REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FORT BONIFACIO DEVELOPMENT CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. **6021**

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

Promulgated:
JAN 30 2002

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DECISION

This Petition for Review filed by Petitioner on February 23, 2000 involves a claim for refund or tax credit in the amount of P 77,151,020.46 allegedly representing the value-added tax it erroneously paid for the first quarter of 1998 on its sales and lease of lots.

Pertinent facts of the case as admitted by the parties in its "Stipulation of Facts, Documents and Issues" dated August 14, 2000 are as follows:

1.03. Petitioner is a domestic corporation duly registered and existing under 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.

1.04. 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 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 transferred 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 of real properties owned by it with a total book value of P 71,227,503,200.00. 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 1998, Petitioner derived the total amount of P903,427,264.20 from its sales and lease of lots, on which the output VAT payable to the Bureau of Internal Revenue was P 90,342,726.42.

1.12. The VAT returns filed by Petitioner likewise show that to pay said amount of P90,342,726.42 due to the BIR, Petitioner made cash payments totaling P77,151,020.46 and utilized its regular input tax credit of P39,878,959.37 on purchases of goods and services.

1.13. On November 22, 1999, Petitioner filed with the BIR a claim for refund of the amount of P77,151,020.46, which it paid as value-added tax for the first quarter of 1998.

1.14. Earlier, on October 8, 1998, November 17, 1998, February 11, 1999, May 11, 1999, and September 10,1999, based on similar grounds, Petitioner filed with the BIR claims for refund of the amounts of P269,340,469.45, P359,652,009.47, P486,355,846.78, P347,741,695.74 and P15,036,891.26, 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, June 30, 1997, September 30, 1997 and December 31, 1997, respectively. After deducting these amounts of P269,340,469.45, P359,652,009.47, P486,355,846.78, P347,741,695.74, and P15,036,891.26 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 P77,151,020.46 subject of Petitioner's claim for refund of November 22, 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 P77,151,020 paid by Petitioner as value-added tax for the first quarter of

1998, the two-year period expired on February 25, 2000, the earliest VAT payment for said quarter having been made on February 25, 1998, as shown in its original Monthly VAT Declaration for January 1998.

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. 120-125)*

Petitioner contends 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 the real properties it submitted to the BIR equivalent to 8% of the value of such real properties or the total amount of P5,698,200,256.00. For easy reference, Section 105 in relation to Section 100(1)(A) of the Tax Code is hereby quoted 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

In compliance with the aforesaid provisions of Section 105 of the Tax Code, and to be able to avail of the input tax credit of 8% thereunder, Petitioner submitted to the Revenue District Office No. 44, Taguig-Pateros of the BIR, an inventory of its real properties with the total book value of P71, 227,503,200.00 (Exhibits C and C-1). Based on the inventory submitted by Petitioner, and by virtue of the provisions of the aforecited Section 105 of the NIRC, Petitioner is entitled to the total amount of P5,698,200,256.00 as input tax credit.

Petitioner likewise alleged that for the first quarter of 1998, he had an output VAT payable of P90,342,726.42 *(Stipulation, par. 1.11, CTA docket, p. 123).* To pay said amount of P90,342,726.42 due to the BIR, Petitioner made cash payments totaling P77,151,020.46 and utilized its regular input tax credit of P39,878,959.37 on purchases of goods and services, *(Stipulation, par. 1.12, CTA docket, p. 123)*, as provided for in Section 104 of the Tax Code, now Section 110 of the 1997 NIRC. Petitioner claims that since the total amount of input tax credit of P5,968,200,256.00 is more than enough to offset the VAT paid by Petitioner for the first quarter of 1998, it is now entitled to the refund or tax credit of P77,151,020.46.

In Answer to the Petition for Review, Respondents raised the following Special and Affirmative Defenses, to wit:

> "6. Under Revenue Regulations No. 7-95, implementing Section 105 of the Tax Code, as amended by E.O. 273, the basis of the presumptive input tax, in the case of real estate dealers, is the improvements, such as buildings, roads, drainage systems and other similar structures, constructed on or after January 1, 1988;
>
> 7. Petitioner failed to comply with the mandate of the aforementioned regulations requiring, for the purposes of availing the presumptive input tax credits under its Transitory Provisions, an inventory as of December 31, 1995, of such goods or properties and improvements showing the quantity, description and amount to be filed with the RDO not later than January 31, 1996;
>
> 8. Administrative regulations have the force and effect of law (**Valerio v. Secretary of Agriculture, L-18587, April 23, 1963**);
>
> 9. The presumptive input tax is not allowable in this particular case because the petitioner purchased and acquired from the Government the properties covered by the inventory under a VAT-free sale transaction, the government, as a vendor was tax-exempt and accordingly did not pass on any VAT or sales tax as part of the price therefor to the petitioner;
>
> 10. Petitioner's claim for refund is under verification/investigation by respondent Commissioner of Internal Revenue;
>
> 11. In a claim for refund, petitioner must show that taxes were paid erroneously or collected illegally and failure to sustain this burden is fatal to the action for refund;
>
> 12. Claims for refund are construed strictly against the claimants since they partake of the nature of exemptions from taxation (**Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 351**);
>
> 13. Taxes are presumed to have been paid and collected in accordance with law." *(Respondent's Answer dated April 26, 2000, CTA docket, pp. 53-54)*

As can be seen from the foregoing answer, Respondent is firm in his assertion that pursuant to Revenue Regulations No. 7-95, implementing Section 105 of the Tax Code, as amended by E.O.273, the basis of the presumptive input tax in the case of real estate dealers should only be the improvements, such as buildings, roads, drainage systems and other similar structures, constructed on or after January 1, 1998. The pertinent Section of Revenue Regulations No. 7-95 which implements Section 105 is hereby quoted as follows:

> **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.
>
> <u>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).</u>
>
> 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)

However, Petitioner believes that Revenue Regulations No. 7-95 is not valid because it is inconsistent with, and violative of, Section 105, in relation to Section 100(A)(1)(A), of the Tax Code. Petitioner pointed out that Section 105 of the Tax Code is clear in itself as there is no necessity for any interpretation or construction. It can be discerned from the language of the law that the legislative intent is to the effect that the taxpayer is entitled to the transitional/presumptive input tax credit based on the value of its beginning inventory of real properties. To say that the input tax credit must be based on the value of the improvements only is not proper, since it is contrary to the language of Section 105, which clearly includes goods, which as defined by Section 100 to include all tangible and intangible objects, capable of pecuniary estimation. Thus, Petitioner avers that Revenue Regulations No. 7-95 actually limits the scope of Section 105 of the Tax Code to less than what the law provides.

Petitioner further adds that said 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.

Petitioner, in its memorandum, further 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, contrary to Respondent's affirmative defense that the purchase and acquisition by the Petitioner of the properties covered by the inventory under a VAT-free sale transaction did not pass on any VAT or sales tax as part of the price, thus no presumptive input tax shall be allowed. According to Petitioner, nowhere in Section 105 is there a condition that there must have been prior payment of VAT. The presumptive input tax credit granted in Section 105 is statutorily presumed; hence, the taxpayer is entitled thereto even without prior payment of VAT or sales tax.

Thus, on the basis of the issues jointly stipulated by the parties, this Court now considers to resolve the following controversies, thus:

1. Whether Revenue Regulations No. 7-95 issued by the Secretary of Finance upon recommendation of the Commissioner of Internal Revenue is consistent with Section 19 of Republic Act No. 7716 and Section 245 (now Section 244 of the Tax Code) or with Section 100(a)(1)(A) thereof, which includes "real properties held primarily for sale to customers in the ordinary course of trade or business" in the definition of the term "goods";
2. Whether the inventory list submitted by Petitioner is in compliance with the applicable provisions of the National Internal Revenue Code or with Revenue Regulations No. 7-95 mandating that the same be filed with the Revenue District Office not later than January 31, 1996;
3. Whether the 8% transitional input tax credit provided for in Section 105 of the National Internal Revenue Code may be based on the value of the taxpayer's beginning inventory of real properties, as claimed by Petitioner, or on the book value of the improvements

constructed on or after January 31, 1996, as claimed by Respondents. *(Stipulation of Issues, CTA docket, p. 125)*

We sustain Petitioner's position.

True enough, the legal aspect besetting the case at bar has already been settled by this Court in favor of the Petitioner. This Court, in upholding the position taken by the Petitioner, is convinced that Section 105 of the Tax Code is clear in itself. Explicit therefrom is the fact that a taxpayer shall be allowed a transitional/presumptive input tax credits based on the value of its beginning inventory of goods which is defined in Section 100 as to encompass even real property. Said finding is fully explained in the case of **Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue, et al, CTA Case No. 5962, December 7, 2001**, which provides, thus:

> "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.
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> x x x x x x x x x
>
> 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**).
>
> x x x x x x x x x

A circumspect scrutiny of the entire text of Revenue Regulations No. 7-95 will reveal some inconsistencies which could crush the contention propounded by the Respondent as to the basis of the transitional/presumptive input tax. It was observed that the transitory provisions contain contradictions that all the more prove the 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 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 states that goods or properties purchased with the object of resale in their present condition comes with the corresponding 8% presumptive input tax of the <u>value of the goods</u>, 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 his 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, there is really no necessity for any further interpretation or construction of the provision of Section 105 of the Tax Code for the same is explicit and categorical. 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. At this juncture, it should be pointed out that where the law is clear and unambiguous, no discretion is left to the judiciary; the court has no choice but to see to it that its mandate is obeyed **(Luzon Surety Co., Inc. vs. De Garcia, 30 SCRA 111; Quijano vs Development Bank of the Philippines, 35 SCRA 270).** 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, supra; Luzon Surety Co. Inc. vs. De Garcia, supra; Resins vs. Auditor General, 25 SCRA 754; People vs. Mapa, 20 SCRA 1164).**

We now proceed to the factual aspect of the claim for refund.

In implementing Section 105 of the National Internal Revenue Code (NIRC), the Bureau of Internal Revenue issued Revenue Regulations No. 7-95 which provides thus:

> **SEC. 4.104-5.** ***Substantiation of claims for input tax credit.***
>
> (a) x x x
> (b) x x x
> (c) Presumptive input tax shall be supported by an inventory of goods as shown in a detailed list to be submitted to the BIR.
> (d) x x x
> (e) x x x

In the Transitory Provision of the aforementioned Revenue Regulations, the substantiation requirements were specified as follows:

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 percent (8%) of the value of 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.

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.**

Based on the transitory provision, a taxpayer claiming presumptive input tax must file an inventory list showing the quantity, description and amount of the goods or properties.

In order to comply with the said regulation, Petitioner, on September 19, 1996, filed its inventory list of the lands (Exhibits C & C-1) showing the lot numbers, the lot description, the area in square meters and the book value of the property in the amount of P 71,227,503,200.00.

However, Respondent insists that said regulation was not substantially complied with by the Petitioner. It could be recalled that Respondent, in his answer avers that Petitioner failed to comply with the mandate of the aforementioned regulation because of Petitioner's belated filing of the list of inventory. He contends that for purposes of availing presumptive input tax, the inventory list must be submitted not later than January 31, 1996. Petitioner, in this case, filed it on September 19, 1996.

On the other hand, Petitioner argued that under Section 105 of the National Internal Revenue Code, as amended, the determinative date of filing the inventory list is the date when the taxpayer becomes liable to the value-added tax or elects to be a VAT – registered person. Petitioner became a VAT-registered taxpayer only on September 18, 1996 as evidenced by its BIR Certificate of Registration (Exhibit B). Therefore, Petitioner became liable for VAT only on October 1996, the month after registration. Hence, its filing of the inventory list on September 19, 1996 is a categorical compliance to the provisions of Section 105 of the NIRC.

The Court finds Petitioner's argument tenable since Section 4.104-5(c) of Revenue Regulations No. 7-95 also provides no specific date as to when the inventory list should be submitted. The only requirement is that the presumptive input tax shall be supported by an inventory of goods as shown in a detailed list to be submitted to the BIR. Moreover, the requirement of filing an inventory of goods not later than January 31, 1996 in the transitory provision of the same regulation refers to the recognition of presumptive input tax on goods or properties on hand as of December 31, 1995 of taxpayers already liable to VAT as of that date.

Clearly, Petitioner is entitled to the presumptive input tax in the amount of P5,698,200,256.00, computed as follows:

Book Value of Inventory (Exhibit C-1)	P71,227,503,200.00
Multiply by Presumptive Input Tax Rate	8%
Available Presumptive Input Tax	P 5,698,200,256.00

The failure of the Petitioner to consider the presumptive input tax in the computation of its output tax liability for the 1st quarter of 1998 results to overpayment of the VAT for the same period.

To prove the fact of overpayment, Petitioner presented the original Monthly VAT Declaration for the month of January 1998 showing the amount of P77,151,020.46 as the cash component of the value-added taxes paid (Exhibits E-14 & E-14-A) which is the subject matter of the instant claim for refund.

In Petitioner's amended quarterly VAT return for the 1st quarter of 1998 (Exhibit D-1), Petitioner deducted the amount of P77,151,020.46 from the total available input tax to show that the amount being claimed would no longer be available as input tax credit.

In conclusion, the Petitioner has satisfactorily proven its entitlement to the refund of value-added taxes paid for the first quarter of taxable year 1998.

WHEREFORE, in view of the foregoing, the Petition for Review is **GRANTED**. Respondents are hereby **ORDERED** to **REFUND** or issue a **TAX CREDIT**

CERTIFICATE in favor of the Petitioner the total amount of P77,151,020.46 representing the erroneously paid value-added tax for the first quarter of 1998.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

(Dissenting)
ERNESTO D. ACOSTA
Presiding Judge

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
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 -

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

Promulgated:

JAN 30 2002

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DISSENTING OPINION

The controversy in this case revolves around the interpretation of the provisions of Section 105 of the Tax Code in relation to Section 100 as amended by Republic Act No. 7716.

The majority posits the theory that Section 105 is clear and categorical when it provides that a taxpayer shall be allowed a transitional/prescriptive input tax credits based on the value of its beginning inventory of goods which is defined in Section 100 to encompass real property. They then struck down Revenue Regulations No. 7-95 as being inconsistent and even violative of said Section 105.

I beg to differ from the view of the majority and maintain my position that 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 concept 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. –
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> 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 or services from a VAT-registered person. 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.
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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)

This issue cannot be resolved without an analysis of the nature and history of the transitional input tax credit. Where a statute has been enacted which is susceptible of several interpretations there is no better means for ascertaining the will and intention of the legislative than that which is afforded by the history of the statute **(Greenfield vs. Meer, 77 Phil. 394)**.

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 was 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 of the 1988 Tax Code and we quote:

"**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 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 Law 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
>
> 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.

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.

I 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 Regulations No. 7-95 specifically Section 4.105-1 and succinctly mentioned that the basis of the presumptive input tax shall be the improvements in case of real estate dealers. I 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 as to the basis of 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)."

This principle was reiterated in the case entitled **Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5926,**

promulgated on October 17, 2000 where then Judge Ramon O. de Veyra and I composed the majority opinion.

WHEREFORE, in view of the foregoing, I vote to deny the claim for refund of alleged overpaid value-added tax in the amount of P77,151,020.46 covering the first quarter of 1998, for lack of merit.

ERNESTO D. ACOSTA
Presiding Judge