REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FORT BONIFACIO DEVELOPMENT CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5926

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

Promulgated:
OCT 17 2000

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DECISION

The case at bar is focused on the question of whether herein Petitioner is entitled to a refund or tax credit in the amount of P347,741,695.74 which it paid as value-added tax for the third quarter of 1997 on its sales and lease of lots, in view of its allegation that it is entitled to a total input tax credit, by virtue of Section 105 of the Tax Code in relation to Section 100 thereof, as amended by R.A. 7716.

The material facts as stipulated by the parties are as follows:

1.01. Petitioner is a domestic Corporation duly registered and existing under the Philippine laws, with office address at Bonifacio Centre, NDCP Compound, Fort Bonifacio, Taguig, Metro, Manila, where it may be served with the processes of this Honorable Court.

1.02. Respondent Commissioner of Internal Revenue is the head of the Bureau of Internal Revenue (BIR), with office address at the Office of the Commissioner of Internal Revenue, BIR Building, Quezon City, Metro Manila, where he may be served with summons and other processes of this Honorable Court.

1.03. Respondent Revenue District Officer, Revenue District No.44, Taguig & Pateros, Bureau of Internal Revenue is the chief of the aforesaid District office, with office address at FTI Administration Building, FTI Complex, Taguig, Metro Manila where she may be served with summons and other processes of this Honorable Court.

1.04. Petitioner is owned, to the extent of forty-five percent (45%) of its issued and outstanding capital stock, by the Bases Conversion Development Authority (BCDA), a wholly-owned government corporation created by Republic Act No. 7227, for the purpose of accelerating the conversion of military reservations into alternative productive uses and raising funds through the sale of portions of said military reservations in order to promote the economic and social development of the country in general. The remaining fifty-five (55%) is owned by Bonifacio Land Corporation, a consortium of private domestic corporations.

1.05. Petitioner is engaged in the development and sale of real property. It is the owner of, and is developing and selling, parcels of land within a newtown development area known as the Fort Bonifacio Global City (hereinafter

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referred to as "Global City"), located within Fort Bonifacio, Taguig Metro Manila.

1.06. The aforesaid area being developed by Petitioner was formerly part of the Fort Bonifacio reservation but was sold on February 8,1995 by the National Government to Petitioner by virtue of R.A. No. 7227 and Executive Order No. 40, dated December 8, 1992.

1.07. On January 1,1996, Republic Act No. 7716 took effect. The said law restructured the value-added tax (VAT) system by further amending pertinent provisions of the National Internal Revenue Code (NIRC), as already amended by Executive Order No. 273 which took effect on January 1, 1988, and imposed a value-added tax on sale of real properties, among others (Sec 100[a][1][A] of NIRC, as amended by R.A. No. 7716). While prior to R.A. No.7716 real estate transactions were not subject to VAT, they became subject to VAT upon the effectivity of R.A. No. 7716.

1.08. In May 1996, Petitioner commenced developing the Global City, and since October 1996, has been selling lots located thereat to interested buyers.

1.09. Petitioner is a duly registered VAT taxpayer.

1.10. With regard to the input tax credit of 8% under Sec. 105 of the NIRC, Petitioner submitted an inventory listing real properties owned by it with a total book value of P71,227,503,200.00. The aforesaid inventory was submitted to the BIR, Revenue District No. 44, Taguig and Pateros, on September 19,1996.

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1.11. Per VAT returns filed by Petitioner with the BIR, for the third quarter of 1997, Petitioner derived the total amount of P3,591,726,328.11 from its sales and lease of lots, on which the output VAT payable to the Bureau of Internal Revenue was P359,172,632.81.

1.12. The VAT returns filed by Petitioner likewise show that to pay said amount of P359,172,632.81 due to the BIR, Petitioner made cash payments totaling P347,741,695.74 and utilized its regular input tax credit of P19,743,565.73 on purchases of goods and services.

1.13. On May 11,1999, Petitioner filed with the BIR a claim for refund of the amount of P347,741,695.74, which it paid as value-added tax for the third quarter of 1997.

1.14. Earlier, on October 8,1998, November 17,1998 and February 11, 1999, based on similar grounds, Petitioner filed with the BIR claims for refund of the amounts of P269,340,469.45, P359,652,009.47, and P486,355,846.78, representing value-added taxes paid by it on proceeds derived from its sales and lease of lots for the quarters ended December 31,1996, March 31,1997, and June 30,1997, respectively. After deducting these amounts of P269,340,469.45, P359,652,009.47, and P486,355,846.78 from the amount of P5,698,200,256.00 claimed by Petitioner as input tax credit, the remaining input tax credit more than sufficiently covers the amount of P347,741,695.74 subject of Petitioner's claim for refund of May 11,1999.

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1.15. As of the date of the Petition, no action had been taken by respondents on Petitioner's claim for refund of May 11, 1999.

1.16. Under Section 230 of the NIRC, a suit or proceeding for the recovery of any national internal revenue tax erroneously or illegally assessed or collected must be brought within two (2) years from payment of the tax. This legal provision has been reproduced as Sec. 229 of the National Internal Revenue Code of 1997. With regard to the amount of P347,741,695.74 paid by Petitioner as value-added tax for the third quarter of 1997, the two-year period expired on August 25,1999, the earliest VAT payment for said quarter having been made on August 25,1997, as shown in its original Monthly VAT Declaration for August 1997.

1.17. The Secretary of Finance, under Sec. 19 of Republic Act No. 7716 and Sec. 245 (now Sec 244) of the Tax Code, and per recommendation of the Commissioner of Internal Revenue, has promulgated implementing revenue regulations for the enforcement thereof." (Stipulation of Facts, Documents and Issue, CTA docket pp. 60-64)

On August 24, 1999, Petitioner filed with this Court a Petition for Review with its unvarying assertion that, pursuant to Section 105 in relation to Section 100 of the Tax Code, it is clearly entitled to an input tax credit on the beginning inventory of its real properties it submitted to the BIR equivalent to 8% of its total book value (P71,227,503,200.00) or in the total amount of P5,698,200,256.00. Petitioner claims that since the input tax credit is more than enough to offset the VAT paid by Petitioner for the 3rd quarter of 1997, it is now entitled to the refund or tax credit of P347,741,695.74.

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Petitioner argued that as a real estate dealer, it is entitled to an input tax credit on its beginning inventory equivalent to 8% of the book value of its real properties, pursuant to Section 100(1)(A) and 105 of the 1996 Tax Code, which provides as follows:

> **SEC. 105.** ***Transitional input tax credits.*** - A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall, subject to the filing of an inventory as prescribed by regulations, be allowed input tax on his beginning inventory of goods, materials and supplies equivalent to 8% of the value of such inventory or the actual value-added tax paid on such goods, materials and supplies, whichever is higher, which shall be creditable against the output tax. (As added by EO 273).
>
> **SEC. 100.** ***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 10% 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.
>
> (1) The term "goods or properties" shall mean all tangible and intangible objects which are capable of pecuniary estimation and shall include:
>
> > (A) Real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business;
>
> x x x x x x x x x

Not convinced with the assertions of the Petitioner, Respondent for his part, avers that pursuant to Section 4.105-1 of Revenue Regulations No. 7-95, the basis of the transitional input tax credit should only be the improvements and not the book value of its land inventory, thus

> **SEC. 4.105-1.** ***Transitional input tax on beginning inventories.*** - Taxpayers who became VAT-registered persons upon effectivity of RA No. 7716 who have exceeded the minimum turnover of P500,000.00 or who voluntarily register even if their turnover does not exceed P500,000.00 shall be entitled to a presumptive input tax on the inventory on hand as of

> December 31, 1995 on the following: (a) goods purchased for resale in their present condition; (b) materials purchased for further processing; (c) goods which have been manufactured by the taxpayer; (d) goods in process and supplies, all of which are for sale or for use in the course of the taxpayer's trade or business as a VAT-registered person.
>
> However, in the case of real estate dealers, the basis of the presumptive input tax shall be the improvements, such as buildings, roads, drainage systems, and other similar structures, constructed on or after the effectivity of EO 273 (January 1, 1988).
>
> The transitional input tax shall be 8% of the value of the inventory or actual VAT paid, whichever is higher, which amount may be allowed as tax credit against the output tax of the VAT-registered person. (Underscoring supplied)

In its memorandum, Petitioner attacks the wisdom of the aforecited Revenue Regulations and states that it is invalid and ineffective in so far as it limits the input tax credit to 8% of the value of the "improvements." It further added that this Revenue Regulation is contrary to the basic law which it seeks to implement and reiterated the fact that in a case where there is a discrepancy between the basic law and a rule or regulation, the former always prevails over the latter, citing numerous Supreme Court cases in support thereof.

However, Respondent remains steadfast with its stand that Petitioner is indeed not legally entitled to any transitional input tax credit, whether it be the 8% presumptive or actual input tax credit in respect of its inventory of land brought into the VAT regime beginning January 1, 1996, in view of the following reasons, to wit:

1. **VAT free acquisition of the raw land.** – Petitioner purchased and acquired, from the Government, the aforesaid raw land under a VAT-free sale transaction. The Government, as vendor was tax-exempt and accordingly did not pass on any VAT or sales tax as part of the price paid therefor by the Petitioner.

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2. **No transitory input tax on inventory of land is allowed.** – Section 105 of the Code, as amended by RA No. 7716, and as implemented by Section 4.105-1 of Revenue Regulations No. 7-95, expressly provides that no transitional input tax credit shall be allowed to real estate dealers in respect of their beginning inventory of land brought into the VAT regime beginning January 1, 1996 (*supra*). Likewise, the Transitory Provisions [(a)(iii)] of Revenue Regulations No. 7-95 categorically states that "for real estate dealers, the presumptive input tax of 8% of the book value of improvements constructed on or after January 1, 1988 (the effectivity of EO 273) shall be allowed." For purposes of subparagraph (i)(ii) and (iii) above, an inventory as of December 31, 1995 of such goods or properties and improvements showing the quantity, description, and amount should be filed with the RDO not later than January 31, 1996. It is admitted that Petitioner filed its inventory listing of real properties on September 19, 1996 or almost nine (9) months late in contravention to the requirements in Revenue Regulations No. 7-95.

Thus, as viewed from the foregoing discussion, Respondent explained that the inventory input tax credit allowed under Section 105 of the Tax Code cannot embrace inventories on which no business tax in any form had been imposed. Since no such business tax in any form has been imposed on the raw land which the Petitioner purchased and acquired from the government, the Petitioner is not legally entitled to any transitory input tax during the transition, when Petitioner's inventories of raw land were eventually brought into the VAT regime as beginning inventories, pursuant to the EVAT law under RA 7716 and its implementing regulations. In support thereof, Respondent cited Section 17 of Revenue Regulations No. 5-87, which implemented the first VAT law under EO No. 237 effective January 1, 1988, were businesses subject to VAT as of January 1, 1988 were not accorded with the benefit of any transitory input tax credit on their beginning inventory of land brought into the VAT regime beginning January 1, 1988, notwithstanding the fact that the same were used in the business or trade of the taxpayer. And, according to Respondent, this principle remained with the amendment of the VAT law RA 7716 (*supra*) and has received congressional acceptance since then.

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In its "Reply to Respondent's Memorandum," Petitioner reiterates that the use of the word "presumptive" in various BIR regulations in relation to the input tax provided in Section 105, including Revenue Regulations No. 7-95, indicates that the input tax is presumed to have been paid on goods or properties which were heretofore not subject to VAT. In other words, it is imputed without necessarily being paid, hence Petitioner need not show that taxes were previously paid on its inventory of land.

Thus, on the basis of the foregoing arguments and disquisitions of the parties, the issue involved in the case at bar which is likewise stipulated upon by the parties is WHETHER OR NOT PETITIONER IS ENTITLED TO THE REFUND OF THE AMOUNT OF P347,741,695.74 PAID BY IT AS VALUE-ADDED TAX OR TO A TAX CREDIT FOR SAID AMOUNT. (Stipulation of Facts, Documents and Issue, CTA docket p. 68).

We sustain Respondent's position. Petitioner is not automatically entitled to the 8% transitional input tax allowed under Section 105 of the Tax Code.

It is to be noted that the subject of transitional input VAT was initially dealt with under Sections 104 and 105 of the Tax Code, as amended by EO No. 273, effective January 1, 1988, thus:

"**Section 104**. *Tax Credits* – (a) Creditable input tax. –

x x x

"Input tax "means the value-added tax paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchases of goods as services from a VAT-registered person. <u>It shall also include the transitional input tax determined in accordance with Section 105 of this Code and other transitional input taxes as prescribed by regulations</u>.

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x x x

Section 105. *Transitional input tax credits.* – A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall, subject to the filing of an inventory as prescribed by regulations, be allowed input tax on his beginning inventory of goods, materials and supplies equivalent to 8% of the value of such inventory or the actual value-added tax paid on such goods, materials and supplies, whichever is higher, which shall be creditable against the output tax. (underscoring supplied)

When the concept of "transitional input tax" was first introduced by EO No. 273 (original VAT Law), it was sought to remedy the iniquitous and inequitable situation that would arise during the transition from Non-VAT to the VAT system. It must be remembered that the VAT law eliminated privilege taxes, percentage taxes and, more importantly, the sales tax on original or subsequent sale of articles with an end in view of simplifying tax administration and collection. As such, the variety of tax rates previously imposed were substituted with the VAT at the uniform rate of 0% or 10%. This transition period from non-VAT to VAT system of taxation would create an absurd situation wherein a trader who is then subjected to a different tax rate would suddenly be charged with an abrupt increase of 10% in its tax liability. In effect, this would leave many manufacturers, producers and importers with inventories consisting of stock of goods bought before January 1, 1988 upon which no actual VAT input could be credited to the 10% output to be paid inasmuch as those goods were never subjected to 10% VAT. Hence, the purpose of this transitional input tax is to eradicate the inequity of denying other VAT taxpayers from being able to avail of a tax credit in its first payment of VAT.

To pave the way for a smooth transition into the new tax system, the framers of the law inserted a transitory provision in EO 273, specifically Section 25 and we quote:

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

The aforecited provision dwelt on the mechanics for the allowance of transitional input taxes mentioned in Section 104 and 105 of the Tax Code, as amended by EO 273. It allows any VAT-registrant to avail of the 8% presumptive tax on its inventory as of December 31, 1987 over goods on which it has not availed of, or cannot avail of the tax credit.

Corollary to this, the Bureau of Internal Revenue implemented Section 105 of EO 273 and issued Revenue Regulations No. 5-87 specifically Section 26(b), which provides:

> **SEC. 26.** ***Transitory provisions.*** - x x x
>
> ***(b) Transitional input tax credits.*** - *(1) Manufacturers, producers and importers.* - The unused deferred tax credit as of December 31, 1987 shall be allowed as input tax credits to all original sellers subject to the value-added tax for the first time, provided that they have registered in

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accordance with the provisions of Section 107. For this purpose, the amount appearing in their books of accounts and corroborated by the amount reflected in the sales tax return as of December 31, 1987 shall be initially accepted as the transitional input tax credit which shall be carried over as allowable tax credits against output tax less any amount for which an application for the issuance of a tax credit certificate has been filed. In the case of corporations filing their sales tax returns on a fiscal quarter basis, they shall file a short period return for the period ending December 31, 1987 which in addition to their ledger account of deferred tax credit shall be the basis of the transitional input tax credits which will be provisionally allowed.

(2) Inventory of goods, not for sale. - For goods, other than capital goods, not for sale but purchased for use in the business in their present condition, and which are not intended for further processing, which are on hand as of December 31, 1987, a presumptive input tax equivalent to 8% of the value of the goods shall be allowed, which amount may be credited against the output tax of a VAT-registered person, provided that the tax thereon has not been taken up or claimed as deferred sales tax credit.

(3) Inventory of goods for sale. - For goods purchased with the object of resale in their present condition, the same presumptive input tax equivalent to 8% of the value of the goods unused as of December 31, 1987 shall be allowed, which amount may also be credited against the output tax of a VAT-registered person, provided that the tax thereon has not been taken up or claimed as deferred sales tax credit.

x x x x x x x x x

With the enactment of RA No. 7716 which is popularly known as the E-VAT Law, the original VAT of 1988 was amended to widen its tax base to include other sale of goods and services not previously subject to VAT. Under the VAT Law of 1988, the term "sale of goods" was confined to the sale of movable, tangible objects but under the E-VAT Law, it now included the sale of immovable properties, thus:

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

SEC. 99. *Persons Liable* x x x

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

x x x x x x x x x

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

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

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

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

Bearing significance to Petitioner's taxability as a VAT person, said law included for the first time real properties under the term "goods" which are subject to VAT. However, it must be noted that the E-VAT law did not touch the provisions of Section 105 of the Tax Code (*supra*) but maintained the benefit of transitional input tax credit but this time for those not subject to VAT under the original VAT Law of 1988 but are now subject to VAT such as real estate dealers. As it is supposed to work, the transitional input tax of 8% of their beginning inventory should answer for the 10% output VAT liability of the taxpayers under the EVAT law. The rationale for this mechanism is premised on the fact that Petitioner in acquiring the goods or real properties in the course of its trade and business has priorly paid a sales or business tax that is tacked on by the manufacturers and producers to the purchase price even before the EVAT law took effect.

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What the law seeks to prevent in granting the benefit of transitional input tax credit is the scenario wherein the taxpayer to whom the tax is passed on could not utilize the tax it paid due to the transition from the sales tax system to the VAT system or in the case of EVAT law, the transition from being exempt from VAT to being subject to VAT as in the case of real estate dealers. Evidently, in order to avail of the said benefit, there must be a prior payment of VAT or sales tax.

As can be gleaned from the factual milieu of the case, Petitioner purchased the real properties from the National Government in 1995 under a VAT-free sale transaction. As such, it did not pass on any VAT or business tax to the Petitioner as part of the purchase price of the real estate subject of the sales transaction considering that the Government is a tax-exempt entity. To allow Petitioner the 8% transitional input tax to offset his output VAT liability without having paid any previous tax has the net effect of granting Petitioner an outright bonus in the amount equivalent to the 10% VAT it may tack on to the goods it would sell to subsequent purchasers.

This brings us to the crux of the controversy wherein Petitioner is claiming for the refund of the value-added taxes it paid on the basis of its view that it is entitled to an input tax credit on the beginning inventory of its real properties it submitted to the BIR equivalent to 8% of the value thereof pursuant to Section 105 in relation to Section 100 of the Tax Code.

We do not agree.

Section 105 which requires the filing of an inventory for the grant of transitional input tax is couched in a manner where there is a need for an implementing rule or regulation to carry out its intendment. True to its wordings, the BIR issued Revenue

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Regulations No. 7-95 specifically Section 4.105-1 and succintly mentioned that the basis of the presumptive input tax shall be the improvements in case of real estate dealers. We do not believe that said Regulation is contrary to the provisions of Sections 100 and 105 of the 1996 Tax Code as the provisions are so clear that it is ripe for application.

The inventory is limited to improvements such as buildings, roads, drainage system and other similar structures constructed in the said land because in the construction of these improvements, the contractors and suppliers have presumably passed on to the owner of the land or the real estate dealer, the business tax due thereon. Hence, the law grants to the real estate dealers, being subjected to the 10% VAT for the first time, an 8% transitional input tax that could be credited to their output tax.

In the case entitled *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue, et al., CTA Case No. 5665, promulgated on August 11, 2000*, this Court had the occasion to rule on the said issue of where to base the inventory required by Section 105 of the Tax Code. It declares that the provisions of Section 4.105-1 of Revenue Regulations No. 7-95 are not contrary to law and upholds the Respondent's position that the 8% transitional input tax credit should be based on the value of the inventory of improvements, thus:

> Corollary to our findings that Petitioner was wrong in basing its transitional input tax credit on the book value of its real properties, is our firm conclusion that Respondent was correct in basing the 8% transitional input tax credit on the value of the improvements on the land such as buildings, roads, drainage systems and similar structures constructed on or after the effectivity of Executive Order 273, pursuant to the wordings of Section 4.105-1 of Revenue Regulations No. 7-95 *(supra)*. Such basis is consistent with the purpose of the transitional input tax credit because when a real estate dealer puts up improvements on the real properties as those enumerated in Revenue Regulations No. 7-95, VAT is necessarily passed on to them either as part of the acquisition

cost of the materials used in building the improvements or as part of the cost of the services rendered in building the same. So in the event those lots with improvements are sold by the dealers upon the effectivity of the E-VAT law or thereafter, the VAT passed on to them can be utilized to pay their output VAT liabilities. It is wrong therefore for the Petitioner to state that Section 4.105-1 of Revenue Regulations No. 7-95 is contrary to law, rather we find it to be consistent and in harmony with the law it seeks to implement. Construction given to a statute by administrative agencies charged with the interpretation and application of the statute is entitled to great respect and should be accorded great weight by the courts, unless such construction is clearly shown to be in sharp conflict with the governing statute or the constitution and other laws (Nestle Philippines vs. Court of Appeals, 203 SCRA 504).

WHEREFORE, premises considered, the instant Petition for Review on the refund of the overpaid value-added tax in the amount of P347,741,695.74 covering the third Quarter of 1997 is hereby **DENIED** for lack of merit.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

(Dissenting)
AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FORT BONIFACIO DEVELOPMENT CORPORATION,
Petitioner,

- versus - **C.T.A. CASE NO. 5926**

COMMISSIONER OF INTERNAL REVENUE; REGIONAL DIRECTOR, REVENUE REGION NO. 8, BIR; and CHIEF, ASSESSMENT DIVISION, REVENUE REGION NO. 8, BIR,
Respondents.

Promulgated:
OCT 17 2000

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DISSENTING OPINION

My esteemed colleagues denied the claim for refund in the amount of P347,741,695.74 on the ground that Petitioner is not entitled to the Transitional Input Tax Credit provided under Section 105 of the 1996 Tax Code.

I reiterate my dissent to the foregoing conclusion (see my Dissenting Opinion in the case entitled Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5665 promulgated on August 11, 2000) and emphasize the following observations:

Section 105 of NIRC, as amended by Executive Order NO. 273, is plainly and unambiguously worded, to wit:

> **SEC. 105.** ***Transitional input tax credit.*** - A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall, subject to the filing of an inventory as prescribed by

> regulations, be allowed input tax on his beginning inventory of goods, materials and supplies equivalent to 8% of the value of such inventory or the actual value-added tax paid on such goods, materials and supplies whichever is higher, which shall be credited against the output tax. (Underscoring Supplied.)

There is nothing in the above law which conveys that the 8% transitional input tax shall be based on the value of the improvements of such goods, materials or supplies. Moreover, Section 100(a)(1)(A), in relation to Sections 104(a)(2)(B) and 105 all of the Tax Code which provide that the presumptive input tax of 8% on the cost of the inventory of goods or properties as of December 31, 1995 shall mean all tangible and intangible objects which are capable of pecuniary estimation and shall include: (a) real properties held primarily for sale to customer or held for lease in the ordinary course of trade or business and not only to improvements. As relative thereto, Section 100[1][A] of the NIRC, as amended by Republic Act No. 7716, provides that **the term "goods or properties" shall mean all tangible and intangible objects which are capable of pecuniary estimation and shall include real properties held primarily for sale to customers** or held for lease in the ordinary course of trade or business. In this regard, We come to the logical conclusion that the 8% transitional input tax provided for under Section 105 in relation to Section 100 of the NIRC, may be based on the value of the taxpayer's beginning inventory of real properties and not only on the improvements thereon.

It is an elementary rule in statutory construction that when the words and phrases of the statute are clear and unequivocal, their meaning must be determined from the language employed and the statute must be taken to mean exactly what it says (**Baranda vs. Gustilo**, 165 SCRA 757). Thus, taking Section 105 in relation to Section 100 of the Code to mean exactly what it says, Petitioner is indubitably entitled to the input tax credit on its beginning inventory of land.

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We are not persuaded by Respondent's position that the 8% transitional input tax shall mean the book value of the improvements of the real properties. We find no rhyme or reason why real properties are treated differently from other goods, supplies and materials under the implementing revenue regulation more particularly Section 4.105-1 of Revenue Regulations No. 7-95. Sections 105 and 100 of the Code are quite specific and require no condition or qualification in availing of the transitional input tax save for the filing of a beginning inventory. If a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation or construction. In short, it must be applied according to its plain and obvious meaning according to its express terms and no interpretation or construction is called for (**Republic vs. Court of Appeals**, 299 SCRA 199; **Cecilleville Realty & Service Corp. vs. Court of Appeals**, 278 SCRA 819; **Paat vs. Court of Appeals**, 266 SCRA 167; **Basbacio vs. Office of the Secretary, DOJ**, 238 SCRA 5; **Victoria vs. COMELEC**, 229 SCRA 269; **Commissioner of Internal Revenue vs. Limpan Investment Corp.**, 34 SCRA 148).

It is worthy to note that Respondent, in implementing the said Section 105, issued Sec. 4.105-1 of Revenue Regulations No. 7-95 which provides among others, that the basis of input tax credit relative to real properties is the improvements, such as buildings, roads, drainage systems and other similar structures. Hence, it is evident that such implementing regulation extended the terms of Section 105. It is axiomatic that a rule or regulation must bear upon, and be consistent with, the provisions of the enabling statute if such rule or regulation is to be valid (**Lina, Jr. vs. Carino**, 221 SCRA 515). The elementary principle of Administrative Law is that in interpreting or implementing provision of law, a government agency cannot go beyond the terms and provisions of the basic law. Much less can it go against the law itself. Administrative rules and regulations issued by a particular department or agency must be in harmony with the provision of law and should be for the sole purpose of carrying into effect the statutory provisions which it is construing or implementing. An administrative agency cannot extend, diminish, or otherwise amend the general provision of law (**Grego vs. COMELEC**, 274 SCRA 481; **Comm. of Int. Rev. vs. CA**, 240 SCRA 368; **People vs. Maceren**, 79 SCRA 450; **Del Mar vs. The Philippine Veterans Administration**, 51 SCRA 340; **U.S. vs. Tupasi Molina**, 29 Phil 119). Furthermore, "administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution" (Art. 7, New Civil Code; **Eastern Shipping Lines, Inc. vs. Court of Appeals**, 291 SCRA 485). In case of discrepancy between the basic law and a rule or regulation issued to implement said law, the basic law prevails (**Conte vs. Commission on Audit**, 264 SCRA 19; **Hijo Plantation, Inc., et al. vs. Central Bank**, 164 SCRA 192; **Shell Philippines, Inc. vs. Central Bank**, 162 SCRA 628; **People vs. Lim**, 108 Phil 1091).

In reading the entire text of Revenue Regulations No. 7-95, I also observed that the transitory provisions contain inconsistencies that all the more prove my point that Respondent erred in basing the transitional input tax credit of real estate dealers on the value of the improvements. The transitory provisions of Revenue Regulations No. 7-95 are hereunder quoted, thus:

TRANSITORY PROVISION

(a) Presumptive Input Tax Credits. -

(i) For goods, materials or supplies not for sale but purchased for use in business in their present condition, which are not intended for further processing and are on hand as of December 31, 1995, a presumptive input tax equivalent to eight percent (8%) of the value of the goods or properties shall be allowed.

(ii) For goods or properties purchased with the object of resale in their present condition, the same presumptive input tax equivalent to eight

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percent (8%) of the value of the goods unused as of December 31, 1995 shall be allowed, which amount may also be credited against the output tax of a VAT-registered person.

(iii) For real estate dealers, the presumptive input tax of eight percent (8%) of the book value of improvements constructed on or after January 1, 1988 (the effectivity of E.O. No. 273) shall be allowed.

Notice that letter (a)(ii) of the aforequoted transitory provisions provides that goods or properties purchased with the object of resale in their present condition comes with the corresponding 8% presumptive input tax of the value of the goods, which amount may also be credited against the output tax of a VAT-registered person. It must be remembered that Section 100 as amended by Republic Act No. 7716 extends the term "goods or properties" to real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business. This provision alone entitles Petitioner to the 8% presumptive input tax of the value of the land (goods or properties) sold. However in letter (a)(iii) of the same Transitory Provisions, Respondent apparently changed its course when it declared that real estate dealers are only entitled to the 8% of the value of the improvements. This glaring inconsistency between these two provisions prove that Revenue Regulations No. 7-95 was not a result of an intensive study and analysis and may have been haphazardly formulated.

In sum, interpretation or construction of the provision of Section 105 of the Code is uncalled for. Naturally, the corresponding implementing regulation which provides that the 8% transitional input tax shall be based on the improvements only of the real properties is not valid nor effective.

Respondent further asseverates that it is the duty of this Honorable Court, in interpreting the transitional input tax credit under Section 105 of the Tax Code, "to look to the object to be accomplished, the evils to be remedied, or the purpose to be subserved, and should give the law a reasonable or liberal construction which will best effectuate its purpose".

Once again, it bears stressing that there is no necessity for interpretation or construction of Section 105 for the same is explicit and categorical. Since there is no room for interpretation, construction, vacillation or equivocation, there is only room for application (**Director of Lands vs. Court of Appeals**, 276 SCRA 276; **Land Bank of the Philippines vs. Court of Appeals**, 258 SCRA 404; **Republic vs. Court of Appeals,** *supra*; **Allarde vs. Commission on Audit**, 218 SCRA 227; **Provincial Board of Cebu vs. Presiding Judge of Cebu CFI, Br. IV**, 171 SCRA 1; **Cebu Portland Cement Co. vs. Municipality of Naga, et al**., 24 SCRA 708) and the law is applied as written (**Commissioner of Internal Revenue vs. Limpan Investment,** *supra*). For the first and fundamental duty of the court is to apply the law as they find it and according to its express terms (**Quijano vs. Development Bank of the Philippines**, 35 SCRA 270; **Luzon Surety Co. Inc. vs. De Garcia**, 30 SCRA 111; **Resins vs. Auditor General**, 25 SCRA 754; **People vs. Mapa**, 20 SCRA 1164).

Likewise, respondent justifies that the questioned regulation is consistent with the Canon of the Value Added Tax System, which is of international application, that transitory input tax credit shall only be allowed provided any form of business tax had been paid and passed-on as part of the invoice price or acquisition cost of the inventory and such inventory is brought into the VAT regime by its owner. Thus, if no such tax forms part of the inventory cost, as in the instant case when Petitioner purchased and acquired the raw land from the Government under a VAT-free sale transaction, no transitory input tax credit shall be allowed when the same is brought into the VAT regime as the taxpayer's transitory beginning inventory. According to the Respondent, the purpose of the transitional input tax credit for inventories brought into the VAT regime, during the transition of the business from non-VAT to VAT, is to prevent the cascading

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of the VAT or sales tax in a subsequent turnover of inventories, in order to avoid imposition of a tax against tax or VAT against VAT and thus prevent double taxation of the inventory, since the VAT is only intended as a tax on value added on every turnover of the inventory until it reaches the ultimate consumer against whom the full burden or cost of the tax is indirectly passed on as a part of his acquisition cost.

Resorting to extrinsic aids in interpreting Section 105 is not proper in the case at bar. Because as We have already pointed out, Section 105 does not require any interpretation or construction. In the case of **People vs. Amigo**, 252 SCRA 43, the Supreme Court held that it is a settled rule of legal hermeneutics that if the language under consideration is plain, it is neither necessary nor permissible to resort to extrinsic aids.

Petitioner also astutely counters that there is no such canon of the Value Added Tax System governing the conditions for granting transitory input tax credits which is of international application for reasons that:

> "The design and structure of VAT as legislated in the Philippines has certain characteristic features which make it unique. For instance, although in most countries, the VAT is comprehensive in scope allowing very few exemptions, the Philippine VAT system is replete with exemptions from VAT which affect the over-all taxable base. The zero rating of certain domestic foreign currency denominated transactions in the Philippine VAT law is another feature not found in the VAT systems of other countries. Likewise, the Philippines is one of the only two countries (the other is New Zealand) which imposes VAT on sale of land. In fact, the imposition in the Philippine VAT law of tax on the sale of land is not in consonance with the view of Alan A. Tait, whose work is cited in respondent's Memorandum, that: "The VAT is supposed to be a tax on flows. Land is a stock and transfer of that stock should not be liable to VAT". These are legislative elements in the Philippine VAT law which is not in line with international VAT practices. Thus, there are components embedded in the Philippine VAT structure which do not conform to the VAT structure of other countries. This shows that the Philippine VAT system differs from, and was not legislated in accordance with, whatever "canon" is perceived to be applicable internationally."

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In fact, We are in full accord with Petitioner's propositions that:

> (1) Contrary to Respondent's position, the rationale for allowing the provisional input tax credit in Section 105 of the NIRC as input tax creditable against output tax, is not necessarily that the goods were previously and actually subjected to other forms of indirect taxes, but to provide relief from burdensome tax;
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> (2) When the Government sold the land, it did not anticipate that the subsequent sale thereof will be subject to VAT and that upon imposition of VAT thereon, the VAT will become a major component of the selling price. Nor did the purchaser of the land, in offering a price for the land, anticipate the imposition of VAT thereon. As a consequence of such imposition, however, the purchasers of land will ultimately bear the indirect tax burden. Thus, to impose the VAT on sales of land acquired prior to January 1, 1996, (the date of effectivity of EVAT Law) without allowing transitional input tax credit as provided for under Section 105 of the NIRC, will unduly increase the cost of the land instead of mitigating the unintended burden of the tax.
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> (3) Had Congress intended to make applicable the so-called "Canon of the Value Added Tax System" and "internationally accepted practice" it would also have amended Section 105 together with the other provisions of the old NIRC. But it did not.
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> (4) Moreover, it bears noting that in Revenue Regulations No. 6-97 (dated January 2, 1997), which were issued to implement Republic Act No. 8241 (the law amending R.A. No. 7716), and which amended Revenue Regulations No. 7-95, the provision in Section 4.105-1 of Revenue Regulations No. 7-95 has been deleted. The amendment appears to recognize that the basis of the 8% input tax credit should not be confined to the value of the improvements.

In addition, I would like to reiterate that Section (a)(ii) of the TRANSITORY PROVISIONS of Revenue Regulations No. 7-95 which implemented Republic Act No. 7716, specifically recognized the availability of presumptive/transitional input VAT on its unused inventory of goods or property as of December 31, 1995 at 8% of the inventory cost.

Accordingly, Petitioner herein is authorized to make an accounting entry in its books of accounts, as follows:

Input VAT	P5,698,200,256.00	
Inventory		P5,698,200,256.00

which journal entry serves as the legal basis for making available the 8% transitional input VAT as tax credit against the output VAT. Considering therefore, that Petitioner has a balance of input tax of P5,698,200,256.00 in its favor, the payment of the VAT output in actual cash was erroneous or illegal.

WHEREFORE, in view of the foregoing, I vote to grant the claim for refund in the amount of P347,741,695.74.

AMANCIO Q. SAGA
Associate Judge

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