REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

CLARK WATER CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9286

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:

AUG 08 2018 4:00 pm

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RESOLUTION

CASANOVA, *J.*:

For resolution is respondent's **Motion for Reconsideration Re: Decision dated 3 May 2018**, filed on May 18, 2018, with petitioner's **Comment (Re: Motion for Reconsideration dated May 18, 2018)**, filed on June 25, 2018.

Respondent seeks reconsideration of the Court's Decision dated May 3, 2018, the dispositive portion of which reads:

> "**WHEREFORE**, the instant Petition for Review is hereby **GRANTED**. The deficiency VAT tax assessment in the total amount of ₱4,931,298.69 is hereby **CANCELLED** and **WITHDRAWN**.
>
> **SO ORDERED**."

Respondent alleges that this Court erred in ruling that petitioner's sale of services within the customs territory should not be subject to 12% value-added tax (VAT).

According to respondent, since petitioner rendered services within the customs territory, the gross amount of sale must be subject to the applicable 12% VAT and not the preferential tax rate provided under Section 15 of Republic Act (RA) No. 7227, as amended by RA No. 9400. Moreover, respondent maintains that Section 3 of Revenue Memorandum Circular (RMC) No. 50-2007 provides that the sale of services or lease of properties (machineries and equipment) by Freeport Zone-registered enterprises to a customer or lessee from the customs territory shall be exempt from VAT if the service is performed or rendered within the Freeport Zone. Thus, he has properly assessed petitioner of its VAT deficiencies for the calendar year 2011.

Respondent further reiterates that the law presumes the propriety and exactness of tax assessments.

On the other hand, petitioner contends that respondent's deficiency VAT assessment for taxable year 2011 is devoid of any legal and/or factual basis. Considering that it is a duly registered Clark Special Economic Zone (CSEZ) Enterprise, petitioner is allegedly entitled to the preferential 5% tax on gross income, which is in lieu of all national and local taxes, pursuant to Section 15 of RA No. 7227, Section 5 of Executive Order No. 80 and Proclamation No. 163.

Furthermore, petitioner claims that it has complied with the requisites stated in the Department of Finance (DOF) Order No. 003-08, which provides that Freeport enterprises may generate services outside of the CFZ and still be subject to the 5% special tax regime as long as its income from within the customs territory does not exceed 30% of its total income from all sources.

Also, petitioner posits that the presumption of correctness of assessment does not apply as petitioner was able to sufficiently prove that such was issued without legal and factual basis.

At the outset, it must be noted that respondent's motion is merely a rehash or a mere reiteration of the grounds and arguments already passed upon and resolved by the Court in the assailed Decision.

As already laid down in the assailed Decision, the Court correlates the provisions in Section 3 of RMC No. 50-2007, such as Q7/A7 and Q9/A9, to wit:

> "Q7: What is the tax treatment for the income of Freeport Zone-registered enterprises derived from sources in the Customs Territory?
>
> A7: Freeport Zone-registered enterprises may generate income from sources within the Customs Territory of up to thirty percent (30%) of its total income from all sources; provided, that should a Freeport Zone-registered enterprise's income from sources within the Customs Territory exceed thirty percent (30%) of its total income from all sources, then it shall be subject to the income tax laws of the Customs Territory; provided further, that in any case, customs duties and taxes must paid with respect to transactions, receipts, income and sales of articles to the Customs Territory and in the Customs Territory.
>
> xxx xxx xxx
>
> Q9: What is the tax treatment of a sale of service or lease of properties (machineries and equipment) by Freeport Zone-registered enterprises to a customer or lessee from the Customs Territory?
>
> **A9: The sale of service shall be exempt from VAT if the service is performed or <u>rendered within the Freeport Zone</u>.**
>
> The lease of properties, on the other hand, shall likewise be exempt from VAT if the property is located within the Freeport Zone. However, if the properties (machineries and equipment) leased by the Freeport Zone-registered enterprise is located outside of the Freeport Zone, payments to such enterprise will be considered as royalties and subject to the final withholding VAT of 12%"

Considering that it was established that petitioner is a registered Clark Freeport Enterprise based on its Certificate of

Registration and Tax Exemption, issued by Clark Development Corporation, it is entitled to enjoy the 5% preferential tax regime in lieu of national and local taxes, including VAT, so long as its sales within the Customs Territory do not exceed the aforesaid 30% threshold.

The Court has already reviewed the records of the case and has confirmed in the assailed Decision that petitioner's revenues from enterprises located outside the Clark Territory amounted only to 7.12% of its total revenue for the taxable year 2011, which was way below the 30% threshold. Consequently, following the foregoing provisions, petitioner's sale of services to its clients within the customs territory should not be subject to VAT.

In view of the foregoing, the Court finds no cogent reason to disturb the ruling in the assailed Decision.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration Re: Decision dated 3 May 2018** is **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CATHERINE T. MANAHAN
Associate Justice