41] Exhibit "P-27", Docket, Vol. II, pp. 982-1001; Order dated September 3, 2019, Docket, Vol. II, pp. 1107-1108.
[42] Docket, Vol. III, pp. 1113-1661.
[43] Docket, Vol. IV, pp. 1711-1712.
[44] Docket, Vol. III, pp. 1665-1694.
[45] Motion to Amend Pre-Trial Order, Docket, Vol. IV, pp. 1695-1701.
[46] Docket, Vol. IV, pp. 1730-1759.
[47] Order dated September 15, 2020, Docket, Vol. IV, pp. 1771-1772.
[48] Docket, Vol. IV, pp. 1774-1782.
[49] Docket, Vol. IV, pp. 1791-1792.
[50] Petitioner's Memorandum, Docket, Vol. IV, pp. 1793-1824; Respondent's Memorandum, Docket, Vol. IV, pp. 1825-1838.
[51] Resolution dated January 11, 2021, Docket, Vol. IV, p. 1840.

THE ISSUE

The parties stipulated on the following issue for the Court's resolution:

> "Whether or not petitioner is liable for deficiency VAT and the corresponding administrative penalty for the period covering 1 July 2013 to 30 June 2014 in the amount of Php27,702,765.35, plus interest and surcharges."[52]

THE PARTIES' ARGUMENTS

Petitioner's arguments[53]

Petitioner contends that it is not liable for deficiency VAT and the corresponding administrative penalty on its sales of vehicles to CSI which it treated as zero-rated sales.

Petitioner alleges that as an SBMA-Registered Enterprise, CSI enjoys a tax-free status. Petitioner cites Section 106(A)(2)(b) of the NIRC of 1997, as amended by the Tax Reform for Acceleration and Inclusion (TRAIN Law), implemented by Section 4.106-5 of Revenue Regulations (RR) No. 16-2005, as amended by RR No. 13-2018, which provides that sales to persons or entities whose tax exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects such sales to zero rate.

Petitioner avers that among the entities that are granted exemptions under special laws are SBMA-Registered Enterprises pursuant to Republic Act No. 7227 (RA 7227) otherwise known as the Bases Conversion and Development Act of 1992 (BCDA),[54] which was subsequently amended by Republic Act No. 9400 (RA 9400) (BCDA, as amended).[55] Under Section 12 of the BCDA, as amended, SBMA-Registered Enterprises shall enjoy 5% preferential tax on gross income earned and shall be exempt from both local and national taxes.

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[52] Paragraph II(B), Amended PTO, Docket, Vol. IV, p. 1734.
[53] Petitioner's Memorandum, Docket, Vol. IV, pp. 1806-1820.
[54] AN ACT ACCELERATING THE CONVERSION OF MILITARY RESERVATIONS INTO OTHER PRODUCTIVE USES, CREATING THE BASES CONVERSION AND DEVELOPMENT AUTHORITY FOR THE PURPOSE, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES.
[55] AN ACT AMENDING REPUBLIC ACT NO. 7227, AS AMENDED, OTHERWISE KNOWN AS THE BASES CONVERSION AND DEVELOPMENT ACT OF 1992, AND FOR OTHER PURPOSES.

Petitioner recognizes the issuance of RMC No. 50-2007, which clarifies the tax treatment of sales made by suppliers from the customs territory to registered freeport enterprises in the SFZ, and submits that the contention between the parties on whether its sales of vehicles to CSI qualify as zero-rated sales rests on the interpretation of Section 3, Q&A No. 5 of RMC No. 50-2007.

Nonetheless, it firmly argues that its sales of vehicles to CSI qualify as zero-rated sales considering that CSI is an SBMA-Registered Enterprise located within the SFZ with Certificates of Tax Exemption, which were valid and effective during the Covered Period of the subject assessment. It holds that based on the NIRC of 1997, as amended; the BCDA, as amended; and relevant regulations, the sale of goods, including vehicles to SBMA-Registered Enterprises by VAT-registered enterprises is treated as zero-rated sales without qualification. As such petitioner cannot legally shift the burden of paying VAT to CSI in its sales of vehicles.

Petitioner claims that the subject assessment involves two relevant transactions: first, petitioner's sale of vehicles to CSI, and second, CSI's sale of vehicles to its customers.

On its sale of vehicles to CSI, petitioner contends that it was established that: *i)* CSI is the customer of petitioner; *ii)* CSI is a separate and distinct entity from petitioner; and, *iii)* CSI's principal office is located inside the SFZ.

Petitioner posits that its sale to CSI is entirely separate from CSI's sale to its own customers. CSI is the entity which may have sales within and outside SFZ. Petitioner clarifies that it has no control to whom CSI sells the vehicles, who may use the same within or outside the SFZ.

Distinguishing these two transactions, petitioner contends that its sales are deemed complete upon sale to CSI. As far as petitioner is concerned, the vehicles sold to CSI are used by CSI exclusively within the SFZ as part of its inventories. The subsequent sale of CSI to its customers is an entirely different transaction which may have different tax consequences.

Petitioner elaborates that the entry of goods into the SFZ and the removal of the goods out of the SFZ are two different transactions that should not be considered together as they have different tax implications. The subsequent sale of the vehicles by CSI should not affect the VAT treatment of the sale of the vehicles by petitioner to CSI since the latter involves the entry of goods into the SFZ while the former involves the movement of goods after entry, which may or may not involve the removal of such goods out of the SFZ. Based on jurisprudence and Section 47 of the Rules and Regulations Implementing the BCDA, as amended, it is the exportation/removal of goods from the SFZ to other parts of the Philippine Territory that is subject to taxes.

Petitioner opines that since the consummation of a sale has the effect of a transfer of ownership of and delivery of a determinate thing to a buyer and the point of sale of CSI are, to the best of petitioner's knowledge occurs within the SFZ, the final use of the said vehicles in the form of disposition (or sale) still occurred within the SFZ. Thus, the requirement of RMC No. 50-2007 for a sale of car to be considered VAT zero-rated (*i.e.* that the cars sold to an SBMA-Registered Enterprise must be exclusively used within the Freeport Zone) is satisfied. Further, under Section 106 of the NIRC of 1997, as amended, VAT liability is determined at the point of sale.

Petitioner is adamant that the sale of goods, including cars, to SBMA-Registered Enterprises are treated as zero-rated sales without any qualifications. It maintains that the Special Economic Zone Act of 1995,[56] cited in respondent's Reply, is not applicable in this case since it governs special economic zones in selected areas excluding the SFZ.

To support its position, petitioner invokes *Hon. Executive Secretary, et al. vs. Southwing Heavy Industries, Inc. et al.*,[57] where the Supreme Court held that the SFZ was designed to ensure the free flow or movement of goods within a portion of the Philippine territory in order to attract investors to invest their capital in a business climate, with the least governmental intervention while the minimum interference policy of the government on the Freeport extends to the kind of business that investors may embark on and the articles which they may import or export into and out of the zone. Further, a contrary interpretation would defeat the very purpose of the freeport and drive away investors.

Petitioner is also of the view that Section 3 (o) of the Implementing Rules and Regulations of RA 7227,[58] as amended,

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[56] Republic Act No. 7916.
[57] G.R. Nos. 164171, 164172 and 168741, February 20, 2006.
[58] RULES AND REGULATIONS IMPLEMENTING THE PROVISIONS RELATIVE TO THE SUBIC SPECIAL ECONOMIC AND FREEPORT ZONE AND THE SUBIC BAY METROPOLITAN

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provides a general definition of the term 'articles' while Section 45 thereof, is sweeping in its determination that all articles imported into the freeport zone are exempt from national internal revenue taxes. Thus, according to petitioner, absent any restriction indicating the contrary, the sale of vehicles without any restriction or condition should be deemed included in the term 'articles' which may be imported by the SBMA-Registered Enterprises into the SFZ free of customs and import duties and national internal revenue taxes, including VAT.

In fine, petitioner believes that it is not liable for the deficiency VAT and the corresponding administrative liability.

Respondent's arguments[59]

Respondent submits that the instant petition should be dismissed for lack of basis in fact and in law. He insists that petitioner's sales of vehicles to CSI are subject to 12% VAT. Allegedly, petitioner has no basis in claiming that such sales are subject to VAT zero-rating since petitioner failed to show that the vehicles subject of the sales were used exclusively within the SFZ pursuant to Section 3 of RMC No. 50-2007 and the Cross Border Doctrine. Thus, he insists that he correctly assessed petitioner for deficiency VAT corresponding to its sales of vehicles to CSI.

Respondent claims that petitioner is liable for administrative penalty for its failure to pay the deficiency VAT at the time or times required by law or regulation as provided under Section 255 of the NIRC of 1997, as amended, in accordance with RMO No. 7-2015 and pursuant to *Commissioner of Internal Revenue vs. Filinvest Development Corporation.*[60] Hence, the imposition of administrative penalty in the amount of ₱50,000.00 is justified.

Respondent reminds that tax assessments are presumed valid and petitioner failed to overturn such presumption.

AUTHORITY UNDER REPUBLIC ACT NO. 7227, OTHERWISE KNOWN AS THE "BASES CONVERSION AND DEVELOPMENT ACT OF 1992".
[59] Respondent's Memorandum, Docket, Vol. IV, pp. 1830-1835.
[60] *Supra* note 32.

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THE COURT'S RULING

Timeliness of the Petition for Review

The Court shall first determine the timeliness of the filing of the present Petition for Review.

Section 228 of the NIRC of 1997, as amended, provides the procedure in issuing and protesting an assessment, *viz.*:

> "**SEC. 228.** *Protesting of Assessment.* —
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, **the Commissioner or his duly authorized representative shall issue an assessment based on his findings.**" *(Boldfacing and underscoring supplied)*

RR No. 12-99, as amended, which implements Section 228 of the NIRC of 1997, as amended, details the procedure for protesting and appealing assessments, to wit:

> "3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* — The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; *otherwise, the assessment shall be void* (see illustration in ANNEX "B" hereof).
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> 3.1.4 *Disputed Assessment.* — **The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof.** The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
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> (i) Request for reconsideration — refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.

(ii) Request for reinvestigation — refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.

The taxpayer shall state in his protest (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered *void and without force and effect.*

xxx xxx xxx

For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final. The term "*relevant supporting documents*" refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration. Furthermore, the term "the assessment shall become final" shall mean the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence, and the FDDA shall consequently be denied.

If the taxpayer fails to file a valid protest against the FLD/FAN within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable. No request for reconsideration or reinvestigation shall be granted on tax assessments that have already become final, executory and demandable.

If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may either: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or (ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision. No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.

xxx xxx xxx

If the protest or administrative appeal, as the case may be, is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision. Otherwise, the assessment shall become final, executory and demandable. A motion for

> reconsideration of the Commissioner's denial of the protest or administrative appeal, as the case may be, shall not toll the thirty (30)-day period to appeal to the CTA. xxx" *(Boldfacing supplied)*

Applying the aforequoted regulation, petitioner has thirty (30) days or until November 18, 2017 to file its protest on the FLD having received the same on October 18, 2017; and, sixty (60) days from filing of such protest to submit additional supporting documents, if it is requesting for a reinvestigation. As petitioner was able to timely file its Protest Letter, with request for reinvestigation, on November 8, 2017 and submit its additional supporting documents on January 4, 2018, its Protest Letter against the FLD prevented the assessment from becoming final, executory and demandable.

Petitioner received the FDDA issued by respondent's representative, OIC-Assistant Commissioner Teresita M. Dizon of the Large Taxpayers Service, denying its Protest Letter on March 1, 2018. Under RR No. 12-99, as amended, it has thirty (30) days from receipt thereof or until March 31, 2018 to either file an appeal with the CTA or the CIR. Thus, the filing of petitioner's Request for Reconsideration with respondent on March 22, 2018 is timely.

Its Request for Reconsideration was, however, also denied by respondent in his Reply. Under the regulations, it has thirty (30) days from receipt of the Reply to appeal before the CTA.

Relatedly, Section 3 (a), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), pertinently states in part:

> "SEC. 3. *Who may appeal; period to file petition.* –
>
> (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, xxx may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. xxx"

Petitioner received respondent's Reply dated November 20, 2018, denying its Request for Reconsideration, on November 26, 2018. Pursuant to the afore-quoted Rule, it had until December 26, 2018 within which to file its Petition for Review.

With the filing of the present Petition for Review on December 20, 2018, the Court finds that it was filed within the period prescribed under Section 3 (a), Rule 8 of the RRCTA.

Sales subject to Zero-Rated VAT

The subject deficiency VAT assessment arose from the sales of petitioner to CSI for the Covered Period which it treated as zero-rated sales pursuant to Section 106 (A) (2) (c) of the NIRC of 1997, as amended.[61] Thus, pivotal to the resolution of the issue of whether petitioner is liable to pay the assessed deficiency VAT, is to settle whether the sales of petitioner to CSI qualify as zero-rated sales.

Section 106 of the NIRC of 1997, as amended, imposes VAT on the sale, barter or exchange of goods or properties and enumerates sales by VAT-registered persons, such as petitioner, which are subject to a VAT rate of 0%, *viz.*:

> "SEC. 106. Value-added Tax on Sale of Goods or Properties. —
>
> (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: xxx
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> xxx xxx xxx
>
> (1) **The term 'goods or properties' shall mean all tangible and intangible objects which are capable of pecuniary estimation** and shall include:
>
> xxx xxx xxx
>
> The term 'gross selling price' means the total amount of money or its equivalent which the purchaser pays or is obligated to pay to the seller in consideration of the sale, barter or exchange of the goods or properties, excluding the value-added tax. The excise tax, if any, on such goods or properties shall form part of the gross selling price.
>
> **(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate**:
>
> (a) **Export Sales.** — The term 'export sales' means:

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[61] Now Section 106 (A) (2) (b) of the NIRC of 1997, as amended by the TRAIN Law.

xxx xxx xxx

(b) **Foreign Currency Denominated Sale**. xxx

(c) Sales to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory **effectively subjects such sales to zero rate**. xxx" *(Boldfacing supplied)*

Section 106 of the NIRC of 1997, as amended, is implemented by RR No. 16-2005, as amended by RR No. 4-2007, which provides in part:

"SEC. 4.106-5. Zero Rated Sales of Goods or Properties. - A zero-rated sale of goods or properties (by a VAT-registered person) is a taxable transaction for VAT purposes, but shall not result in any output tax. However, the input tax on purchases of goods, properties or services, related to such zero-rated sale, shall be available as tax credit or refund in accordance with these Regulations.

The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) **Export sales**. — "Export Sales" shall mean:

xxx xxx xxx

(5) Transactions considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws.

"Considered export sales under Executive Order No. 226" shall mean the Philippine port F.O.B. value determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer, or the net selling price of export products sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same; Provided, That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents; Provided, further, **That pursuant to EO 226 and other special laws, even without actual exportation, the following shall be considered constructively exported**: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) sales to export processing zones pursuant to Republic Act (RA) Nos. 7916, as amended, 7903, 7922 and other similar export processing zones; (3) **sale to enterprises duly registered and accredited with the Subic Bay Metropolitan Authority pursuant to RA 7227**; (4) sales to registered export traders operating bonded trading warehouses supplying raw materials in the manufacture of export products under guidelines to be set by the Board in consultation with the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC); (5) sales to

> diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products whether paid for in foreign currency or not.
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> (b) "Foreign Currency Denominated Sale". — xxx
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> (c) "Sales to Persons or Entities Deemed Tax-exempt under Special Law or International Agreement". — **Sales of goods or property to persons or entities who are tax-exempt under special laws** or international agreements to which the Philippines is a signatory, such as, Asian Development Bank (ADB), International Rice Research Institute (IRRI), etc., **shall be effectively subject to VAT at zero-rate**." *(Boldfacing supplied)*

Section 4.106-6 of RR No. 16-2005, as amended, further elucidates what the term "effectively zero-rated sale of goods and properties" means, to wit:

> "SECTION 4.106-6. Meaning of the term 'Effectively Zero-Rated Sale of Goods and Properties'. — The term 'effectively zero-rated sale of goods and properties' shall refer to the local sale of goods and properties by a VAT-registered person to a person or entity who was granted indirect tax exemption under special laws or international agreement."

From the aforequoted law and regulation, generally, sale, barter or exchange of goods or properties shall be subject to 12% VAT unless such sale, barter or exchange of goods or properties is (a) an export sale, (b) a foreign currency denominated sale, or (c) sales to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects such sales to VAT at zero-rate. Also, included in export sales are "constructive exports" or those transactions not involving actual export, such as local sales of goods and properties to persons or entities who are tax-exempt under special laws or international agreement.

VAT-exemption of Freeport Enterprises

RA 7227 created the Subic Special Economic and Freeport Zones, and the SBMA which governs them. RA 7227 was amended by RA 9400, which extended the benefits under RA 7227 to other special economic and freeport zones.

The BCDA, as amended, grants a 5% preferential tax on gross income and exemption from national and local taxes to business enterprises within the SSEZ, to wit:

> "SEC. 12. *Subic Special Economic Zone.* – xxx
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> xxx xxx xxx
>
> (c) **The provision of existing laws, rules and regulations to the contrary notwithstanding, no national and local taxes shall be imposed within the Subic Special Economic Zone. In lieu of said taxes, a five percent (5%) tax on gross income earned shall be paid by all business enterprises within the Subic Special Economic Zone** and shall be remitted as follows: three percent (3%) to the National Government, and two (2%) percent to the Subic Bay Metropolitan Authority (SBMA) for distribution to the local government units affected by the declaration of and contiguous to the zone, namely: the City of Olongapo and the municipalities of Subic, San Antonio, San Marcelino and Castillejos of the Province of Zambales; and the municipalities of Morong, Hermosa and Dinalupihan of the Province of Bataan, on the basis of population (50%), land area (25%), and equal sharing (25%). xxx" *(Boldfacing supplied)*

DOF Department Order No. 003-08[62] issued by the Department of Finance, implementing RA 9400, provides:

> "SECTION 4. *Tax Incentives in Ecozones and Freeport Zones.* — Ecozone and Freeport Enterprises shall be entitled to the following tax incentives:
>
> a. Subic Special Economic Zone — Ecozone Enterprises in the SSEZ shall be entitled to the 5% special tax on Gross Income Earned, in lieu of national and local taxes.
>
> **b. Subic Freeport Zone — Freeport Enterprises in the SFZ shall be entitled to: (i) the freeport status of the zone; and (ii) the 5% special tax on Gross Income Earned, in lieu of national and local taxes.**" *(Boldfacing supplied)*

In *Secretary of Finance Cesar B. Purisima and Commissioner of Internal Revenue Kim S. Jacinto-Henares vs. Representative Carmelo F. Lazatin and Ecozone Plastic Enterprises Corporation*,[63] the Supreme Court confirmed that the tax exemption granted under the BCDA, as amended, includes exemption from VAT and that Freeport and Economic Zone (FEZ) enterprises are VAT-exempt entities, *viz.*:

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[62] Rules and Regulations to Implement Republic Act No. 9400, "An Act Amending Republic Act No. 7227, Otherwise Known as the Bases Conversion and Development Act of 1992, and for Other Purposes."
[63] G.R. No. 210588, November 29, 2016.

"RA 9400 and its Implementing Rules grant the following:

First, the law provides that importations of raw materials and capital equipment into the FEZs shall be tax- and duty-free. It is the specific transaction (i.e., importation) that is exempt from taxes and duties.

Second, the law also grants FEZ enterprises tax- and duty-free importation and a preferential rate in the payment of income tax, in lieu of all national and local taxes. **These incentives exempt the establishment itself from taxation.**

Thus, the Legislature intended FEZs to enjoy tax incentives in general — whether with respect to the transactions that take place within its special jurisdiction, or the persons/establishments within the jurisdiction. From this perspective, the tax incentives enjoyed by FEZ enterprises must be understood to necessarily include the tax exemption of importations of selected articles into the FEZ.

We have ruled in the past that FEZ enterprises' tax exemptions must be interpreted within the context and in a manner that promotes the legislative intent of RA 7227 and, by extension, RA 9400. Thus, we recognized that **FEZ enterprises are exempt from both direct and indirect internal revenue taxes. In particular, they are considered VAT-exempt entities.**

In line with this comprehensive interpretation, we rule that **the tax exemption enjoyed by FEZ enterprises covers internal revenue taxes imposed on goods brought into the FEZ**, including the Clark FEZ, **such as VAT** and excise tax." *(Boldfacing supplied)*

Gleaned from the aforecited case is that the tax- and duty-free privilege under the BCDA, as amended, applies in general to FEZ whether with respect to the transactions that take place within its special jurisdiction, or the persons/establishments within the jurisdiction. Consequently, VAT may not be imposed on the transaction or passed on to Freeport Enterprises, such as CSI.

CSI as a Freeport Enterprise is a VAT-exempt entity

In the case at bar, CSI, being a Freeport Enterprise registered with the SBMA during the Covered Period, is exempt from VAT pursuant to Section 12 (c) of the BCDA, as amended.

To prove that CSI is a Freeport Enterprise entitled to the tax incentives under the BCDA, as amended, petitioner presented CSI's

Certificates of Tax Exemption[64] issued by the SBMA for the period from February 7, 2013 to February 6, 2014 and from February 7, 2014 to February 6, 2015 and CSI's Certificate of Incorporation.[65]

While respondent did not present evidence to controvert these pieces of evidence, the Court finds the same sufficient to prove that CSI, during the Covered Period, is a Freeport Enterprise registered with the SBMA fully entitled to the tax privileges under the BCDA, as amended.

Consequently, petitioner cannot pass VAT to CSI consistent with the settled rule that Freeport Enterprises are VAT-exempt entities.[66] Hence, petitioner's treatment of its sales to CSI as zero-rated sales is proper.

Respondent, however, qualifies CSI's VAT exemption by limiting the goods or properties subject of the transaction to which VAT zero-rating may be applied by requiring that the vehicles procured from petitioner are used exclusively within the SFZ.

In the PAN,[67] FLD,[68] FDDA,[69] and Reply[70], respondent cited RMC No. 25-99[71] in justifying the exclusion of petitioner's sale of vehicles to CSI from the application of VAT zero-rating; and RMC No. 50-2007 in requiring that the vehicles are used exclusively within the SFZ.

RMC No. 25-99 provides that exemptions from the imposition of VAT in the Economic Zones are being allowed only with respect to importation of specialized vehicles and other transportation equipment that are directly related to the registered activity, *viz.*:

> "The definition of what comprises merchandise or goods is found under Section 2(ii) of R.A. 7916, as follows:
>
> 'ii. 'Merchandise or Goods' shall collectively refer to raw materials, supplies, equipment, machineries, spare parts, packaging materials or wares of every description *to be used*

[64] Exhibits "P-24" and "P-25", Docket, Vol. III, pp. 1508-1509.
[65] Exhibit "P-22", Docket, Vol. III, p. 1480.
[66] *Supra* note 63.
[67] Exhibit "P-4", Docket, Vol. III, p. 1177.
[68] Exhibit "P-10", Docket, Vol. III, p. 1214.
[69] Exhibit "P-13", Docket, Vol. III, p. 1321.
[70] Exhibit "P-15", Docket, Vol. III, p. 1377.
[71] SUBJECT: Disseminating the Ruling of the Commissioner of Internal Revenue on the Non-eligibility for VAT Zero-Rating of Automobile Sales to Entities Registered with PEZA, SBMA and Clark Development Authority dated March 18, 1999.

> *in connection with the registered activity of an ECOZONE enterprise.*

The use of the phrase "to be used in connection with the registered activity of an ECOZONE enterprise" in describing what comprises merchandise or goods imparts the presumption that the same are somehow utilized in the production activity of an ECOZONE enterprise. This is confirmed by referring to the Rules and Regulations to Implement R.A. 7916. Rule XV thereof which deals with the incentives granted to ECOZONE export and free-trade enterprises, provides, thus:

> 'SECTION 1. *Exemption from Duties and Taxes on Merchandise.* — Merchandise, raw materials, supplies, articles, equipment, machineries, spare parts and wares of every description brought into the ECOZONE Restricted Area by an ECOZONE Export or Free Trade Enterprise *to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded or otherwise processed, manipulated, manufactured, mixed with foreign or domestic merchandise* whether directly or indirectly related in such activity, shall not be subject to customs and internal revenue laws and regulations of the Philippines nor to local tax ordinances. . . .'

Applying the foregoing provisions, **it would now appear that cars or automobiles could not be possibly embraced within the classification of goods or merchandise entitled to the benefit of tax exemption.**

On the other hand, **we find specific reference to the kind of vehicles which may be extended such tax exemption privilege and this can be likewise found in the same Rule XV of the Rules and Regulations to Implement R.A. 7916** in this wise:

> 'D. *Importation of Specialized Vehicles and Other Transportation Equipment* — Specialized vehicles and other specialized transportation equipment, including necessary spare part, directly related to the registered activity of the ECOZONE Export or Free Trade Enterprise, may be imported exempt from customs duties and taxes only upon prior approval of the Board and with proper clearance from the appropriate government agency(ies). ***Otherwise, ordinary vehicles and other transportation equipment, including necessary spare parts, whenever applicable shall be procured locally.***'

The plain meaning and significance of the above provision need no further construction in arriving at the obvious conclusion that **1) only specialized vehicles may be allowed to be imported free from duties and taxes; and that 2) ordinary commercial vehicles shall be purchased locally which necessarily includes all component duties and taxes.** In this regard, we agree to the observation taken by Mrs. Elvira R. Vera, former Chief of the Regulatory Operations Monitoring Division, in her memorandum

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dated August 3, 1998, as concurred by the present ROMD Chief, Director Enrique Ramos, that:

> 'Pursuant to the Rules XV, Section 1(D) of the Rules and Regulations issued by PEZA to implement the Special Economic Zone Act of 1995 (RA No. 7916), **exemptions from the imposition of value-added tax are being allowed only with respect to importation of specialized vehicles and other transportation equipment that are directly related to the registered activity**. For example, a registered construction firm may import specialized vehicles such as pay loaders, graders, etc. without the payment of the value-added tax. **However, exemption does not extend to importation of service vehicles since the same are not directly related to its registered activity as a construction contractor**. As a matter of policy, PEZA is not giving tax incentives for the procurement of vehicles or transportation equipment that are not directly connected with the firms' registered activities in view of the absence of an effective monitoring system to determine whether these vehicles are indeed being utilized by registered enterprises in the conduct of their registered activities. It appears, therefore, that with the issuance of the aforementioned ruling, the BIR is more liberal in the grant of tax incentives to locators inside the PEZA zone.'

In view hereof, the Regulatory Operations Monitoring Division is hereby directed to deny all applications for effective zero-rating of the sales of automobiles to enterprises registered with PEZA, SBMA and CDA and other ECOZONES now or hereinafter established pursuant to RA Nos. 7227 and 7916. All BIR rulings and issuances inconsistent with this directive are hereby revoked, superseded or modified accordingly, subject to the non-retroactivity provision of Section 246 of the Tax Code 1997." *(Boldfacing supplied)*

RMC No. 50-2007, on the other hand, provides that the sale/supply of ordinary cars, vehicles, automobiles, specialized vehicles or other transportation equipment are covered by zero-rating, provided that these are used exclusively within the subject special Freeport Zones, *viz.*:

"SECTION 3. Clarificatory Questions and Answers. –

xxx xxx xxx

Q5: What is the coverage of VAT zero-rating?

A5: The zero-rating will cover sale, barter or exchange or lease of all goods, properties and/or services by a VAT-registered seller/contractor from the Customs Territory to a Freeport Zone-registered enterprise and shall include, among others, the following:

> a. The sale/supply of ordinary cars, vehicles, automobiles, specialized vehicles or other transportation equipment, **provided that these are used exclusively within the subject special Freeport Zones**; xxx" *(Boldfacing supplied)*

RMC No. 25-99 being an earlier issuance is apparently superseded by RMC No. 50-2007 in so far as it clarifies that the coverage of VAT-zero rating includes sales of a VAT-registered seller/contractor from the Customs Territory to a Freeport Zone-registered enterprise of ordinary vehicles albeit it requires that vehicles are used within the Freeport Zone.

Both the NIRC of 1997, as amended, and BCDA, as amended, however, do not limit the "goods or properties" subject of VAT-zero rating or require that the "goods or properties" be used exclusively within the Freeport Zone.

Section 106 of the NIRC of 1997, as amended, categorically states that "the term 'goods or properties' shall mean all tangible and intangible objects which are capable of pecuniary estimation." Further, the provisions of the implementing rules of RA 7227, provides that in general, anything may be made the subject of importation into or exportation from the SFZ except those articles prohibited by the SBMA and those absolutely prohibited by law, *viz.*:

> "SECTION 3. *Definitions.* — For purposes of these Rules, these terms shall be understood to have the following meanings:
>
> xxx xxx xxx
>
> (o) *Articles* — for purposes of these Rules, and when used with reference to importations or exportations, the term includes raw materials, supplies, equipment, machinery, packaging materials, goods, wares, merchandise and in general, **anything that may, under the Rules of the SBMA, be made the subject of importation into or exportation from the Zone**.
>
> xxx xxx xxx
>
> SECTION 45. *Importation of Articles.* — In general, **all articles** may be imported by SBF Enterprises into the SBF **free of customs and import duties and national internal revenue taxes**, except those articles prohibited by the SBMA and those absolutely prohibited by law." (*Boldfacing supplied*)

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Moreover, the discussion in *Coconut Oil Refiners Association, Inc., et al. vs. Hon. Executive Secretary Ruben Torres, et al.,*[72] enlightens that Section 12 of RA 7227 does not restrict the duty-free importation only to a certain kind of goods and properties, *viz.:*

> "Anent the first alleged limitation, petitioners contend that the wording of Republic Act No. 7227 clearly limits the grant of tax incentives to the importation of raw materials, capital and equipment only. Hence, they claim that the assailed issuances constitute executive legislation for invalidly granting tax incentives in the importation of consumer goods such as those being sold in the duty-free shops, in violation of the letter and intent of Republic Act No. 7227.
>
> **A careful reading of Section 12 of Republic Act No. 7227, which pertains to the SSEZ, would show that it does not restrict the duty-free importation only to "raw materials, capital and equipment."** Section 12 of the cited law is partly reproduced, as follows:
>
> > SECTION 12. *Subic Special Economic Zone.* —
> >
> > . . .
> >
> > The abovementioned zone shall be subject to the following policies:
> >
> > . . .
> >
> > (b) The Subic Special Economic Zone shall be operated and managed as a separate customs territory ensuring free flow or movement of goods and capital within, into and exported out of the Subic Special Economic Zone, as well as provide incentives such as tax and duty-free importations of raw materials, capital and equipment. However, exportation or removal of goods from the territory of the Subic Special Economic Zone to the other parts of the Philippine territory shall be subject to customs duties and taxes under the Customs and Tariff Code and other relevant tax laws of the Philippines.
>
> **While it is true that Section 12 (b) of Republic Act No. 7227 mentions only raw materials, capital and equipment, this does not necessarily mean that the tax and duty-free buying privilege is limited to these types of articles to the exclusion of consumer goods. It must be remembered that in construing statutes, the proper course is to start out and follow the true intent of the Legislature and to adopt that sense which harmonizes best with the context and promotes in the fullest manner the policy and objects of the Legislature.**
>
> In the present case, there appears to be no logic in following the narrow interpretation petitioners urge. **To limit the tax-free importation privilege of enterprises located inside the special**

[72] G.R. No. 132527, July 29, 2005.

> **economic zone only to raw materials, capital and equipment clearly runs counter to the intention of the Legislature to create a free port where the "free flow of *goods* or capital within, into, and out of the zones" is insured.**
>
> The phrase "tax and duty-free importations of raw materials, capital and equipment" was merely cited as an example of incentives that may be given to entities operating within the zone. Public respondent SBMA correctly argued that the maxim *expressio unius est exclusio alterius*, on which petitioners impliedly rely to support their restrictive interpretation, does not apply when words are mentioned by way of example. It is obvious from the wording of Republic Act No. 7227, particularly the use of the phrase "such as," that the enumeration only meant to illustrate incentives that the SSEZ is authorized to grant, in line with its being a free port zone.
>
> Furthermore, said legal maxim should be applied only as a means of discovering legislative intent which is not otherwise manifest, and should not be permitted to defeat the plainly indicated purpose of the Legislature." *(Citations omitted; boldfacing supplied)*

It goes without saying, however, that the right of investors in the SSEZ to import goods and articles is not absolute but subject to the limitation that goods or articles which are absolutely prohibited by law cannot be allowed entry into the SSEZ.[73]

Respondent's insistence that the vehicles procured by CSI must be used exclusively within the SFZ fails to consider that CSI's VAT-exemption is by virtue of its status as a VAT-exempt entity under the BCDA, as amended, a special law. Certainly, a tax exemption granted by law may not be modified by a mere administrative issuance.

Notably, both the aforequoted Section 106 (A) (2) (c) of the NIRC of 1997, as amended, and Section 12 of the BCDA, as amended, do not impose such conditions in order for the sales of VAT-registered entities from the Customs Territory, such as petitioner, to Freeport Enterprises, like CSI, to be subject to VAT at zero percent rate. *Ubi lex non distinguit nec nos distinguere debemus.* Basic is the rule in statutory construction that where the law does not distinguish, the courts should not distinguish.[74] Where the law is free from ambiguity, the court may not introduce exceptions or conditions where none is provided from considerations of convenience, public welfare, or for any laudable purpose; neither may it engraft into the law qualifications not contemplated.[75]

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[73] *Amira C Foods International DMCC vs. Republic*, CTA Case No. 8557, July 18, 2019.
[74] *La Suerte Cigar and Cigarette Factory vs. Court of Tax Appeals*, G.R. No. L-36130, January 17, 1985.
[75] *Rey Nathaniel C. Ifurung vs. Hon. Conchita C. Carpio Morales in her capacity as the Ombudsman, et al.*, G.R. No. 232131, April 24, 2018.

A Revenue Memorandum Circular is an administrative ruling issued by the CIR to interpret tax laws. While it is widely accepted that an interpretation by the executive officers whose duty is to enforce the law is entitled to great respect from the courts, their interpretation is not conclusive and will be disregarded if judicially found to be incorrect.[76] Courts will not countenance administrative issuances that override, instead of remaining consistent and in harmony with the law they seek to apply and implement.[77] Administrators and implementors cannot engraft additional requirements not contemplated by the legislature.[78] In case of discrepancy between the basic law and an implementing rule or regulation, the former prevails.[79]

Thus, the Court cannot sustain respondent's requirement that sold "ordinary cars, vehicles, automobiles, specialized vehicles or other transportation equipment" to Freeport Enterprises by VAT-registered sellers from the Customs Territory "be used exclusively within the subject special Freeport Zones" before petitioner's sales to CSI can be treated as zero-rated sales.

As Answer A5 (a) of Section 3 on Clarificatory Questions and Answers of RMO No. 50-2007, an administrative issuance, attempts to qualify the VAT-exempt status of Freeport Enterprises clearly accorded by the Legislature, respondent has arrogated upon himself a power reserved exclusively to Congress, in violation of the doctrine of separation of powers. It must, therefore, be struck down.

At any rate, the Court finds that petitioner has shown that CSI has complied with RMC No. 50-2007, *i.e.*, CSI has used the vehicles exclusively within the SFZ.

It is undisputed that CSI is a Freeport Enterprise, engaged in the business of selling vehicles and conducts its business within the SFZ during the Covered Period. As a seller of vehicles, CSI's inventories are vehicles.

Upon the consummation of the contract of sale between petitioner and CSI, the ownership of the vehicles passes on to CSI and

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[76] *Mitsubishi Corporation – Manila Branch vs. Commissioner of Internal Revenue*, G.R. No. 175772, June 5, 2017.
[77] *In the Matter of Declaratory Relief on the Validity of BIR Revenue Memorandum Circular No. 65-2012, "Clarifying the Taxability of Association Dues, Membership Fees and Other Assessments/Charges Collected by Condominium Corporations,"* G.R. No. 215801, January 15, 2020.
[78] *Supra* note 63.
[79] *Philippine Petroleum Corporation, vs. Municipality of Pililla, Rizal, represented by Mayor Nicomedes F. Patenia,* G.R. No. 90776, June 3, 1991.

forms part of its inventories. CSI's subsequent sale of the vehicles to its clients who may or may not bring the vehicles outside of the SFZ should not affect the tax treatment of the sale of vehicles by petitioner to CSI, in as much as petitioner is not a party to the transaction between CSI and its clients.

In our jurisdiction, tax exemptions are granted for specific public interests that the Legislature considers sufficient to offset the monetary loss in the grant of exemptions. To qualify the VAT exempt status of FEZ enterprises by imposing conditions before transactions with them are treated as zero-rated sales is contrary to the Legislature's intent to create a freeport where the "free flow of goods or capital within, into, and out of the zones" is ensured.[80]

Sales to CSI is a VAT-exempt transaction

It cannot be over-emphasized that the sales of petitioner to CSI is subject to zero-rated VAT as the transaction between them is in the nature of a "constructive export".

Section 12 (b) of the BCDA, as amended, provides that the SSEZ shall be operated and managed as a separate customs territory. *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue*,[81] lengthily discussed the concept of a "separate customs territory", *viz.*:

> "**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, **<u>which would necessarily be located within ECOZONES</u>, 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,

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[80] *Supra* note 54.
[81] G.R. No. 190506, June 13, 2016.

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> rather, **because of Section 8 of the same statute which establishes the fiction that ECOZONES are foreign territory**.
>
> **<u>It is important to note herein that respondent Toshiba is located within an ECOZONE.</u>** An ECOZONE or a Special Economic Zone has been described as —
>
> . . . [S]elected areas with highly developed or which have the 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 ECOZONE 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; **<u>thus, creating the fiction that the ECOZONE is a foreign territory</u>. As a result, sales made by a supplier in the Customs Territory <u>to a purchaser in the ECOZONE</u> 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." *(Boldfacing and underscoring supplied)*

While *Hon. Executive Secretary, et al. vs. Southwing Heavy Industries, Inc. et al.*[82] elucidated on the nature of a freeport under R.A. No. 7227, as a separate customs territory, *viz:*

> "RA 7227 was enacted providing for, among other things, the sound and balanced conversion of the Clark and Subic military reservations and their extensions into alternative productive uses in the form of Special Economic and Freeport Zone, or the Subic Bay Freeport, in order to promote the economic and social development of Central Luzon in particular and the country in general.
>
> The Rules and Regulations Implementing RA 7227 specifically defines the territory comprising the Subic Bay Freeport, referred to as the Special Economic and Freeport Zone in Section 12 of RA 7227 as 'a separate customs territory consisting of the City of Olongapo and the Municipality of Subic, Province of Zambales, the lands occupied by the Subic Naval Base and its contiguous extensions as embraced, covered and defined by the 1947 Philippine-U.S. Military Base Agreement as amended and within the

[82] *Supra* note 57.

territorial jurisdiction of Morong and Hermosa, Province of Bataan, the metes and bounds of which shall be delineated by the President of the Philippines; provided further that pending establishment of secure perimeters around the entire SBF, the SBF shall refer to the area demarcated by the SBMA pursuant to Section 13 hereof.

xxx xxx xxx

The Freeport was designed to ensure free flow or movement of goods and capital within a portion of the Philippine territory in order to attract investors to invest their capital in a business climate with the least governmental intervention. The concept of this zone was explained by Senator Guingona in this wise:

> Senator Guingona. Mr. President, the special economic zone is successful in many places, particularly Hong Kong, which is a free port. The difference between a special economic zone and an industrial estate is simply expansive in the sense that the commercial activities, including the establishment of banks, services, financial institutions, agro-industrial activities, maybe agriculture to a certain extent.
>
> **This delineates the activities that would have the least of government intervention, and the running of the affairs of the special economic zone would be run principally by the investors themselves, similar to a housing subdivision, where the subdivision owners elect their representatives to run the affairs of the subdivision, to set the policies, to set the guidelines.**
>
> **We would like to see Subic area converted into a little Hong Kong, Mr. President, where there is a hub of free port and free entry, free duties and activities to a maximum spur generation of investment and jobs.**
>
> While the investor is reluctant to come in the Philippines, as a rule, because of red tape and perceived delays, we envision this special economic zone to be an area where there will be minimum government interference.
>
> The initial outlay may not only come from the Government or the Authority as envisioned here, but from them themselves, because they would be encouraged to invest not only for the land but also for the buildings and factories. As long as they are convinced that in such an area they can do business and reap reasonable profits, then many from other parts, both local and foreign, would invest, Mr. President.

With minimum interference from the government, investors can, in general, engage in any kind of business as well as import and export any article into and out of the Freeport. These are among the rights accorded to Subic Bay Freeport Enterprises under Section 39 of the Rules and Regulations Implementing RA 7227, thus –

> SEC. 39. Rights and Obligations.- SBF Enterprises shall have the following rights and obligations:
>
> a. To freely engage in any business, trade, manufacturing, financial or service activity, and to import and export freely all types of goods into and out of the SBF, subject to the provisions of the Act, these Rules and other regulations that may be promulgated by the SBMA;
>
> Citing, *inter alia*, the interpellations of Senator Enrile, petitioners claim that the "free flow or movement of goods and capital" only means that goods and material brought within the Freeport shall not be subject to customs duties and other taxes and should not be construed as an open floodgate for entry of all kinds of goods. They thus surmise that the importation ban on motor vehicles is applicable within the Freeport. Pertinent interpellations of Senator Enrile on the concept of Freeport is as follows:
>
> Senator Enrile: Mr. President, I think we are talking here of sovereign concepts, not territorial concepts. The concept that we are supposed to craft here is to carve out a portion of our terrestrial domain as well as our adjacent waters and say to the world: "Well, you can set up your factories in this area that we are circumscribing, and bringing your equipment and bringing your goods, **you are not subject to any taxes and duties because you are not within the customs jurisdiction of the Republic of the Philippines**, whether you store the goods or only for purposes of transshipment or whether you make them into finished products again to be reexported to other lands."
>
> xxxx
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> We do not really care whether these goods are stored here. The only thing that we care is for our people to have an employment because of the entry of these goods that are being discharged, warehoused and reloaded into the ships so that they can be exported. That will generate employment for us. For as long as that is done, we are saying, in effect, that we have the least contact with our tariff and customs laws and our tax laws. Therefore, we consider these goods as outside of the customs jurisdiction of the Republic of the Philippines as yet, until we draw them from this territory and bring them inside our domestic commerce. In which case, they have to pass through our customs gate. I thought we are carving out this entire area and convert it into this kind of concept.
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> **However, contrary to the claim of petitioners, there is nothing in the foregoing excerpts which absolutely limits the incentive to Freeport investors only to exemption from customs duties and taxes. Mindful of the legislative intent to attract investors, enhance investment and boost the economy, the legislature could not have limited the enticement only to**

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> **exemption from taxes. The minimum interference policy of the government on the Freeport extends to the kind of business that investors may embark on and the articles which they may import or export into and out of the zone. A contrary interpretation would defeat the very purpose of the Freeport and drive away investors.**
>
> **It does not mean, however, that the right of Freeport enterprises to import all types of goods and article is absolute. Such right is of course subject to the limitation that articles absolutely prohibited by law cannot be imported into the Freeport.** Nevertheless, in determining whether the prohibition would apply to the Freeport, resort to the purpose of the prohibition is necessary." *(Boldfacing supplied)*

Indubitably, by legislative fiat, the SSEZ shall be regarded as a separate customs territory. In other words, while the SSEZ is geographically located within the Philippines, it is deemed as a separate customs territory and regarded in law as a foreign soil. As a foreign territory, importations into SSEZ are exempted from customs duties and taxes and the government shall have, to a certain extent, minimum interference not only to the business that investors may engage in, but also to the articles that they import into and out of the zone.[83]

Petitioner and CSI are two separate and distinct juridical entities

Respondent's assertion that the sales subject to zero-rating, if any, should be the sales of CSI to qualified customers and not petitioner's sales to CSI, is irrelevant. It must be stressed that the subject of the case is the assessment against petitioner's sales of vehicles to CSI.

The sales transactions between petitioner and CSI and between CSI and its clients must be treated as two different transactions. As rightly pointed out by petitioner, petitioner's sales of vehicles to CSI concerns the entry of goods into the Freeport Zone which is exempt from tax, while the sales of vehicles of CSI to its clients may or may not entail the movement of goods from the Freeport Zone to the Customs Territory which may have different tax consequences.

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[83] *Supra* note *73.*

The fact that petitioner and CSI have common stockholders[84] is immaterial in determining the tax liability of petitioner. It must be emphasized that petitioner and CSI are two separate and distinct juridical entities and payment of taxes is the personal obligation of the taxpayer. Consequently, the tax liabilities of CSI, as a corporate taxpayer, if any, cannot be imposed on its stockholders for this will violate the separate corporate personality rule. [85]

A corporation, upon coming into existence, is invested by law with a personality separate and distinct from those of the persons composing it as well as from any other legal entity to which it may be related.[86]

The party alleging that the corporate veil must be pierced has the burden of presenting clear and convincing evidence to justify the setting aside of the separate corporate personality rule.[87] The mere fact that a corporation owns all of the stocks of another corporation, taken alone is not sufficient to justify their being treated as one entity. If used to performed legitimate functions, a subsidiary's separate existence shall be respected, and the liability of the parent corporation as well as the subsidiary will be confined to those arising in their respective businesses.[88]

Here, other than the fact that petitioner and CSI have common stockholders, records are bereft of proof to justify the setting aside of the separate corporate personality rule.

The imposition of administrative penalty or compromise penalty is unwarranted

As previously mentioned, in the Reply, respondent already deleted the imposition of administrative penalty or compromise penalty. Despite such deletion, respondent now claims that such imposition is justified.

[84] TSN of the September 3, 2019 Hearing, pp. 20-21; Q3, Exhibit "P-27", Docket, Vol. II, pp. 982-983.
[85] *Proton Pilipinas Corp. vs. Republic*, G.R. No. 165027, October 16, 2006.
[86] *Commissioner of Customs vs. Oilink International Corporation*, G.R. No. 161759, July 2, 2014.
[87] *Philippine National Bank and National Sugar Development Corporation vs. Andrada Electric and Engineering Company*, G.R. No. 142936, April 17, 2002.
[88] *MR Holdings, ltd., vs. Sheriff Carlos P. Bajar, et al.*, G.R. No.138104, April 11, 2002.

Respondent's reliance in *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[89] to support the imposition of compromise penalties against petitioner is misplaced. In *Filinvest*, the Supreme Court affirmed the imposition of compromise penalties upon a contrary finding that the taxpayer is liable for deficiency documentary stamp taxes (DST) due on the instructional letters as well as the journal and cash vouchers evidencing the advances the taxpayer extended to its affiliates in 1996 and 1997. Since the taxpayer was found liable for DST, it had the concomitant duty to file the necessary information or return, statement or list, or keep any record or supply any information required, relative to its DST liability. Said the Supreme Court:

> " xxx The imposition of the compromise penalty is, in turn, warranted under Sec. 250 of the NIRC which prescribes the imposition thereof "in case of each failure to file an information or return, statement or list, or keep any record or supply any information required" on the date prescribed therefor."

In this case, there is no such finding of failure "to file an information or return, statement or list, or keep any record or supply any information required" on the part of petitioner in as much as it was decreed that petitioner is not liable to pay deficiency VAT since it correctly treated its sales to CSI as zero-rate sales. Therefore, the imposition of compromise penalty cannot be anchored on Section 250 of the NIRC of 1997, as amended. Further, Paragraph III (5) of RMO No. 7-2015, the basis of respondent's imposition of compromise penalty, categorically states that since compromise penalties are only amounts suggested in settlement of criminal liability, it may not be imposed or exacted on the taxpayer, instead the taxpayer's violation shall be referred for criminal action in case of refusal to pay the same, *viz.*:

> "III. Guidelines and Instructions
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> xxx xxx xxx
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> 5. Since compromise penalties are only amounts suggested in settlement of criminal liability, and may not therefore be imposed or exacted on the taxpayer, the violation shall be referred to the appropriate office for criminal action in the event that a taxpayer refuses to pay the suggested compromise penalty."

All told, the subject assessment for deficiency VAT and administrative penalty has no legal mooring to stand on.

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[89] *Supra* note 32.

WHEREFORE, premises considered, petitioner Carworld, Inc.'s Petition for Review filed on December 20, 2018 is hereby **GRANTED.** Accordingly, the Formal Letter of Demand and Audit Result/Final Assessment Notice Nos. ELTAD-II-MC-13-0032 and ELTAD-II-VT-13-0059 all dated October 13, 2017 are hereby **CANCELLED AND WITHDRAWN**. The Final Decision on Disputed Assessment dated February 20, 2018 and Reply to the Motion for Reconsideration on Final Decision on Disputed Assessment dated November 20, 2018 are **SET ASIDE**.

Respondent Commissioner of Internal Revenue, his representatives, agents or any person acting on his behalf are hereby **ENJOINED** from enforcing collection and/or taking any further action against petitioner Carworld, Inc. arising from the Formal Letter of Demand and Audit Result/Final Assessment Notice Nos. ELTAD-II-MC-13-0032 and ELTAD-II-VT-13-0059 all dated October 13, 2017, Final Decision on Disputed Assessment dated February 20, 2018 and Reply to the Motion for Reconsideration on Final Decision on Disputed Assessment dated November 20, 2018. This order of suspension is **IMMEDIATELY EXECUTORY** consistent with Section 4, Rule 39 of the Rules of Court.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

CATHERINE T. MANAHAN Associate Justice	**MARIAN IVY F. REYES-FAJARDO** 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