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[G.R. No. 158885, October 02, 2009]

**FORT BONIFACIO DEVELOPMENT CORPORATION PETITIONER,
VS. COMMISSIONER OF INTERNAL REVENUE, REGIONAL
DIRECTOR, REVENUE REGION NO. 8, AND CHIEF, ASSESSMENT
DIVISION, REVENUE REGION NO. 8, BIR, RESPONDENTS.**

[G.R. NO. 170680]

**FORT BONIFACIO DEVELOPMENT CORPORATION PETITIONER,
VS. COMMISSIONER OF INTERNAL REVENUE, REVENUE
DISTRICT OFFICER, REVENUE DISTRICT NO. 44, TAGUIG AND
PATEROS, BUREAU OF INTERNAL REVENUE. RESPONDENTS.**

R E S O L U T I O N

LEONARDO-DE CASTRO, J.:

Before us is respondents' Motion for Reconsideration of our Decision dated April 2, 2009 which granted the consolidated petitions of petitioner Fort Bonifacio Development Corporation, the dispositive portion of which reads:

WHEREFORE, the petitions are GRANTED. The assailed decisions of the Court of Tax Appeals and the Court of Appeals are REVERSED and SET ASIDE. Respondents are hereby (1) restrained from collecting from petitioner the amount of P28,413,783.00 representing the transitional input tax credit due it for the fourth quarter of 1996; and (2) directed to refund to petitioner the amount of P347,741,695.74 paid as output VAT for the third quarter of 1997 in light of the persisting transitional input tax credit available to petitioner for the said quarter, or to issue a tax credit corresponding to such amount. No pronouncement as to costs.

The Motion for Reconsideration raises the following arguments:

I

SECTION 100 OF THE OLD NATIONAL INTERNAL REVENUE CODE (OLD NIRC), AS AMENDED BY REPUBLIC ACT (R.A.) NO. 7716, COULD NOT HAVE SUPPLIED THE DISTINCTION BETWEEN THE TREATMENT OF REAL PROPERTIES OR REAL ESTATE DEALERS ON THE ONE HAND, AND THE TREATMENT OF TRANSACTIONS INVOLVING OTHER COMMERCIAL GOODS ON THE OTHER HAND, AS SAID DISTINCTION IS FOUND IN SECTION 105 AND, SUBSEQUENTLY, REVENUE REGULATIONS NO. 7-95 WHICH DEFINES THE INPUT TAX CREDITABLE TO A REAL ESTATE

DEALER WHO BECOMES SUBJECT TO VAT FOR THE FIRST TIME.

II

SECTION 4.105.1 AND PARAGRAPH (A) (III) OF THE TRANSITORY PROVISIONS OF REVENUE REGULATIONS NO. 7-95 VALIDLY LIMIT THE 8% TRANSITIONAL INPUT TAX TO THE IMPROVEMENTS ON REAL PROPERTIES.

III

REVENUE REGULATIONS NO. 6-97 DID NOT REPEAL REVENUE REGULATIONS NO. 7-95.

The instant motion for reconsideration lacks merit.

The first VAT law, found in Executive Order (EO) No. 273 [1987], took effect on January 1, 1988. It amended several provisions of the National Internal Revenue Code of 1986 (Old NIRC). EO 273 likewise accommodated the potential burdens of the shift to the VAT system by allowing newly VAT-registered persons to avail of a transitional input tax credit as provided for in Section 105 of the Old NIRC. Section 105 as amended by EO 273 reads:

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.

RA 7716 took effect on January 1, 1996. It amended Section 100 of the Old NIRC by imposing for the first time value-added-tax on sale of real properties. The amendment reads:

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; xxx

The provisions of Section 105 of the NIRC, on the transitional input tax credit, remain intact despite the enactment of RA 7716. Section 105 however was amended with the passage of the new National Internal Revenue Code of 1997 (New NIRC), also officially known as Republic Act (RA) 8424. The provisions on the transitional input tax credit are now embodied in Section 111(A) of the New NIRC, which reads:

Section 111. *Transitional/Presumptive Input Tax Credits.* -

(A) *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 *according to rules and regulations prescribed by the Secretary of finance, upon recommendation of the Commissioner*, be allowed input tax on his beginning inventory of goods, materials and supplies equivalent for 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. [Emphasis ours.]

The Commissioner of Internal Revenue (CIR) disallowed Fort Bonifacio Development Corporation's (FBDC) presumptive input tax credit arising from the land inventory on the basis of Revenue Regulation 7-95 (RR 7-95) and Revenue Memorandum Circular 3-96 (RMC 3-96). Specifically, Section 4.105-1 of RR 7-95 provides:

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, but which have not yet undergone processing; (c) goods which have been manufactured by the taxpayer; (d) goods in process and supplies, all of which are for sale or for use in the course of the taxpayer's trade or business as a VAT-registered person.

However, in the case of real estate dealers, the basis of the presumptive input tax shall be the improvements, such as buildings, roads, drainage systems, and other similar structures, constructed on or after the effectivity of EO 273 (January 1, 1988).

The transitional input tax shall be 8% of the value of the inventory or actual VAT paid, whichever is higher, which amount may be allowed as tax credit against the output tax of the VAT-registered person.

In the April 2, 2009 Decision sought to be reconsidered, the Court struck down Section 4.105-1 of RR 7-95 for being in conflict with the law. It held that the CIR

had no power to limit the meaning and coverage of the term "*goods*" in Section 105 of the Old NIRC sans statutory authority or basis and justification to make such limitation. This it did when it restricted the application of Section 105 in the case of real estate dealers only to improvements on the real property belonging to their beginning inventory.

A law must not be read in truncated parts; its provisions must be read in relation to the whole law. It is the cardinal rule in statutory construction that a statute's clauses and phrases must not be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole. Every part of the statute must be interpreted with reference to the context, *i.e.*, that every part of the statute must be considered together with other parts of the statute and kept subservient to the general intent of the whole enactment.^[1]

In construing a statute, courts have to take the thought conveyed by the statute as a whole; construe the constituent parts together; ascertain the legislative intent from the whole act; consider each and every provision thereof in the light of the general purpose of the statute; and endeavor to make every part effective, harmonious and sensible.^[2]

The statutory definition of the term "*goods or properties*" leaves no room for doubt. It states:

Sec. 100. Value-added tax on sale of goods or properties. - (a) Rate and base of tax. - xxx.

(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; xxx.

The amendatory provision of Section 105 of the NIRC, as introduced by RA 7716, states:

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.

The term "*goods or properties*" by the unambiguous terms of Section 100 includes "*real properties held primarily for sale to costumers or held for lease in the ordinary course of business.*" Having been defined in Section 100 of the NIRC, the term "*goods*" as used in Section 105 of the same code could not have a different

meaning. This has been explained in the Decision dated April 2, 2009, thus:

Under Section 105, the beginning inventory of "goods" forms part of the valuation of the transitional input tax credit. Goods, as commonly understood in the business sense, refers to the product which the VAT-registered person offers for sale to the public. With respect to real estate dealers, it is the real properties themselves which constitute their "goods." Such real properties are the operating assets of the real estate dealer.

Section 4.100-1 of RR No. 7-95 itself includes in its enumeration of "goods or properties" such "real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business." Said definition was taken from the very statutory language of Section 100 of the Old NIRC. By limiting the definition of goods to "improvements" in Section 4.105-1, the BIR not only contravened the definition of "goods" as provided in the Old NIRC, but also the definition which the same revenue regulation itself has provided.

Section 4.105-1 of RR 7-95 restricted the definition of "*goods*", viz:

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).

As mandated by Article 7 of the Civil Code,^[3] an administrative rule or regulation cannot contravene the law on which it is based. RR 7-95 is inconsistent with Section 105 insofar as the definition of the term "*goods*" is concerned. This is a legislative act beyond the authority of the CIR and the Secretary of Finance. The rules and regulations that administrative agencies promulgate, which are the product of a delegated legislative power to create new and additional legal provisions that have the effect of law, should be within the scope of the statutory authority granted by the legislature to the objects and purposes of the law, and should not be in contradiction to, but in conformity with, the standards prescribed by law.

To be valid, an administrative rule or regulation must conform, not contradict, the provisions of the enabling law. An implementing rule or regulation cannot modify, expand, or subtract from the law it is intended to implement. Any rule that is not consistent with the statute itself is null and void. ^[4]

While administrative agencies, such as the Bureau of Internal Revenue, may issue regulations to implement statutes, they are without authority to limit the scope of the statute to less than what it provides, or extend or expand the statute beyond its terms, or in any way modify explicit provisions of the law. Indeed, a quasi-judicial body or an administrative agency for that matter cannot amend an act of Congress. Hence, in case of a discrepancy between the basic law and an interpretative or administrative ruling, the basic law prevails.^[5]