REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FORT BONIFACIO DEVELOPMENT CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5735

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

Promulgated:

OCT 12 2000

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DECISION

Before Us for consideration is a Petition for Review filed on February 24, 1999 seeking for a refund of the amount of P359,652,009.47 representing alleged overpaid value-added tax on Petitioner's sale of lots covering the first quarter of 1997.

The antecedent facts of this case giving rise to the controversy at bar are contained in the stipulation of facts of the contending parties:

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 process of this Honorable Court.

1.03. Respondent Revenue District Office, 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 per cent (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 per cent (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 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.

1.11. Per VAT returns filed by petitioner with the BIR, for the first quarter of 1997, petitioner derived the total amount of P3,685,356,539.50 from its sales and lease of lots, on which the output VAT payable to the Bureau of Internal Revenue was P368,535,653.95.

1.12. The VAT returns filed by petitioner likewise show that to pay said amount of P368,535,653.95 due to the BIR, petitioner made cash payments totalling P359,652,009.47 and utilized its regular input tax credit of P8,883,644.48 on purchases of goods and services.

1.13. On November 17, 1998, petitioner filed with the BIR a claim for refund of the amount of P359,652,009.47 which it paid as value-added tax for the first quarter of 1997.

1.14. Earlier, on October 8, 1998, petitioner filed with the BIR a claim for refund of the amount of P269,340,469.45 which it paid as value-added tax for the fourth quarter of 1996.

1.15. As of the date of the Petition, no action had been taken by respondents on petitioner's claim for refund of November 17, 1998.

1.16. Under Sec. 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 P359,652,009.75 paid by petitioner as value-added tax for the first quarter of 1997, the two-year period will expire on March 25, 1999, the earliest VAT payment for said quarter having been made on March 25, 1997, as shown in its original Monthly VAT Declaration for February 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.

As agreed upon by the parties in their joint stipulation of facts the issue to be resolved by this Court is whether or not Petitioner is entitled to a refund of the amount of P359,652,009.47, paid by it as value added tax or to a tax credit for the said amount.

In the main, Petitioner anchors its arguments on the provisions of Section 105 of the National Internal Revenue Code in relation to Section 100(1)(A) which grants an input tax credit of 8% of the value of the taxpayer's beginning inventory of real properties.

In opposition thereto, Respondent relies on Revenue Regulations No. 7-98 implementing Section 105 of the Tax Code as amended by E.O. 273 limiting the basis of the presumptive input tax on the improvements such as buildings, roads, drainage system and other similar structures, constructed on or after January 1, 1998. Respondent further asseverates that the transitory input tax credit shall only be recognized and allowed provided the inventory of goods of properties brought into the transition from non-VAT to VAT regime have previously been purchased subject to the VAT or to any form of sales tax which accordingly had been passed on as a part of the buyer's invoiced price or acquisition cost. Respondent concludes that where no VAT or any form of sales had been passed on as part of the buyer's invoiced price or acquisition cost of the inventory no transitory input tax credit shall be recognized or allowed when the same is brought into the VAT regime as part of the beginning inventory in the transition of the taxpayer's business from non-VAT to Vatable business. Respondent opines that since no such tax forms part of the inventory cost when Petitioner purchased and acquired the raw land from the government under a VAT-free sale transaction, it follows then that no transitory input tax credit shall be allowed when the same is brought into the VAT regime as the taxpayer's transitory beginning inventory.

Respondent's contentions are well-taken. We do not agree with the Petitioner that the 8% transitional input tax credit should be based on the value of the taxpayer's beginning inventory of real properties for reasons which are to be viewed in the perspective of its purpose.

The transitional input tax credit was first introduced by Executive Order No. 273 also known as the original VAT Law of 1988. By virtue of E.O. No. 273, Section 105 of the Tax Code was amended to read as follows:

> **SEC. 105.** ***Transitional input tax credit.*** - <u>A person who becomes liable to value-added tax</u> or any person who elects to be a VAT-registered person <u>shall, subject to the filing of an inventory as prescribed by regulations, be allowed input tax on his beginning inventory of goods</u>, materials and supplies <u>equivalent to 8% of the value of such inventory</u> or the actual value-added tax paid on such goods, materials and supplies whichever is higher, <u>which shall be credited against the output tax</u>. (Underscoring Supplied.)

To implement the provisions of the aforequoted Section 105, the Bureau of Internal Revenue issued Revenue Regulations No. 5-87 specifically Section 26(b) which provides as follows:

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 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.

A cursory analysis of Section 26(b) of Revenue Regulations No. 5-87 points out two important facts: one, the transitional input tax credit is a benefit granted by law to manufacturers, producers and importers who are being subject to VAT for the first time and second, that the purposes of this benefit is to give recognition to the sales tax component of inventories which would qualify as input tax credit had such goods been acquired during the effectivity of the VAT Law of 1988. It must be remembered that the VAT Law abolished privilege taxes, percentage taxes and, more importantly, the sales tax on original or subsequent sale of articles. These taxes were substituted with the VAT at the constant rate of 0% or 10%. The transition or passage from the sales tax system to the value-added tax system, particularly in 1988, left many manufacturers, producers and importers with inventories consisting of goods upon which sales taxes were already paid or passed on as part of the invoice price or acquisition cost. To be able to utilize the sales taxes, the VAT Law of 1988 included a provision granting these taxpayers the benefit of transitional input tax credit to be utilized to pay for their VAT liability under the present system. The value of their transitional input tax credit corresponds to 8% of the value of their beginning inventories as prescribed by Revenue Regulations No. 5-87.

The original VAT Law of 1988 (E.O. 273) was later on amended by Republic Act 7716 otherwise known as the E-VAT Law which now included, among others, the sale of real properties under the term "sale of goods" hence subject to value-added tax.

However, the E-VAT Law did not touch the provisions of Section 105 of the Tax Code (supra) maintaining 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. The purpose was to provide these taxpayers with the benefit of utilizing the VAT or sales tax component of their inventories to pay for its output VAT liabilities under the E-VAT Law. Why, it must be asked, do these taxpayers have a VAT component on their beginning inventories, when they were exempt from paying the VAT under the original VAT Law of 1988? The answer is that these taxpayers may have purchased goods or services where the VAT was passed on to them as part of the invoice price or acquisition cost. Therefore, the VAT passed on to them should qualify as their tax credit in paying their output VAT because this benefit is granted explicitly under the provisions of Section 104 of the 1996 Tax Code which provides, thus:

> **SEC. 104.** ***Tax Credits.*** - (a) *Creditable Input tax.* - Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 108 hereof on the following transactions shall be creditable against the output tax:
>
> "(1) Purchase or importation of goods:

"(A) For sale; or

"(B) For conversion into or intended to form part of a finished product for sale including packaging materials; or

"(C) For use as supplies in the course of business; or

"(D) For use as materials supplied in the sale of service; or

"(E) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code, except automobiles, aircraft and yachts.

"(2) Purchase of services on which a value-added tax has been actually paid.

"The input tax on domestic purchase of goods or properties shall be creditable:"

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But because they were not covered by the VAT Law prior to the amendments introduced by the E-VAT Law, the latter law now provides them with the benefit of transitional input tax credit on their beginning inventories equivalent to 8%. Petitioner's contention that it is entitled to a transitional input tax credit equivalent to 8% of its beginning inventory of real property nestles on the erroneous premise that the transitional input tax credit is granted by law to all real estate dealers regardless of whether or not their beginning inventories carry with them prior imposition of business taxes (sales tax or VAT). Viewed from the perspective of its purpose, the benefit of transitional input tax credit comes with the condition that business taxes should have been paid first and that said taxes may be used to pay their output tax liability through the transitional input tax credit provided by Section 105.

The facts of this case indubitably show that Petitioner purchased the real properties from the National Government in 1995 under a VAT-free sale transaction because the Government as seller was tax exempt hence did not pass on any VAT or sales tax as part of the purchase price paid by Petitioner. Also, it must be noted that in 1995, sale of real property was still exempt from the payment of VAT. This fact alone suffices to exclude the Petitioner from availing of the transitional input tax credit provided by law. To base the 8% transitional input tax on the book value of the land is to negate the purpose of the law in granting such benefit. It would be tantamount to giving an undeserved bonus to real estate dealers similarly situated as Petitioner. A bonus which the Government cannot afford to provide.

In the case entitled **Fort Bonifacio Development Corp. vs. Commissioner of Internal Revenue, et. al., CTA Case No. 5665 promulgated on August 11, 2000,** this Court had the opportunity to uphold the provisions of Section 4.105-1 of Revenue Regulations No. 7-95 where Respondent based the 8% transitional input tax credit on the value of the 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."

WHEREFORE, in view of all the foregoing, the claim for refund representing alleged overpaid value-added tax covering the first quarter of 1997 is hereby **DENIED** for lack of merit.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate 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