REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Third Division

PTT PHILIPPINES TRADING CORPORATION,
Petitioner,

CTA Case No. 9132

-versus-

COMMISSIONER OF CUSTOMS AND COMMISSIONER OF INTERNAL REVENUE,
Respondents.

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

Promulgated:

AUG 29 2019
11:00 a.m.

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DECISION

RINGPIS-LIBAN, *J.*:

The present Petition for Review[1] filed by PTT Philippines Trading Corporation (PTT) seeks refund or issuance of tax credit certificate in the amount of Thirteen Million Three Hundred Forty Seven Thousand Two Hundred Seventy Five Pesos and 20/100 (₱13,347,275.20), allegedly representing erroneously paid advance value added tax (VAT) on importation of petroleum products for the period September 20, 2013 to January 20, 2014.

THE FACTS

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at Brand Rex Compound, Argonaut Highway, Boton, Subic Bay

[1] Docket (vol. 1), pp. 10-27.

Freeport Zone, Philippines[2]. It is registered with the Subic Bay Metropolitan Authority (SBMA) as a Subic Bay Freeport Enterprise with Certificate of Registration and Tax Exemption Certificate No. 1997-0049[3].

Petitioner's primary purpose is to engage in the distribution, marketing and selling of petroleum and petroleum related products within Subic Bay Freeport Zone (SBFZ), Clark Freeport Zone, Other Special Economic and Export Processing Zones and international trading outside the Philippine territory and conduct terminalling, subleasing, storage and pipeline throughput operations from SBFZ to Clark Special Economic Zone (CSEZ).[4]

Petitioner, however, is not a VAT-registered taxpayer.[5]

On the other hand, respondent Commissioner of Customs (COC) is the duly appointed official of the Bureau of Customs (BOC), tasked and authorized to assess and collect customs duties and all other lawful revenues from imported articles. He holds office at the BOC, Port Area, Manila.

While respondent Commissioner of Internal Revenue (CIR), CIR is the duly appointed official of the Bureau of Internal Revenue (BIR), empowered to perform the duties, including, among others, to act and approve claims for refund as provided by law. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On August 12, 2013, petitioner imported 2,600,576 and 650,144 liters of diesel fuel covered by BOC's Import Entry and Internal Revenue Declaration (IERD) Nos. 2013 C-4122[6] and 2013 C-4123[7], respectively, from the Cayman Islands, British West Indies.[8]

Pursuant to Revenue Regulations (RR) No. 2-2012[9] dated February 17, 2012, petitioner paid on August 28, 2013, the corresponding VAT for the two (2) importations involved amounting to Ten Million Six Hundred Seventy Seven Thousand Three Hundred Sixty Five Pesos and 48/100 (₱10,677,365.48) and Two Million Six Hundred Sixty Nine Thousand Nine Hundred Nine Pesos and 72/100 (₱2,669,909.72), respectively.[10]

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[2] Exhibit "P-1".
[3] Exhibit "P-65".
[4] Exhibit "P-1".
[5] *Id.* at Note 1, p. 1561, Joint Stipulations of Facts and Issues (JSFI), Facts Undisputed by Both Parties, par.2.
[6] Exhibit "P-18".
[7] Exhibit "P-19".
[8] *Id.* at Note 1, p. 1562, JSFI, Facts Undisputed by Both Parties, par. 3.
[9] Prescribes The Tax Administration Treatment Of Petroleum And Petroleum Products Imported Into The Philippines Including Those Coming In Through Freeport Zones And Economic Zones And Registration Of All Storage Tanks, Facilities, Depots And Terminals.
[10] *Id.* at Note 2, p. 1562, par. 4.

Petitioner then sold the said imported diesel fuel to Clark Development Corporation (CDC).[11]

Thereafter, petitioner filed with the District Collector of the Port of Subic administrative claims for refund respectively dated February 7, 2014[12] for IERD No. 2013 C-4122 in the amount of ₱10,677,365.48, and on November 5, 2014[13] for IERD No. 2013 C-4123 in the amount of ₱2,669,909.72.

Claiming inaction, petitioner filed the present Petition for Review on August 28, 2015, seeking tax refund or issuance of tax credit certificate in the total amount of ₱13,347,275.20, representing erroneously paid VAT to the BOC for the period of September 20, 2013 to January 20, 2014.

On December 1, 2015, respondent CIR filed his Answer (Re: Petition for Review dated 28 August 2015)[14] interposing the following special and affirmative defenses, *viz*.:

> **<u>Petitioner is not entitled to refund</u>**
>
> 4. Audit findings conducted by respondent CIR shows that on August 12, 2013, petitioner imported 2,600,576 and 650,114 liters of diesel fuel covered by Import Entry Nos. 2013 C-4122 and 2013 C-4123, respectively from Cayman Island, British West Indies and paid VAT on importation in the amount of ₱10,667,365.48 and ₱2,669,909.72 respectively.
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> 5. Petitioner sold the imported diesel fuel to Clark Development Corporation ('CDC' for brevity). However, CDC is not a locator engaged in any registered activity to utilize the said diesel fuel. CDC, however, allegedly sold the said the said diesel fuel to several locators inside the Clark Special Economic Zone (CSEZ).
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> 6. CDC falls within the purview of a business enterprise operating within the CSEZ. Thus, sale to CDC is effectively zero-rated.

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[11] *Id.*, par. 5.
[12] Exhibit "P-4".
[13] Exhibit "P-5".
[14] *Id.* at Note 1, pp. 1349-1359.

7. It is provided under Section 3 of RR No. 2-2012 that no claim for refund shall be granted unless it is properly shown to the satisfaction of the BIR that petroleum products imported have been sold to a duly registered locator and have been utilized in the registered activity/operation of the locator, or that such have been sold and have been used for international shipping or air transport operations, or that the entities to which the said goods were sold are statutorily zero-rated for VAT.

8. If the sale is subject to zero percent (0%) VAT, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt. Verification showed that the term 'zero rated sale' was not written or printed in all sales invoices issued to CDC, instead a term 'Non-VAT' was printed.

9. The Supreme Court held in the case of *Commissioner of Internal Revenue vs. Seagate Technology*, (GR No. 153866, February 11, 2005) that the VAT registration is indispensable to VAT refund. Petitioner failed to comply with this requirement of the highest court when it did not register as VAT-taxpayer, and therefore, no VAT returns were filed.

10. CDC is an Ecozone enterprise while petitioner is a non-VAT enterprise. Sales to an Ecozone enterprise made by a non-VAT or unregistered supplier would only be exempt from VAT and the supplier shall not be able to claim credit/refund of its Input VAT (*CIR vs. Toshiba Information Equipment Phils.) Inc.* GR No. 150154, August 9, 2005.

11. Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate.

12. Admittedly, petitioner was not registered as a VAT taxpayer. Based on the Supreme Court ruling in the *CIR vs. Seagate Technology* (GR No. 153866, February 11, 2005) that VAT registration is indispensable to a VAT refund. This fact is fatal to the instant petition.

13. Furthermore, as previously discussed, since CDC is a business enterprise operating within the CSEZ whereas petitioner is a non-VAT entity, as held in *Toshiba*, the non-VAT or unregistered supplier would only be exempt from VAT and the supplier shall not be able to claim credit/refund of its input VAT.

14. Based on the foregoing, the instant petition must be denied.

It is incumbent upon petitioner to prove that it complied with all the requirements to entitle it to a claim for refund

15. As a matter of course, a claim for refund is subject to investigation as it involves removal of accrued revenue from the coffers of the Government. It has been held by the Supreme Court that a claim for refund is not *ipso facto* granted because the Commissioner of Internal Revenue still has to investigate and ascertain the veracity of the claim.

16. Respondent CIR submits that petitioner failed to demonstrate that the amount being claimed was erroneously or illegally collected. Taxes remitted to the BIR are presumed to have been made in the regular course of business and in accordance with provisions of law.

17. Before judicial inquiry into the issue of whether taxpayers, in general, are entitled to a refund/tax credit under substantive law may be considered, the taxpayers have the initial burden to discharge.

18. Respondent CIR submits that petitioner failed to substantiate its claim for refund/issuance of tax credit certificate amounting to ₱13,347,275.20 representing alleged erroneously paid VAT for the period 20 September 2013 to 20 January 2014. In the present case, petitioner failed to submit all the necessary documents needed to support its application for refund.

19. Petitioner filed the application for tax credits/refund using BIR Form No. 1914 checking the 'Claim Arising from Erroneous Payment of Taxes' as the reason for filling the claim for TCC/refund. However, it is clearly stated in petitioner's letter dated March 24, 2015 that the payment of input tax was founded under RR No. 2-2012. There was no valid argument presented to establish that there was an error on the payment of VAT. In addition, it is worth mentioning that the only instance the payment of VAT will fall under 'erroneous payment' is if RR No. 2-2012 is declared void or defective by a competent court. As it stands, the said Revenue Regulation is a valid law.

20. Revenue Memorandum Circular (RMC) No. 70-2014 provides that *'issuance of certifications and/ or delinquency verification slips on the existence of any outstanding tax liability issued by for purposes of ensuring that* ***tax refunds, cash conversions of Tax Credit Certificates (TCCs) and Value-Added Tax (VAT) monetization are not granted to delinquent taxpayers thereby protection the interest of the government...'*** Petitioner was not able to secure the Delinquency Verification Reports (DVR) from ARMD and LT-CED.

21. Furthermore, pursuant to RMC No. 54-2012 the application for VAT refund/ tax credit must be accompanied by the complete supporting documents, including the affidavit attesting to the completeness of the submitted documents. It was also provided that no other documents shall be accepted/ required from the taxpayer in the course of its evaluation. Pertinent portion of RMC No. 54-2012 provides:

> 'The application for VAT refund/ tax credit must be accompanied by the complete supporting documents as enumerated in Annex 'A' hereof. **In addition, the taxpayer shall attach a statement under oath attesting to the completeness of the submitted documents. The affidavit shall further state that the said documents are the only documents which the taxpayer will present to support the claim.** If the taxpayer is a juridical person, there should be a sworn statement that the officer signing the affidavit (i.e. at the very least, the Chief Financial Officer) has been authorized by the Board of Directors of the Company.
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> Upon submission of the administrative claim and its supporting documents, the claim shall be processed and no other documents shall be accepted/required from the taxpayer in the course of its evaluation. A decision shall be rendered by the Commissioner based only on the documents submitted by the taxpayer. **The application for tax refund/credit shall be denied where the taxpayer/claimant failed to submit the complete supporting documents.**"

22. Petitioner was not able to provide such affidavit when it filed its claim for refund. Because of the provision of RMC 54-2014, respondent CIR has no power to force the petitioner to submit additional documents. Consequently, failure to attach such affidavit will also result to a denial of the application for tax refund/credit.

23. The purpose of requiring the filling of the administrative claim for refund/tax credit and submission of supporting documents relevant to a claim for tax refund/ credit is to give the administrative agency concerned the opportunity to ascertain the veracity and validity of the claim.

Tax refunds are strictly construed against the claimant and in favor of the government

24. The power to tax is the most effective instrument to raise needed revenues to finance and support the myriad activities of the government for the delivery of basic services essential to the promotion of the general welfare and enhancement of peace, progress and prosperity of the people. Consequently, any delay in implementing tax measures would be to the detriment of the public. It is for this reason that claims for refund are required to be done within certain time frames.

25. Exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications ***(Asiatic Petroleum Co. vs. Llaness, 49 Phil. 466 cited in Collector of Internal Revenue vs. Manila Jockey Club, Inc., 98 Phil.670)***.

26. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund. Hence, a taxpayer is charged with heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund. Failure to comply therewith warrants a dismissal of the taxpayer's claim for refund. Respondent humbly submits that petitioner failed to establish its right to refund.

27. It can never be emphasized enough that in this jurisdiction tax refunds/credits are in the nature of tax exemptions, hence, laws relating to them call for a strict application against the claimant. As held by the Honorable Supreme Court:

> "Tax refunds are in the nature of tax exemptions, and are to be construed strictissimi juris against entity claiming the same. Thus, the burden of proof rests upon

the taxpayer to establish by sufficient and competent evidence, its entitlement to a claim for refund."

28. Taxes collected are presumed to be in accordance with laws and regulations.

29. Claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation ***(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)*** and as such, they are looked upon with disfavor ***(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)***. Basic is the rule that the tax refunds are regarded as tax exemptions that are in derogation of the sovereign authority and are to be construed in strictissimi juris against the person or entity claiming the exemption ***(Philippine Phosphate Fertilizer Corporation vs. Commissioner of Internal Revenue, G.R. No. 141973, June 28, 2005)***. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted ***(Sea-Land Service vs. Court of Appeals, 357 SCRA 444)***.

30. Based on the foregoing, petitioner's claim for refund has no basis in fact and in law. Thus, the instant petition should be denied for lack of merit.

Thereafter, petitioner filed a Reply[15] on December 22, 2015.

On January 25, 2016, this Court issued a Notice of Pre-Trial Conference[16], setting the case for pre-trial conference on March 8, 2016. Subsequently, respondent CIR filed a Respondent Commissioner of Internal Revenue's Pre-Trial Brief[17] on March 4, 2016, while petitioner filed its Pre-Trial Brief[18] on May 6, 2016.

On May 20, 2016, the parties submitted their Joint Stipulation of Facts and Issues[19] (JSFI). Accordingly, a Pre-Trial Order[20] was later issued by this Court on June 8, 2016, approving and adopting the JSFI submitted by the parties thereby deeming the pre-trial terminated.

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[15] *Ibid*, pp. 1416-1430.
[16] *Id.*, pp. 1451-1452.
[17] *Id.*, pp. 1461-1469.
[18] *Id.*, pp. 1543-1552.
[19] *Id.* at Note 1, pp. 1561-1570.
[20] *Id.*, pp. 1595-1604.

Meanwhile, on June 6, 2016, petitioner filed a Motion for the Commissioning of an Independent Certified Public Accountant[21]. Petitioner prays that Mr. Richard S. Querido, Partner in Mendoza Querido & Co., be commissioned as the Independent Certified Public Accountant (ICPA) for the present case. Thus, in the Order dated October 4, 2016, this Court granted petitioner's motion and commissioned Mr. Richard S. Querido as this case's ICPA.

During trial, petitioner presented as witnesses its General Manager, Mr. Danilo C. Ablado[22]; its external Relations Assistant, Mr. Dariel B. Ela[23]; and, the court-commissioned ICPA, Mr. Richard S. Querido[24], who all testified on direct by way of judicial affidavit.

After completing the respective testimonies of its witnesses, petitioner filed its Formal Offer of Evidence[25] on September 18, 2017, offering Exhibits "P-1" to "P-69-a", inclusive of sub-markings. Then, in the Resolution[26] dated January 10, 2018, this Court admitted all of petitioner's documentary exhibits. Thus, petitioner was deemed to have rested its case.

For his part, respondent CIR offered Revenue Officer Francis F. Nabua as his sole witness, who also testified on direct by way of judicial affidavit[27]. Thereafter, respondent CIR filed his Formal Offer of Evidence[28], offering Exhibits "R-1" to "R-7-a" as his documentary exhibits. In the Resolution[29] dated June 29, 2018, this Court likewise admitted all of respondent CIR's exhibits evidence. After being deemed to have rested his case, the parties were then granted a period of thirty (30) days within which to submit their respective memoranda.

On August 9, 2018, petitioner filed its Memorandum[30] while respondents' Memorandum[31] was submitted on August 28, 2018. Accordingly, in the Resolution[32] dated August 31, 2018, the present case was deemed submitted for decision.

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[21] *Id.*, pp. 1580-1584.
[22] *Id.*, pp. 1636-1647; Exhibits "P-64" to "P-64-a".
[23] *Id.*, pp. 1753-1773; Exhibits "P-69" to "P-69-a".
[24] *Id.*, pp. 1724-1733; Exhibits "P-68" and "P-68-a".
[25] *Id.*, pp. 1887-1896
[26] *Id.*, pp. 2013-2014.
[27] *Id.*, pp. 1470-1475; Exhibits "R-7" and "R-7-a".
[28] *Id.*, pp. 2018-2024.
[29] *Id.*, pp. 2027-2028.
[30] *Id.*, pp. 2034-2055.
[31] *Id.*, vol. IV, pp. 2061-2071.
[32] *Id.*, p. 2073.

THE ISSUE

The sole issue[33] submitted by the parties for this Court's resolution is, whether petitioner is entitled to a tax refund or issuance of tax credit certificate in the amount of ₱13,347,275.20, representing erroneously paid VAT to the BOC on its importations of petroleum products into the Subic Bay Freeport Zone sold to duly registered locators of Clark Development Corporation (CDC) and Philippine Economic Zone Authority (PEZA) for the period September 20, 2013 to January 20, 2014, pursuant to RR No. 2-2012 dated February 17, 2012.

THE RULING OF THE COURT

The claim for refund was filed within two years from date of payment of tax

In ascertaining whether or not petitioner timely filed its judicial claim for refund, 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 filled within two (2) years from the date of payment of the tax.[34]

Upon perusal of the case, petitioner paid and remitted to the BIR the assessed VAT on its importation of diesel fuel on August 28, 2013. Counting two (2) years from the said date, petitioner had until August 28, 2015, within which to file its claim both in the administrative and judicial levels.

On February 7, 2014, petitioner filed its administrative claim[35] in the amount of ₱10,677,365.48 covered by Customs Import Entry No. 2013 C4122, and again on November 5, 2014, it filed another administrative claim[36] in the amount of ₱2,669,909.72 covered by Customs Import Entry No. 2013 C4123. Thereafter, petitioner filed its judicial appeal before this Court on August 28, 2015. Clearly then, both the administrative and judicial claim were made within the two-year period prescribed by law.

Now, as regards the substantive issue in the case at bar, pertinent to its resolution are Sections 204(C) and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, which reads as follows:

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[33] *Id.*, p. 1597, Pre-Trial Order, Issues.
[34] *Commissioner of Internal Revenue vs. Victorias Milling Co., Inc. and The Court of Tax Appeals*, G.R. No. L-24108, January 3, 1968.
[35] Exhibit "P-4".
[36] Exhibit "P-5".

Section 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –

x x x

(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 stamps 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."

"**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 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."

Pursuant to the afore-quoted provisions, to be entitled to a refund of erroneously or illegally collected tax, the following requisites must be complied with: (1) that 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) that the claim for refund or credit has been filed within two years from the date of payment of tax, or penalty, regardless of any supervising cause that may arise after payment.

The tax has been erroneously or illegally collected

Verily, Section 109 of the NIRC of 1997, as amended, provides a list of transactions which are exempt from VAT. Paragraph (K) of said Section specifically pertains to exemption under special laws, thus:

> **SEC. 109.** *Exempt Transactions.* - (1) Subject to the provisions of subsection (2) hereof, the following transactions shall be exempt from the value-added tax:
>
> x x x
>
> (K) Transactions which are exempt under international agreements to which the Philippines is a signatory or under special laws, except those under Presidential Decree No. 529;

Perforce, in 1992, Congress enacted Republic Act (RA) No. 7227, otherwise known as the *"Bases Conversion and Development Act of 1992"* to enhance the benefits to be derived from the Subic and Clark military reservations. RA No. 7227 established the Subic Special economic zone and granted such special territory various tax and duty incentives.[37] As such, being a special law, Section 12 of RA No. 7227, provides that:

> SECTION 12. *Subic Special Economic Zone* - xxx
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> The abovementioned zone shall be subject to the following policies:
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> (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;

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[37] *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*, G.R. No. 210588, November 29, 2016.

(c) The provision of existing laws, rules and regulations to the contrary notwithstanding, no taxes, local and national, shall be imposed within the Subic Special Economic Zone. x x x

In case of conflict between national and local laws with respect to tax exemption privileges in the Subic Special Economic Zone, the same shall be resolve in favor of the latter;

More so, on March 20, 2007, RA No. 7227 was amended by RA No. 9400[38], which now provides that:

SECTION 1. Section 12 of Republic Act No. 7227, as amended, otherwise known as the Bases Conversion and Development Act of 1992, is hereby amended to read as follows:

SEC. 12. *Subic Special Economic Zone.* – xxx

x x x

(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, xxx."

Clearly, there are tax exemption privileges in the special economic zones because the law considers them as separate customs territories, which means that such jurisdictions are, by legal fiction, foreign territories. As shown on the records, petitioner is a domestic corporation registered with the Subic Bay Metropolitan Authority, as such, any articles brought therein are not considered taxable importations. Stated differently, as long as the goods remain (e.g., sale and/or consumption of the article are made within zone) in the special economic zones or re-exported to another foreign jurisdiction, they shall continue to be tax-free. However, once the goods are introduced into the Philippine customs territory, it ceases to enjoy the tax privileges accorded to the special economic zones. It shall then be considered as an importation subject to all applicable national internal revenue taxes and customs duties.[39]

With regard to respondents' basis in imposing VAT on petitioner's importation of diesel, the issue has already been long settled. No less than the

[38] An Act Amending Republic Act No. 7227, As Amended, Otherwise Known As The Bases Conversion And Development Act Of 1992, And For Other Purposes.
[39] *Ibid.*

Supreme Court declared that RR No. 2-2012[40] is null and void. Again, in the case of *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*[41], the Supreme Court ruled in this wise, *viz.*:

> "On the merits of the case, we rule that RR 2-2012 is invalid and unconstitutional because: a) it illegally imposes taxes upon FEZ enterprises, which, by law, enjoy tax-exempt status, and b) it effectively amends the law *(i.e.,* RA 7227, as amended by RA 9400) and thereby encroaches upon the legislative authority reserved exclusively by the Constitution for Congress.
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> x x x
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> RR *2-2012 is unconstitutional.*
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> According to the respondents, the power to enact, amend, or repeal laws belong exclusively to Congress. In passing RR 2-2012, petitioners illegally amended the law - a power solely vested on the Legislature.
>
> We agree with the respondents.
>
> The power of the petitioners to interpret tax laws is not absolute. The rule is that regulations may not enlarge, alter, restrict, or otherwise go beyond the provisions of the law they administer; administrators and implementors cannot engraft additional requirements not contemplated by the legislature.
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> It is worthy to note that RR 2-2012 does not even refer to a specific Tax Code provision it wishes to implement. *While it purportedly establishes mere administration measures for the collection of VAT and excise tax on the importation of petroleum and petroleum products, not once did it mention the pertinent chapters of the Tax Code on VAT and excise tax.*
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> While we recognize petitioners' essential rationale in issuing RR 2-2012, the procedures proposed by the issuance cannot be implemented at the expense of entities that have been clearly granted statutory tax immunity.

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[40] Tax Administration Treatment of Petroleum and Petroleum Products Imported into the Philippines Including those Coming in Through Freeport Zones and Economic Zones and Registration of All Storage Tanks, Facilities, Depots and Terminals.

[41] G.R. No. 210588, November 29, 2016.

Tax exemptions are granted for specific public interests that the Legislature considers sufficient to offset the monetary loss in the grant of exemptions. To limit the tax-free importation privilege of FEZ enterprises by requiring them to pay subject to a refund clearly runs counter to the Legislature's intent to create a free port where the "free flow of goods or capital within, into, and out of the zones" is ensured.

Finally, the State's inherent power to tax is vested exclusively in the Legislature. We have since ruled that the power to tax includes the power to grant tax exemptions. Thus, the imposition of taxes, as well as the grant *and* withdrawal of tax exemptions, shall only be valid pursuant to a legislative enactment.

As RR 2-2012, an executive issuance, attempts to withdraw the tax incentives clearly accorded by the legislative to FEZ enterprises, the petitioners have arrogated upon themselves a power reserved exclusively to Congress, in violation of the doctrine of separation of powers.

In these lights, we hereby rule and declare that RR 2-2012 is null and void."

Apparently, RR No. 2-2012 directly contravenes the tax exemptions granted to petitioner under RA No. 7227, amended by RA No. 9400. Since RR No. 2-2012 is of no force and effect, respondents' imposition of VAT on petitioner's importation of diesel is without valid basis. Hence, the VAT payment made by petitioner on the importation of diesel is erroneous and illegal.

It is to be recalled that petitioner sold and delivered the said imported diesel fuel to CDC, which, in turn, sold to the several locators within the CSEZ, except for On Semiconductor SSMP Philippines Corporation, which petitioner sold directly to, for use in their respective registered activities.

In addressing the issue of petroleum importations to special economic zones, the foregoing cited case[42] further held that:

"Since the tax exemptions enjoyed by [*Freeport and Economic Zone*] enterprises under the law extend even to VAT and excise tax, as we discussed above, it follows and we accordingly rule that the taxes imposed by Section 3 of RR 2-2012 directly contravene these exemptions. **First**, the regulation erroneously considers

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[42] *Ibid.*

petroleum and petroleum products brought into a [*Freeport and Economic Zone*] as taxable importations. **Second**, it unreasonably burdens [*Freeport and Economic Zone*] enterprises by making them pay the corresponding taxes — an obligation from which the law specifically exempts them — even if there is a subsequent opportunity to refund the payments made.

Petroleum and petroleum products brought into the [*Freeport and Economic Zone*] and **which remain therein** are not taxable importations.

First, importation refers to bringing goods from abroad into the Philippine customs jurisdiction. It begins from the time the goods enter the Philippine jurisdiction and is deemed terminated when the applicable taxes and duties have been paid or the goods have left the jurisdiction of the BOC.

Second, under the Tax Code, imported goods are subject to VAT and excise tax. These taxes shall be paid prior to the release of the goods from customs custody. Also, for VAT purposes, an importer refers to any person who brings goods into the Philippines.

Third, the Philippine VAT system adheres to the cross border doctrine. Under this rule, no VAT shall be imposed to form part of the cost of the goods destined for consumption outside the Philippine customs territory. Thus, we have already ruled before that an [*Freeport and Economic Zone*] enterprise cannot be directly charged for the VAT on its sales, nor can VAT be passed on to them indirectly as added cost to their purchases.

Fourth, laws such as R.A. 7227, R.A. 7916, and R.A. 9400 have established certain special areas as *separate customs territories*. In this regard, we have already held that such jurisdictions, such as the Clark [*Freeport and Economic Zone*], are, by legal *fiction, foreign territories*.

Fifth, the Implementing Rules provides that goods *initially introduced* into the [*Freeport and Economic Zone*]s and *subsequently brought out* therefrom and introduced into the Philippine customs territory shall be considered as *importations* and thereby subject to the VAT. One such instance is the sale by any [*Freeport and Economic Zone*] enterprise to a customer located in the customs

> territory, which the VAT regulations refer to as a *technical importation.*
>
> We find it clear from all these that when goods (e.g., petroleum and petroleum products) are brought into an [*Freeport and Economic Zone*], *the goods remain to be in foreign territory* and are not therefore goods introduced into Philippine customs territory subject to Philippine customs and tax laws.
>
> Stated differently, goods brought into and traded within an [*Freeport and Economic Zone*] are generally beyond the reach of national internal revenue taxes and customs duties enforced in the Philippine customs territory. This is consistent with the incentive granted to [*Freeport and Economic Zone*]s exempting the *importation itself* from taxes and duties.
>
> Therefore, the act of bringing the goods into an [*Freeport and Economic Zone*] is not a taxable importation. As long as the goods remain (e.g., sale and/or consumption of the article within the [*Freeport and Economic Zone*]) in the [*Freeport and Economic Zone*] or re-exported to another foreign jurisdiction, they shall continue to be tax-free. However, once the goods are introduced into the Philippine customs territory, it ceases to enjoy the tax privileges accorded to FEZs. It shall then be considered as an importation subject to all applicable national internal revenue taxes and customs duties".

Furthermore, pursuant to RA No. 7916[43], as amended by RA 8748[44], otherwise known as *"The Special Economic Zone Act of 1995"*, states that:

> SEC. 24. Exemption from National and Local Taxes.- Except for real property taxes on land owned by developers, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu thereof, five percent (5%) of the gross income earned by all business enterprises within the ECOZONE shall be paid and remitted as follows: x x x

The company, On Semiconductor SSMP Philippines Corporation, is located in Luisita Industrial Park, Tarlac City which is an Operating Manufacturing Economic Zones under PEZA.

[43] An Act Providing for the Legal Framework and Mechanisms for the Creation, Operation, Administration, and Coordination of Special Economic Zones in the Philippines, Creating for this Purpose, the Philippine Economic Zone Authority (PEZA), and for other Purposes

[44] R. A. NO. 7916, as amended by Republic Act No. 8748.

Accordingly, CDC was created to be the implementing and operating arm of the Bases Conversion and Development Authority to manage CSEZ. As a duly-registered enterprise in the CSEZ, CDC has been exempt from paying direct and indirect taxes pursuant to Section 24 of RA No. 7916 (The Special Economic Zone Act of 1995), in relation to Section 15 of RA No. 9400 (Amending Republic Act No. 7227, otherwise known as the Bases Conversion Development Act of 1992).[45]

In view of the foregoing, petitioner is entitled to the refund of the illegally collected or erroneously paid VAT on the importation of diesel in the amount of ₱13,347,275.20.

WHEREFORE, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, respondent hereby is **ORDERED TO REFUND** in favor of petitioner the amount of **₱13,347,275.20**, representing the illegally collected or erroneously paid VAT by petitioner on its importation of diesel fuel.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

[45] *Chevron Philippines, Inc. (formerly Caltex Philippines, Inc.) vs. Bases Conversion Development Authority and Clark Development Corporation*, G.R. No. 173863, September 15, 2010.

ATTESTATION

I attest that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice