REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

PHILIPPINE INTERNATIONAL AIR TERMINALS CO., INC., *Petitioner,*	**CTA CASE NO. 9123**
-versus-	**Members:** **BAUTISTA,** Chairperson; **FABON-VICTORINO, RINGPIS-LIBAN,** ***JJ.***
COMMISSIONER OF INTERNAL REVENUE *Respondent.*	**Promulgated:** MAY 07 2018 2:18 p.m.

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DECISION

RINGPIS-LIBAN, J.:

The Case

This Petition for Review[1] filed pursuant to Section 7(a)(1) of Republic Act ("R.A.") No. 1125 as amended by R.A. No. 9282 prays for the reversal of the deficiency Value-Added Tax ("VAT") assessment in the aggregate amount of One Billion Seven Hundred Eighty-Four Million Seven Hundred Four Thousand Six Hundred Thirty-Four and 23/100 Pesos (Php1,784,704,634.23), including penalties, surcharge and interest for taxable years 2000, 2001 and 2002, as confirmed in the three (3) Final Decisions on Disputed Assessment ("FDDA") all dated July 14, 2015 ("Second FDDA, Third FDDA and Fourth FDDA").[2]

The Facts

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1 Par. 1.1, Petition for Review, docket, vol. 1, p. 2.
2 Exhibits "P-23" to "P-25".

Petitioner Philippine International Air Terminals Co., Inc. (PIATCO) is a domestic corporation duly organized and existing under Philippine laws, with principal office at the 3rd Floor, PAIR-PAGS Center, Ninoy Aquino International Airport ("NAIA") Compound, NAIA Avenue, Pasay City.[3]

On the other hand, Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR") who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code ("NIRC") of 1997, as amended or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[4]

In 1998, Petitioner registered with the Philippine Export Zone Authority ("PEZA") as an "Ecozone Developer/Operator" to "establish, develop, construct, administer, manage and operate a special economic zone to be known as PIATCO Special Economic Zone".[5]

Petitioner also registered with the PEZA as an "Economic Zone Facilities Enterprise" to "engage in the construction and operation of the NAIA Terminal Passenger 3 at the PIATCO Special Economic Zone".[6]

In a Letter dated June 17, 1998, Petitioner formally notified the PEZA that it was waiving the income tax holiday incentives granted under Executive Order ("E.O.") No. 226. In view of this waiver, Petitioner was entitled to "exemptions from all national and local taxes".[7]

On June 24, 2002, Petitioner received from Respondent Letter of Authority ("LOA") No. 0029367 dated June 20, 2002 ("First LOA"), informing Petitioner that BIR examiners were authorized to examine its books of account and other accounting records "for all internal revenue taxes for the period from January 01, 1997 to December 31, 2001".[8]

On November 04, 2003, after several conferences with the BIR, Petitioner received an undated Preliminary Assessment Notice ("First PAN").[9]

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[3] Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), docket, vol. 3, p. 1419.
[4] Par. 2, Stipulation of Facts, JSFI, docket, vol. 3, p. 1419.
[5] Par. 3, Stipulation of Facts, JSFI, docket, vol. 3, p. 1420; Exhibit "P-26".
[6] Par. 4, Stipulation of Facts, JSFI, docket, vol. 3, p. 1420; Exhibit "P-27".
[7] Pars. 3.6 and 3.7, Petition for Review, docket, vol. 1, pp. 13-14; Exhibit "P-28".
[8] Par. 5, Stipulation of Facts, JSFI, docket, vol. 3, p. 1420; Exhibit "P-2".
[9] Par. 6, Stipulation of Facts, JSFI, docket, vol. 3, p. 1420; Exhibit "P-3".

On November 19, 2003, Petitioner submitted its written reply to the First PAN.[10]

On April 17, 2006, Petitioner received a Formal Letter of Demand dated 15 January 2006 ("First FLD"), with seventeen (17) Assessment Notices all dated April 07, 2006, demanding payment of deficiency taxes, including VAT, for taxable years 1997 to 2001.[11]

On May 17, 2006, Petitioner filed with Respondent its Protest Letter against the First FLD.[12]

On February 09, 2007, Respondent issued a FDDA ("First FDDA") finding Petitioner liable for deficiency taxes in the total amount of Php24,423,565.09 for taxable years 1997 to 2001.[13]

On February 14, 2007, Petitioner remitted payments to Respondent for deficiency taxes covering taxable years 1997 to 2001 in the amount of Php24,423,565.09, in compliance with the First FDDA.[14]

On September 30, 2008, Petitioner received: (a) BIR LOA No. 000044211 dated September 18, 2008 ("Second LOA") for the examination of Petitioner's deficiency VAT for taxable year 2001, and (b) Notice of Informal Conference dated September 26, 2008 to be held on October 03, 2008.[15]

On January 12, 2009, Petitioner received: (a) BIR LOA No. 00006822 dated December 10, 2008 ("Third LOA") for the examination of deficiency VAT on importations for taxable year 2000, and a Notice of Informal Conference dated January 08, 2009 to be held on January 14, 2009, and (b) BIR LOA No. 00006821 dated December 10, 2008 ("Fourth LOA") for the examination of deficiency VAT on importations for taxable year 2002, and a Notice of Informal Conference dated January 08, 2009 to be held on January 14, 2009.[16]

In its initial findings, Respondent assessed Petitioner the following: (a) Php51,406,057.47 as deficiency VAT for taxable year 2000, (b) Php682,927,427.37 as deficiency VAT for taxable year 2001 and (c)

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10 Par. 6, Stipulation of Facts, JSFI, docket, vol. 3, p. 1420; Exhibit "P-4".
11 Par. 7, Stipulation of Facts, JSFI, docket, vol. 3, pp. 1420-1421; Exhibit "P-5".
12 Par. 8, Stipulation of Facts, JSFI, docket, vol. 3, p. 1421; Exhibit "P-6".
13 Par. 9, Stipulation of Facts, JSFI, docket, vol. 3, p. 1421; Exhibit "P-7".
14 Par. 10, Stipulation of Facts, JSFI, docket, vol. 3, p. 1421; Exhibit "P-8".
15 Par. 3.14, Petition for Review, docket, vol. 1, p. 16; Exhibits "P-9" and "P-9-1".
16 Par. 3.15, Petition for Review, docket, vol. 1, p. 16; Exhibits "P-10" to "P-10-3" and "P-11" to "P-11-7".

Php475,914,313.89 as deficiency VAT for taxable year 2002, inclusive of surcharge and interest. The alleged deficiency VAT assessments all pertain to Petitioner's importations of capital equipment, building materials and supplies used in the construction of the NAIA Passenger Terminal 3 facilities.[17]

After the informal conferences, Respondent issued to Petitioner three (3) PANs dated: (a) January 23, 2009 assessing deficiency VAT for taxable year 2001 in the amount of Php698,710,054.48 ("Second PAN"), (b) March 16, 2009 assessing deficiency VAT for taxable year 2000 in the amount of Php51,976,782.93("Third PAN") and (c) March 16, 2009 assessing deficiency VAT for taxable year 2002 in the amount of Php477,161,015.16 ("Fourth PAN"). The deficiency VAT assessments all pertain to Petitioner's importations under its PEZA registrations.[18]

On February 27, 2009 and April 03, 2009, Petitioner filed its letter replies to the Second PAN, Third PAN and Fourth PAN.[19]

In response, on August 08, 2012, Respondent sent a letter to Petitioner with the attached BIR Memorandum dated July 24, 2012 issued by BIR Region No. 8, declaring that Petitioner's importations of construction materials and equipment under its PEZA registrations are exempt from VAT, and as such, the proposed 2000 to 2002 deficiency VAT assessments are null and void for lack of legal basis, considering the case closed and terminated.[20]

On February 23, 2015, notwithstanding the previous letter of Respondent dated August 08, 2012, Petitioner received FANs all dated February 23, 2015 assessing the same deficiency VAT for TY 2000, 2001 and 2002.[21]

On March 25, 2015, Petitioner filed its protest against the FANs.[22]

On July 20, 2015, Petitioner received from Respondent three (3) FDDA dated July 14, 2015 upholding Petitioner's liability for deficiency VAT amounting to (a) Php73,057,388.40 for taxable year 2000 ("Second FDDA"), (b) Php1,012,652,812.14 for taxable year 2001 ("Third FDDA") and Php698,994,433.69 for taxable year 2002 ("Fourth FDDA").[23]

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[17] Par. 11, Stipulation of Facts, JSFI, docket, vol. 3, p. 1421.

[18] Pars. 12 to 16, Stipulation of Facts, JSFI, docket, vol. 1, p. 1421-1423; Exhibits "P-12" to "P-14".

[19] Par. 16, Stipulation of Facts, JSFI, docket, vol. 3, p. 1422-1423; Exhibits "P-15" and "P-16".

[20] Par. 3.24, Petition for Review, docket, vol. 1, pp. 10-11; Exhibits "P-17" and "P-18".

[21] Par. 17, Stipulation of Facts, JSFI, docket, vol. 3, p. 1423; Exhibits "P-19" to "P-21".

[22] Par. 18, Stipulation of Facts, JSFI, docket, vol. 3, p. 1423; Exhibit "P-22".

[23] Par. 19, Stipulation of Facts, JSFI, docket, vol. 3, p. 1423; Exhibits "P-23" to "P-25".

Consequently, Petitioner filed the instant Petition for Review[24] on August 19, 2015.

On September 18, 2015, Petitioner received from Respondent three (3) Final Notices Before Seizure ("the Notices") dated September 18, 2015. Therein, Respondent demanded payment of VAT liabilities for taxable years 2000, 2001 and 2002 in the total amount of Php2,263,152,164.26 including penalties, surcharge and interest.[25]

Petitioner was informed in the Notices that if it failed to pay the amounts assessed as deficiency VAT, Respondent would serve and execute the Warrant of Distraint and/or Levy and Garnishment already prepared to enforce collection.[26]

In response to the Notices, Petitioner filed a Motion for Suspension of Collection of Tax[27] on September 28, 2015 praying that this Court issue an Order directing Respondent to withdraw the Notices and suspend all acts to collect tax deficiencies from Petitioner, including the issuance of a Warrant of Distraint and/or Levy and Garnishment. Petitioner also prayed for the posting of a surety bond in an amount lower than the principal amount of the deficiency VAT of Php430,463,290.23.

On September 30, 2015, Petitioner filed its Supplemental Motion for Suspension of Collection of Tax[28] praying that a Writ of Preliminary Injunction be issued without need of posting a bond, and if a bond was needed that it be an amount substantially lower than the basic tax assessed.

In the Answer[29] filed on October 23, 2015 *via* registered mail, Respondent interposed the following special and affirmative defenses:

> **"PIATCO's importation of capital equipment and construction materials are not exempt from Value-Added Tax (VAT).**

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24 Docket, vol. 1, p. 441.
25 Pars. 1 to 5, Motion for Suspension of Collection of Tax, docket, vol. 2, pp. 871-872.
26 Par. 6, Motion for Suspension of Collection of Tax, docket, vol. 2, pp. 873.
27 Docket, vol. 2, pp. 871-877.
28 Docket, vol. 2, pp. 885-894.
29 Docket, vol. 2, pp. 913-921.

12. PIATCO's availment of incentives under RA No. 7916 is not absolute. It shall be subject to the rules and regulations of PEZA.

13. Under the PEZA Law and its implementing rules and regulation, PEZA is mandated to evaluate and approve the importations of registered enterprise based on well-defined criteria that determines significance of the importations in relation to the nature of activity engaged in by the registered economic enterprises.

14. PIATCO recognizes the above madate of PEZA and in fact it requested from PEZA to be allowed to import construction materials tax and duty-free to be used for the NAIA Passenger Terminal III (PT3) project.

15. Acting on PIATCO's request, the PEZA, however, through Board Resolution No. 01-284 dated September 27, 2001, categorically DENIED its request because PIATCO is not eligible to avail of duty and tax exemption on imported construction materials and equipment for the PT3 project.

16. While PEZA issued Board Resolution No. 02-090 dated March 26, 2002, allowing the processing of PIATCO's import permit application, and release of the construction materials and equipment subject to the posting of surety bonds until the issues in the appeal of PIATCO are finally resolved. Said Resolution, however, did not modify or reverse PEZA's previous resolution that PIATCO is not entitled to avail of the duties and tax exemption on its importation of construction materials and equipment. In fact, up to this date there is no document to show that PIATCO's appeal has been finally resolved in its favor.

17. The Supreme Court has held in numerous cases that "taxation is the rule and exemption is the exception. The burden of proof rests upon the party claiming exemption to prove that it is, in fact covered by the exemption so claimed. As a rule, tax exemptions are construed strongly against claimant. Exemptions must be shown to exist clearly and categorically and supported by clear provision".

18. Consequently, in the absence of clear and convincing proof that PIATCO's importation of construction materials and

equipment are tax-exempt, or there is a final ruling by PEZA that PIATCO is eligible of duty and tax exemption on imported construction materials and equipment, PIATCO shall not be allowed to claim the exemption provided under Section 24 of RA No. 7916.

19. Accordingly, PIATCO's importation of construction materials and equipment is clearly subject to VAT which was even confirmed by PIATCO's filing of VAT returns and the payments of the corresponding VAT dues thereon. It logically follows that PIATCO is not really exempt from all kinds of taxes contrary to its assertion that it is exempt from local and national taxes by virtue of RA No. 7916.

20. Moreover, when PIATCO paid and settled the deficiency tax for taxable years 1997-2001 issued by the BIR, National Investigation Division (NID), it is already barred by estoppel from raising defense of PIACO's tax exemption from all kinds of taxes including VAT. Thus, PIATCO cannot now come and argue that it is exempt from all taxes when by its act of settling its 1997-2001 tax liabilities and the filing of VAT returns and payment of VAT due thereon, it had definitely consented to its taxability.

The BIR's right to assess PIATCO of its deficiency VAT for taxable years 2000, 2001 and 2002 is not barred by prescription.

21. While it is true that PIATCO filed its VAT returns for the years 2000, 2001, and 2002, said VAT returns are false for failure to include therein the importation of the construction materials and equipment for the PT3 project. Hence, for filing false VAT returns for the years 2000, 2001, and 2002, the corresponding taxes may be assessed at anytime within ten (10) years after the discovery of such falsity pursuant to Section 222(a) of the 1997 National Internal Revenue Code (NIRC), as amended. PIATCO deviated from the truth, making the same false returns within the purview of Section 222(a) of the NIRC.

22. In the landmark case of **Aznar vs. Court of Tax Appeals and Collector of Internal Revenue, G.R. No. L-20569, 23 August 1974**, the Supreme Court stated that a false return is one which contains wrong information due to mistake, carelessness or ignorance. The word "false" is defined as an adjective which means not true or not correct. Intent to evade is immaterial in case of filing of false returns. As long as there is some deviation from the truth, whether it is due to mistake, ignorance or carelessness, falsity arises.

23. The Supreme Court had ruled that the filing of deficient returns which prevent the Commissioner of Internal Revenue from computing the proper taxes is tantamount to non-filing. The Commissioner had to determine and assess the taxes on data obtained not from the return, but from other sources.

24. In the case at bar, the BIR only discovered the falsity of PIATCO's VAT returns via third-party information furnished to the BIR in the year 2008 relative to PIATCO's non-payment of VAT on its importation of construction materials and equipment for the years 2000-2002 and the ruling of PEZA that PIATCO is not entitled to tax and duty-free importation. Clearly, insofar as these false VAT returns for the taxable years 2000, 2001 and 2002, the FANs issued on February 15, 2015 are not yet time-barred.

The BIR can still assess PIATCO of its deficiency VAT for taxable years 2000 and 2001 notwithstanding previous investigation and assessment for the same periods.

25. PIATCO contends that it had already been investigated for all internal revenue taxes for the period January 1, 1997 to December 31, 2001 under Letter of Authority No. 00029367 dated June 20, 2002, and as a result of which was made to pay the deficiency taxes for the said period; that the BIR found no deficiency VAT assessment for the years 2000 and 2001; and that since 2000 and 2001 were already covered by previous Letter of Authority and deficiency assessments, the BIR is precluded from assessing PIATCO for the same taxable periods.

26. The above contention of PIATCO is bereft of merit. Section 235 of the NIRC, as amended provides

> 'SEC. 235. **Preservation of Books and Accounts and Other Accounting Records.** – <u>All the books of accounts, including the subsidiary books and other accounting records of corporations,</u> partnerships, or persons, shall be preserved by them for a period beginning from the last entry in each book until the last day prescribed by Section 203 within which the Commissioner is authorized to make an assessment. The said books and records shall be subject to examination and inspection by internal revenue officers: Provided, That for **income tax purposes**, such examination and inspection shall be made only once in a taxable year, except in the following cases:
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> (a) **Fraud, irregularity or mistakes, as determined by the Commissioner;**
> (b) The taxpayer requests reinvestigation;
> (c) Verification of compliance with withholding tax laws and regulations;
> (d) **In the exercise of the Commissioner's power under Section 5(B) to obtain information from other persons in which case, another or separate examination and inspection may be made**.xxx' (Emphasis supplied)

27. From the foregoing, the "one-investigation per year rule" clearly applies only for income tax purposes. In the present case, the investigation and assessment is for VAT purposes. Hence, the above rule does not apply to the case of PIATCO.

28. Moreover, it must be noted that what had been examined and terminated in the investigation by the NID for the years 2000 and 2001 were for the other tax types, and that no mention whatsoever was made on the examination and assessment of PIATCO's VAT liabilities for the same taxable periods.

29. Even assuming for the sake of argument that the "one-investigation per year rule" will apply, the BIR can still pursue the investigation and assessment of PIATCO's VAT liabilities.

30. First, in case of fraud, irregularity or mistakes, as determined by the Commissioner, the limitation of one investigation per year does not apply. PIATCO committed fraud, irregularity and mistakes in not declaring its importation for VAT purposes despite the ruling of PEZA that PIATCO is not entitled to avail of duties and tax exemption on its importation of construction materials and equipment.

31. Second, the VAT liabilities of PIATCO was ascertained through verification from the data obtained from third party sources. The investigation conducted by the BIR Pasay City which led to the issuance of the subject deficiency VAT assessments does not therefore contravene the provision of Section 235 of the NIRC of 1997, as amended. Verifying copies of the documents obtained from third-party sources and matching the same with the VAT returns on file with BIR, cannot by any stretch of the imagination be considered as an examination and inspection of the books of accounts and other accounting records of PIATCO which are kept in their place of business.

32. Finally, Section 5(B) of the NIRC of 1997, as amended, specifically empowers the Commissioner of Internal Revenue or her authorized representatives, to obtain information from any person other than the person whose internal revenue tax liability is subject to audit or investigation for the purpose of determining the taxpayer's tax liability. The discovery of substantial underdeclaration or we say substantial underdeclaration of PIATCO's importation for VAT purposes for taxable years 2000, 2001 and 2002 upon verified information provided for by an "informer", as well as the necessity of obtaining information from third parties to ascertain the correctness of the return filed or evaluation of tax compliance in collecting taxes, are circumstances warranting exception from the general rule in Section 235 of the NIRC, as amended.

33. Verification from the Certification provided by PEZA disclosed that PIATCO made importations of construction materials and equipment for taxable year 2000 in the aggregate

amount of $3,153,657.36. The peso equivalent of which is in the aggregate amount of Php139,372,102.64 and the total basic VAT due therefrom is in the amount of Php16,532,920.06.

34. Verification from the Certification provided by PEZA disclosed that PIATCO made importations of construction materials and equipment for taxable year 2001 in the aggregate amount of Php2,225,758,899.47. The total basic VAT due therefrom is in the amount of Php240,027,454.01.

35. Verification from the Certification provided by PEZA disclosed that PIATCO made importations of construction materials and equipment for taxable year 2002 in the aggregate amount of Php1,645,095,135.82. The total basic VAT due therefrom is in the amount of Php173,902,916.16.

36. All presumptions are in favor of the correctness of the tax assessment **(Interprovincial Autobus vs. Collector of Internal Revenue, 98 Phil. 290)**."

On November 09, 2015, Petitioner filed its Reply[30] to Respondent's Answer.

On November 27, 2015, Petitioner received this Court's Resolution[31] dated November 25, 2015 where We ruled as follows:

a) Denying Petitioner's Motion for Suspension of Collection of Tax and Supplemental Motion for Suspension of Collection of Tax for being premature; and

b) Respondent is put on notice that his Civil Remedies for Collection of Taxes under the Tax Code has not yet ripened. Thus, any effort to collect the disputed assessment in the basic amount of Php430,463,290.23 should only be done after a final and executory Decision in this case, provided such is favorable to Respondent.

On December 02, 2015, Petitioner received a Notice of Pre-Trial Conference[32] setting the Pre-Trial Conference on February 23, 2016 and

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[30] Docket, vol. 2, pp. 922-936.
[31] Docket, vol. 2, pp. 937-942.
[32] Docket, vol. 2, pp. 942-944.

directing the parties to file with the Court and serve on the adverse party their respective pre-trial briefs at least three (3) days before the date of the pre-trial. The Notice further ordered the parties to submit the judicial affidavit of their witness not later than five (5) days before the pre-trial.

On February 19, 2016, Petitioner filed its: (a) Pre-Trial Brief[33], and (b) Compliance, with attached Judicial Affidavit of its witness, Atty. Moises S. Tolentino, Jr.[34]

During the September 06, 2016 hearing, this Court granted the parties a period of ten (10) days or until September 16, 2016 to file their Joint Stipulation of Facts and Simplification of Issues.[35]

On September 16, 2016, Petitioner and Respondent jointly filed their Joint Stipulation of Facts and Simplification of Issues.[36]

On October 04, 2016, this Court issued a Pre-Trial Order[37] approving and adopting the Joint Stipulation of Facts and Simplication of Issues filed by the parties. The Pre-Trial Order also stated the documentary and testimonial evidence of Petitioner and Respondent.

During the May 23, 2017 hearing, Petitioner's witness, Atty. Moises S. Tolentino, Jr., testified in open court, identified his Judicial Affidavit dated February 18, 2016 and his signature therein. Petitioner then rested its case.[38]

On June 02, 2017, Petitioner filed its Formal Offer of Evidence with Manifestation[39]. All of Petitioner's exhibts were admitted.[40]

On August 07, 2017, Respondent manifested that he has no witness to present.[41] Thus, on September 14, 2017, Respondent filed his Formal Offer of Evidence[42].

[33] Docket, vol. 3, pp. 1367-1381.
[34] Docket, vol. 2, pp. 945-973.
[35] Docket, vol. 3, p. 1415.
[36] Docket, vol. 3, pp. 1419-1426.
[37] Docket, vol. 3, pp. 1428-1440.
[38] Docket, vol. 3, p. 1485.
[39] Docket, vols. 3 and 4, pp. 1487-1504.
[40] Resolution dated August 07, 2017, docket, vol. 5, pp. 2095-2097; Resolution dated January 12, 2018, docket, vol. 5, pp. 2169-2172.
[41] Docket, vol. 5, p. 2098.
[42] Docket, vol. 5, pp. 2157-2159.

On January 12, 2018, this Court issued a Resolution[43] admitting Respondent's exhibits and directed the filing of a Memorandum. On February 23, 2018, Petitioner filed its Memorandum[44].

On March 13, 2018, this Court issued a Resolution[45] stating that Respondent failed to file his Memorandum. Hence, the case is now submitted for decision.

The Issues

The issues to be resolved in this case are as follows:[46]

1. Whether Petitioner is liable for deficiency VAT for taxable years 2000, 2001 and 2002;

2. Whether Petitioner's importations of capital equipment and raw materials are exempt from VAT;

3. Whether the period for respondent to assess deficiency VAT against Petitioner for taxable years 2000, 2001 and 2002 has prescribed; and

4. Whether Respondent is barred from assessing Petitioner for taxable years 2000 and 2001 due to the previous assessments made against Petitioner for the same taxable years.

Discussion/Ruling

The Court has jurisdiction over the present case.

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

Section 228 of the NIRC of 1997, as amended, provides:

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43 Docket, vol. 5, pp. 2169-2172
44 Docket, vol. 5, pp. 2173-2215.
45 Docket, vol. 5, p. 2218.
46 Issues, JSFI, docket, vol. 3, pp. 1424-1425.

> "SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> **If the protest is denied** in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, **the taxpayer adversely affected by the decision** or inaction **may appeal to the Court of Tax Appeals <u>within</u> <u>thirty</u> <u>(30)</u> <u>days</u> <u>from</u> <u>receipt</u> <u>of the</u> <u>said</u> <u>decision</u>**, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."[47]

Based on the foregoing provision, Petitioner had thirty (30) days from July 20, 2015[48], the date of receipt of the Second FDDA, Third FDDA and Fourth FDDA, or until August 19, 2015 within which to appeal the said decisions.

Considering that Petitioner filed this Petition for Review through registered mail on August 19, 2015, which the Court received on August 20, 2015, the instant Petition for Review was timely filed.[49]

Petitioner is not liable for deficiency VAT for taxable years 2000, 2001 and 2002.

We shall now proceed to discuss the main issue.

Respondent contends that Petitioner's availment of incentives under R.A. No. 7916 or The Special Economic Zone Act of 1995 is not absolute and it is subject to the rules and regulations of PEZA. Respondent posits that in order for Petitioner to claim the exemption under the law, there should be clear and convincing proof that Petitioner's importation of construction materials and equipment are tax-exempt, or there is a final ruling by PEZA that it is eligible of duty and tax exemption on imported construction materials and equipment.

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[47] *Emphasis and underscoring supplied.*
[48] Exhibits "P-23" to "P-25".
[49] Docket, vol. 1, p. 441.

The Court is not convinced.

Petitioner is a PEZA-registered entity. It is registered both as an "Ecozone Developer/Operator" under Certificate of Registration No. EZ-98-01 and as an "Ecozone Facilities Enterprise" under Certificate of Registration No. EZ 98-01F.[50] Respondent himself recognized Petitioner's status as a PEZA-registered entity based on the records and in his submissions with this Court.[51] Hence, it is entitled to the fiscal incentives granted under R.A. No. 7916 and E.O. No. 226 or the Omnibus Investments Code of 1987.[52]

As a PEZA-registered enterprise, Petitioner waived the Income Tax Holiday incentive under E.O. No. 226 in a Letter dated June 17, 1998[53] in order to avail of the 5% special tax rate on gross income, in lieu of all other national and local taxes contemplated under R.A. No. 7916.

Section 24 of R.A. No. 7916 provides:

> "**SEC. 24.** Exemption from National and Local Taxes.- **Except for real property taxes on land owned by developers, <u>no taxes, local and national, shall be imposed</u> on business establishments operating within the ECOZONE. <u>In lieu thereof, five percent (5%) of the gross income</u> earned by all business enterprises within the ECOZONE shall be paid** and remitted as follows:
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> a. Three percent (3%) to the National Government;
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> b. Two percent (2%) which shall be directly remitted by the business establishments to the treasurer's office of the municipality or city where the enterprise is located."[54]

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[50] Exhibits "P-26" and "P-27".

[51] Pars. 3 and 4, Stipulation of Facts, JSFI, docket, vol. 3, p. 1420.

[52] Section 23 of R.A. No. 7916:

SEC. 23. Fiscal Incentives. – Business establishments operating within the ECOZONES shall be entitled to the fiscal incentives as provided for under Presidential Decree No. 66, the law creating the Export Processing Zone Authority, or those provided under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987. xxx

[53] Pars. 3.6 and 3.7, Petition for Review, docket, vol. 1, pp. 13-14; Exhibit "P-28".

[54] *Emphasis and underscoring supplied.*

PEZA's entitlement to the 5% special tax rate on gross income as an Ecozone Developer/Operator" and "Ecozone Facilities Enterprise" is further reinforced by Section 2 of Part VII of the Implementing Rules and Regulations ("IRR") of R.A. 7916, thus:

> **"PART VII - INCENTIVES TO ECOZONE ENTERPRISES**
>
> xxx xxx xxx
>
> **SECTION 2.** Scope of Entitlement - New or expanding **ECOZONE Developers/Operators**, Export, Free Trade, Domestic Market, Utilities, **Facilities** and Tourism **Enterprises**, except ECOZONE Service Enterprises as defined under Section 2(p), Rule I of these Rules, registered on or after the effectivity of these Rules, **shall be entitled to the fiscal incentives provided in Sections 24 and 42 of the Act.**"[55]

Additionally, Section 1 of Rule XIV and Section 2 of Rule XVI of the IRR provides:

> **"Rule XIV - Incentives to Ecozone Developers/Operators**
>
> SECTION 1. ECOZONE Developers/Operators - ECOZONE Developers/Operators shall be entitled to the following incentives:
>
> A. Exemption from National and Local Taxes and Licenses - An **ECOZONE Developer/Operator shall**, to the extent of its construction and operation, **be <u>exempt</u> <u>from</u> <u>payment</u> <u>of</u> <u>all</u> <u>national</u> <u>internal</u> <u>revenue</u> <u>taxes</u>** and all local government impost, fees, licenses or taxes, **including but not limited to the following**:
>
> 1. **Internal revenue taxes such as gross receipts tax, <u>Value</u> <u>Added</u> <u>Tax</u>**, ad valorem and excise taxes; and

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[55] *Emphasis supplied.*

2. Franchise, common carrier or value added taxes and other percentage taxes on public and service utilities and enterprises.

In lieu thereof, the ECOZONE Developer/Operator Enterprise **shall pay a five percent (5%) final tax on gross income** in accordance with the provisions of Rule XX of these Rules.

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Rule XVI - Incentives to Ecozone Domestic Market, Facilities, Utilities and Tourism Enterprises

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SECTION 2. ECOZONE Facilities, Utilities and Tourism Enterprises - **ECOZONE Facilities**, Utilities and Tourism **Enterprises shall be entitled** to the following incentives:

a. **<u>Exemption from national and local taxes and lieu thereof payment of a special tax rate of five percent (5%) on gross income</u> in accordance with Section 1(A) of Rule XIV** and Rule XX of these Rules...

xxx xxx xxx"[56]

Evident from the foregoing, Petitioner, upon election of the 5% special tax rate on gross income, is exempt from payment of all national and local taxes including VAT on importations.

In BIR Memorandum[57] dated July 24, 2012, which was attached to the August 08, 2012 response of Respondent to Petitioner's letter-reply to the Second PAN, Third PAN and Fourth PAN, Respondent himself categorically ruled that Petitioner is exempt from VAT. Respondent through Deputy Commissioner Nelson M. Aspe confirmed that no VAT directly (sales) and indirectly (purchase) shall be imposed on a PEZA-registered enterprise. Thus, the proposed deficiency assessments against Petitioner pertaining to its importations of equipment and construction materials have no basis, rendering the same as null and void.

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[56] *Emphasis and underscoring supplied.*
[57] Exhibit "P-18".

The BIR Memorandum further emphasized that a void assessment cannot give rise to an obligation to pay deficiency taxes and divest the taxing authority of the right to collect them.

In view of the issuance of this BIR Memorandum, Respondent sent Petitioner a Letter dated August 08, 2012[58] informing Petitioner that **the case involving the assessment for deficiency VAT for TY 2000, 2001 and 2002 was considered closed and terminated.**

Accordingly, there are no legal grounds for Respondent to issue the FANs all dated February 23, 2015[59] **more than two years and six months thereafter,** because Respondent had already made an explicit ruling that Petitioner is VAT exempt and has in fact terminated the case against Petitioner on this particular matter.

Moreover, jurisprudence is very clear on the VAT exemption of PEZA-registerd enterprises.

The Supreme Court in the case of *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*[60] had laid to rest the issue on the preferential tax treatment of PEZA-registered enterprises. Upon payment of the 5% special tax rate on gross income, PEZA-registered enterprises are not subject to other internal revenue taxes. The VAT on importation is an internal revenue tax from which a PEZA-registered entity is exempt. This exemption covers both direct and indirect taxes. The relevant portion of *Seagate* is as follows:

> "From the above-cited laws, **it is immediately clear that petitioner enjoys preferential tax treatment. It is not subject to internal revenue laws and regulations and is even entitled to tax credits. The VAT on capital goods is an internal revenue tax from which petitioner as an entity is exempt.** Although the transactions involving such tax are not exempt, petitioner as a VAT-registered person, however, is entitled to their credits.
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> xxx xxx xxx

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[58] Exhibit "P-1".
[59] Exhibits "P-19" to "P-21".
[60] G.R. No. 153866, February 11, 2005.

This exemption covers *both* direct and indirect taxes, stemming from the very nature of the VAT as a tax on consumption, for which the direct *liability* is imposed on one person but the indirect *burden* is passed on to another. Respondent, as an exempt entity, can neither be directly charged for the VAT on its sales nor indirectly made to bear, as added cost to such sales, the equivalent VAT on its purchases. *Ubi lex non distinguit, nec nos distinguere debemus.* Where the law does not distinguish, we ought not to distinguish.

Moreover, the exemption is both express and pervasive for the following reasons:

First, **RA 7916 states that "no taxes, local and national, shall be imposed on business establishments operating within the ecozone." Since this law does not exclude the VAT from the prohibition, it is deemed included.** *Exceptio firmat regulam in casibus non exceptis.* An exception confirms the rule in cases not excepted; that is, a thing not being excepted must be regarded as coming within the purview of the general rule.

Moreover, even though the VAT is not imposed on the entity but on the transaction, it may still be passed on and, therefore, indirectly imposed on the same entity -- a patent circumvention of the law. **That no VAT shall be imposed directly upon business establishments operating within the ecozone under RA 7916 also means that no VAT may be passed on and imposed indirectly**. *Quando aliquid prohibetur ex directo prohibetur et per obliquum.* When anything is prohibited directly, it is also prohibited indirectly.

Second, when RA 8748 was enacted to amend RA 7916, the same prohibition applied, except for real property taxes that presently are imposed on land owned by developers. **This similar and repeated prohibition is an unambiguous ratification of the law's intent in not imposing local or national taxes on business enterprises within the ecozone**.

Third, **foreign and domestic merchandise, raw materials, equipment and the like "shall not be subject to x x x internal revenue laws and regulations" under PD 66** -- the original charter of PEZA (then EPZA) that was later amended by RA 7916. No provisions in the latter law modify such exemption."[61]

Applying the foregoing to the instant case, Petitioner as a PEZA-registered enterprise availing of the 5% special tax rate on gross income in lieu of all national and local taxes under Section 24 of R.A. No. 7916, its business is not subject to VAT.

Respondent himself in a tax ruling addressed to Mitsui High-Tech (Phils.), Inc. favorably quoted the Supreme Court's decision in *Seagate* stating that no VAT can be imposed directly or indirectly upon business establishments located in an ecozone.[62]

We also note that Respondent itself has issued several VAT rulings confirming the exemption of PEZA-registered entities from VAT.[63] Specifically, some of these rulings pertain to the exemption of PEZA-registered "Ecozone Developers/Operators". [64]

Additionally, there is no basis for Respondent to require Petitioner to obtain a final ruling from PEZA that it is eligible for duty and tax exemption on imported construction materials before it could claim VAT exemption under R.A. No. 7916. The law itself explicitly mandates that registered ecozone enterprises availing of the 5% tax on gross income are exempt from all national and local taxes including VAT. The issuance by PEZA of a ruling declaring the tax-exempt status of the activity, if at all, is merely confirmatory of what is provided under the law.

We stress that the only condition for Petitioner to avail of the above fiscal incentive is that the activity in question shall be limited to the extent of the construction and operation of the area that it shall develop (*i.e.* PIATCO Special Economic Zone). [65] Since there is no showing by Respondent that the

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[61] *Emphasis supplied.*

[62] DA-ITAD BIR Ruling No. 102-08, December 08, 2008.

[63] VAT Ruling No. 002-06, February 15, 2006; VAT Ruling No. 089-02, December 12, 2002 *citing* VAT Ruling Nos. 037-98; 043-98; 027-99; and 063-99.

[64] BIR RULING [DA-(C-270) 678-09], November 18, 2009; BIR RULING [DA-(VAT-085) 535-09], September 14, 2009 *citing* BIR Ruling No. 333-98 dated July 21, 1998; BIR Ruling No. 070-97 dated June 9, 1997; DA 067-04 dated February 12, 2004.

[65] Rule XIV - Incentives to Ecozone Developers / Operators

SECTION 1. ECOZONE Developers/Operators - ECOZONE Developers/Operators shall be entitled to the following incentives:

A. Exemption from National and Local Taxes and Licenses - An ECOZONE Developer/Operator shall, **to the extent of its construction and operation**, be exempt from payment of all national internal importation of construction materials and equipments for the NAIA Passenger Terminal 3 Project are outside of its registered activity, then the same falls under the exemption on national and local taxes including VAT.

Respondent's right to assess Petitioner for the alleged VAT deficiencies for taxable years 2000, 2001 and 2002 had already prescribed.

Section 203 of the NIRC of 1997, as amended, states that internal revenue taxes must generally be assessed within three (3) years counted from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later, *viz*:

> "SEC. 203. *Period of Limitation Upon Assessment and Collection.* – **Except as provided in Section 222, internal revenue taxes shall be assessed <u>within three (3) years after the last day prescribed by law for the filing of the return</u>, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period**: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day." [66]

Petitioner filed its Third and Fourth Quarter VAT Returns (i.e., BIR Form No. 2550-Q) for taxable year 2002 as follows:

Quarters	**Dates when the Returns were Filed**	**Last day Prescribed to File Return**	**Expiration Date of the 3-Year Period to Assess**
Third	October 22, 2002[67]	October 25, 2002	October 25, 2005
Fourth	January 08, 2003[68]	January 25, 2003	January 25, 2006

revenue taxes and all local government impost, fees, licenses or taxes, including but not limited to the following…

[66] *Emphasis and underscoring supplied.*
[67] Exhibit "R-7".
[68] Exhibit "R-10".

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Since the Third and Fourth Quarter VAT Returns for taxable year 2002 are the last two (2) returns filed by Petitioner for VAT assessments under consideration, Respondent should have issued the assessment on January 25, 2006 at the latest. However, Respondent issued the Second FAN, Third FAN and Fourth FAN only **on February 23, 2015**, more than nine (9) years after, which is way beyond the last day allowed by law to assess the alleged deficiency VAT.

Respondent failed to show by clear and convincing evidence that Petitioner's VAT Returns for taxable years 2000, 2001 and 2002 were false in order to merit the ten (10) year prescriptive period under Section 222(a)[69] of the NIRC of 1997, as amended. Petitioner's declarations in its VAT Returns reflected its actual situation (*i.e.* as a PEZA-registered enterprise, it was exempt from payment of VAT on importations of equipment, construction materials and supplies). Consequently, Petitioner could not have filed false or fraudulent VAT Returns with the intent to evade tax.

The Supreme Court has consistently ruled that a mere claim by the BIR of fraud or falsity in the filing of tax returns is not sufficient to take the assessment out of the coverage of the three (3) year prescriptive period for assessments.[70]

To allow Respondent to issue an assessment beyond the three (3) year prescriptive period would defeat the very purpose of prescription, that is, "to afford protection to the taxpayer against unreasonable investigations as the indefinite extension of the period for assessment deprives the taxpayer of the assurance that he will no longer be subjected to further investigation for taxes after the expiration of a reasonable period of time."[71]

Respondent is barred from assessing Petitioner again for taxable years 2000 and 2001 in

69 SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. -

(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

70 Commissioner of Internal Revenue v. Court of Tax Appeals and Elevator Service Co., Inc., G.R. No. 61509, April 19, 1988.

71 Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc., G.R. No. 198677, November 26, 2014.

view of the previous assessments made.

Respondent is of the position that it can still assess Petitioner deficiency VAT for taxable years 2000 and 2001 because the "one-investigation per year rule" applies only for income tax purposes. He further argues that what was terminated and investigated by the National Investigation Division (NID) for taxable years 2000 and 2001 were for other tax types, and not for Petitioner's VAT liabilities.

Respondent further contends that even assuming that the "one-investigation per year rule" applies for all types of taxes, he can still pursue the investigation and assessment of Petitioner's VAT liabilities because Section 235[72] of the NIRC of 1997, as amended, allows examination of a taxable year more than once, in case of fraud, irregularity or mistake. Moreover, the VAT liabilities of Petitioner was obtained from third party sources; thus, it cannot be considered as an examination and inspection of books of accounts and other accounting records. Finally, Respondent alleges that verified information provided by an "informer" is one of the circumstances that would warrant exception from the general rule in Section 235 of the NIRC of 1997, as amended.

We find no merit in Respondent's arguments.

Contrary to Respondent's allegation, the assessment for taxable years 1997 to 2001 includes deficiency VAT. The First LOA[73] clearly specified that the scope of the examination of Petitioner's books of account and other accounting records was "**for all internal revenue taxes** for the period from January 01, 1997 to December 31, 2001". Said term embraces VAT as well. It is not surprising therefore that a deficiency VAT assessment was included in the First PAN[74], the First FLD[75] and the First FDDA[76].

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[72] SEC. 235. Preservation of Books and Accounts and Other Accounting Records. - All the books of accounts, including the subsidiary books and other accounting records of corporations, partnerships, or persons, shall be preserved by them for a period beginning from the last entry in each book until the last day prescribed by Section 203 within which the Commissioner is authorized to make an assessment. The said books and records shall be subject to examination and inspection by internal revenue officers: Provided, That for income tax purposes, such examination and inspection shall be made only once in a taxable year, except in the following cases:

(a) Fraud, irregularity or mistakes, as determined by the Commissioner...

[73] Par. 5, Stipulation of Facts, JSFI, docket, vol. 3, p. 1420; Exhibit "P-2".

[74] Exhibit "P-3".

[75] Exhibit "P-5".

[76] Exhibit "P-7".

The First FDDA[77] was issued by Respondent on February 09, 2007 for taxable years 1997 to 2001. Petitioner paid the deficiency taxes found to be due during the period.[78] Hence, for all intents and purposes, Petitioner cannot be examined anymore for the same taxable years.

In the case of *Commissioner of Internal Revenue v. B.F. Goodrich Phils., Inc.*[79], the Supreme Court held that where the BIR had already made an initial assessment for deficiency taxes in a taxable year, and the taxpayer paid the deficiency tax assessed, the BIR has no valid authority to issue, after the three (3) year prescriptive period had expired, a second or third assessment for the same taxable year.

In view of the fact that Petitioner had already been assessed for taxable years 1997 to 2001, and deficiency taxes determined to be due has been paid and settled, there is no basis for the assessments involving the same years again subject of this case. As earlier ruled, there is no falsity or fraud on the on the part of Petitioner that would serve as a ground for the application of the ten (10) year prescriptive period.

Moreover, Respondent himself issued BIR Memorandum[80] dated July 24, 2012 categorically declaring that Petitioner is VAT exempt by virtue of its PEZA registration and consequently ordering the case against Petitioner as terminated and closed.

At some point, baseless tax assessments and harassment against innocent taxpayers should stop.

WHEREFORE, premises considered, judgment is rendered as follows:

1) **GRANTING** the instant Petition for Review and **SETTING ASIDE** and **CANCELLING** the three (3) Final Decision on Disputed Assessment all dated July 14, 2015 for taxable years 2000, 2001 and 2002 issued by Respondent Commissioner of Internal Revenue for lack of merit;

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77 Exhibit "P-7".
78 Par. 10, Stipulation of Facts, JSFI, docket, vol. 3, p. 1421; Exhibit "P-8".
79 G.R. No. 104171, February 24, 1999.
80 Exhibit "P-18".

2) **CONFIRMING** Petitioner's entitlement to incentives under R.A. No. 9716, particularly its exemption from VAT; and

3) **DECLARING** that Petitioner is not liable for any deficiency VAT for taxable years 2000, 2001 and 2002.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

(Inhibited)
ESPERANZA R. FABON-VICTORINO
Associate Justice

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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice