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[G.R. No. 173425, January 22, 2013]

FORT BONIFACIO DEVELOPMENT CORPORATION, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE AND 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

DEL CASTILLO, J.:

This resolves respondents' Motion for Reconsideration.[1] Respondents raise the following arguments: "1) Prior payment of tax is inherent in the nature and payment of the 8% transitional input tax;[2] 2) Revenue Regulations No. 7-95 providing for 8% transitional input tax based on the value of the improvements on the real properties is a valid legislative rule;[3] 3) For failure to clearly prove its entitlement to the transitional input tax credit, petitioner's claim for tax refund must fail in light of the basic doctrine that tax refund partakes of the nature of a tax exemption which should be construed *strictissimi juris* against the taxpayer."[4]

We deny with finality the Motion for Reconsideration filed by respondents; the basic issues presented have already been passed upon and no substantial argument has been adduced to warrant the reconsideration sought.

In his *Dissent*, Justice Carpio cites four grounds as follows: "*first*, petitioner is not entitled to any refund of input [Value-added tax] VAT, since the sale by the national government of the Global City land to petitioner was not subject to any input VAT; *second*, the Tax Code does not allow any cash refund of input VAT, only a tax credit; *third*, even for zero-rated or effectively zero-rated VAT-registered taxpayers, the Tax Code does not allow any cash refund or credit of transitional input tax; and *fourth*, the cash refund, not being supported by any prior actual tax payment, is unconstitutional since public funds will be used to pay for the refund which is for the exclusive benefit of petitioner, a private entity."[5]

At the outset, it must be pointed out that all these arguments have already been extensively discussed and argued, not only during the deliberations but likewise in the exchange of comments/opinions.

Nevertheless, we will discuss them again for emphasis.

First argument: "[P]etitioner is not entitled to any refund of input VAT since the sale by the national government of the Global City land to

petitioner was not subject to any input VAT[.]"[6]

Otherwise stated, it is argued that prior payment of taxes is a prerequisite before a taxpayer could avail of the transitional input tax credit.

This argument has long been settled. To reiterate, prior payment of taxes is not necessary before a taxpayer could avail of the 8% transitional input tax credit. This position is solidly supported by law and jurisprudence, *viz*:

First. Section 105 of the old National Internal Revenue Code (NIRC) clearly provides that for a taxpayer to avail of the 8% transitional input tax credit, all that is required from the taxpayer is to file a beginning inventory with the Bureau of Internal Revenue (BIR). It was never mentioned in Section 105 that prior payment of taxes is a requirement. For clarity and reference, Section 105 is reproduced below:

> 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. (Emphasis supplied.)

Second. Since the law (Section 105 of the NIRC) does not provide for prior payment of taxes, to require it now would be tantamount to judicial legislation which, to state the obvious, is not allowed.

Third. A transitional input tax credit is not a tax refund *per se* but a tax credit. Logically, prior payment of taxes is not required before a taxpayer could avail of transitional input tax credit. As we have declared in our September 4, 2012 Decision,[7] "[t]ax credit is not synonymous to tax refund. Tax refund is defined as the money that a taxpayer overpaid and is thus returned by the taxing authority. Tax credit, on the other hand, is an amount subtracted directly from one's total tax liability. It is any amount given to a taxpayer as a subsidy, a refund, or an incentive to encourage investment."[8]

Fourth. The issue of whether prior payment of taxes is necessary to avail of transitional input tax credit is no longer novel. It has long been settled by jurisprudence. In fact, in the earlier case of *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*,[9] this Court had already ruled that—

> x x x. If the intent of the law were to limit the input tax to cases where actual VAT was paid, it could have simply said that the tax base shall be the actual value-added tax paid. Instead, the law as framed contemplates a situation where a transitional input tax credit is claimed even if there was no actual payment of VAT in the underlying transaction.

In such cases, the tax base used shall be the value of the beginning inventory of goods, materials and supplies.[10]

Fifth. Moreover, in *Commissioner of Internal Revenue v. Central Luzon Drug Corp.*, [11] this Court had already declared that prior payment of taxes is not required in order to avail of a tax credit.[12] Pertinent portions of the Decision read:

> While a tax liability is essential to the *availment or use* of any *tax credit*, prior tax payments are not. On the contrary, for the *existence* or *grant* solely of such credit, neither a tax liability nor a prior tax payment is needed. The Tax Code is in fact replete with provisions granting or allowing *tax credits*, even though no taxes have been previously paid.
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> For example, in computing the *estate tax due*, Section 86(E) allows a *tax credit*-subject to certain limitations-for estate taxes paid to a foreign country. Also found in Section 101(C) is a similar provision for donor's taxes-again when paid to a foreign country–in computing for the *donor's tax due*. The *tax credits* in both instances allude to the prior payment of taxes, even if not made to our government.
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> Under Section 110, a VAT (Value-Added Tax)-registered person engaging in transactions–whether or not subject to the VAT–is also allowed a *tax credit* that includes a ratable portion of any input tax not directly attributable to either activity. This input tax may *either* be the VAT on the purchase or importation of goods or services that is merely due from–not necessarily paid by–such VAT-registered person in the course of trade or business; *or* the transitional input tax determined in accordance with Section 111(A). The latter type may in fact be an amount equivalent to only eight percent of the value of a VAT-registered person's beginning inventory of goods, materials and supplies, when such amount-as computed-is higher than the actual VAT paid on the said items. Clearly from this provision, the *tax credit* refers to an input tax that is either due only or given a value by mere comparison with the VAT actually paid–then later prorated. No tax is actually paid prior to the availment of such credit.
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> In Section 111(B), a one and a half percent input *tax credit* that is merely presumptive is allowed. For the purchase of primary agricultural products used as inputs–either in the processing of sardines, mackerel and milk, or in the manufacture of refined sugar and cooking oil–and for the contract price of public work[s] contracts entered into with the government, again, no prior tax payments are needed for the use of the *tax credit.*
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> More important, a VAT-registered person whose sales are zero-rated or effectively zero-rated may, under Section 112(A), apply for the issuance of a *tax credit* certificate for the amount of creditable input taxes merely due–again not necessarily paid to–the government and attributable to such sales, to the extent that the input taxes have not been applied against output taxes. Where a taxpayer is engaged in zero-rated or

effectively zero-rated sales and also in taxable or exempt sales, the amount of creditable input taxes due that are not directly and entirely attributable to any one of these transactions shall be proportionately allocated on the basis of the volume of sales. Indeed, in availing of such *tax credit* for VAT purposes, this provision–as well as the one earlier mentioned–shows that the prior payment of taxes is not a requisite.

It may be argued that Section 28(B)(5)(b) of the Tax Code is another illustration of a *tax credit* allowed, even though no prior tax payments are not required. Specifically, in this provision, the imposition of a final withholding tax rate on cash and/or property dividends received by a nonresident foreign corporation from a domestic corporation is subjected to the condition that a foreign *tax credit* will be given by the domiciliary country in an amount equivalent to taxes that are merely deemed paid. Although true, this provision actually refers to the *tax credit* as a *condition* only for the imposition of a lower tax rate, not as a *deduction* from the corresponding tax liability. Besides, it is not our government but the domiciliary country that credits against the income tax payable to the latter by the foreign corporation, the tax to be foregone or spared.

In contrast, Section 34(C)(3), in relation to Section 34(C)(7)(b), categorically allows as credits, against the income tax imposable under Title II, the amount of income taxes merely incurred–not necessarily paid –by a domestic corporation during a taxable year in any foreign country. Moreover, Section 34(C)(5) provides that for such taxes incurred but not paid, a *tax credit* may be allowed, subject to the condition precedent that the taxpayer shall simply give a bond with sureties satisfactory to and approved by petitioner, in such sum as may be required; and further conditioned upon payment by the taxpayer of any tax found due, upon petitioner's redetermination of it.

In addition to the above-cited provisions in the Tax Code, there are also tax treaties and special laws that grant or allow *tax credits*, even though no prior tax payments have been made.

Under the treaties in which the *tax credit* method is used as a relief to avoid double taxation, income that is taxed in the *state of source* is also taxable in the *state of residence*, but the tax paid in the former is merely allowed as a credit against the tax levied in the latter. Apparently, payment is made to the *state of source*, not the *state of residence*. No tax, therefore, has been *previously* paid to the latter.

Under special laws that particularly affect businesses, there can also be *tax credit* incentives. To illustrate, the incentives provided for in Article 48 of Presidential Decree No. (PD) 1789, as amended by Batas Pambansa Blg. (BP) 391, include *tax credits* equivalent to either five percent of the net value earned, or five or ten percent of the net local content of export. In order to avail of such credits under the said law and still achieve its objectives, no prior tax payments are necessary.

From all the foregoing instances, it is evident that prior tax payments are not indispensable to the availment of a *tax credit*. Thus, the CA correctly

held that the availment under RA 7432 did not require prior tax payments by private establishments concerned. However, we do not agree with its finding that the carry-over of *tax credits* under the said special law to succeeding taxable periods, and even their application against internal revenue taxes, did not necessitate the existence of a tax liability.

The examples above show that a tax liability is certainly important in the *availment or use*, not the *existence or grant*, of a *tax credit*. Regarding this matter, a private establishment reporting a *net loss* in its financial statements is no different from another that presents a *net income*. Both are entitled to the *tax credit* provided for under RA 7432, since the law itself accords that unconditional benefit. However, for the losing establishment to immediately apply such credit, where no tax is due, will be an improvident usance.[13]

Second and third arguments: "[T]he Tax Code does not allow any cash refund of input VAT, only a tax credit;" and "even for zero-rated or effectively zero-rated VAT-registered taxpayers, the Tax Code does not allow any cash refund or credit of transitional input tax."[14]

Citing Sections 110 and 112 of the Tax Code, it is argued that the Tax Code does not allow a cash refund, only a tax credit.

This is inaccurate.

First. Section 112 of the Tax Code speaks of zero-rated or effectively zero-rated sales. Notably, the transaction involved in this case is not zero-rated or effectively zero-rated sales.

Second. A careful reading of Section 112 of the Tax Code would show that it allows either a cash refund or a tax credit for input VAT on zero-rated or effectively zero-rated sales. For reference, Section 112 is herein quoted, viz:

Sec. 112. **Refunds** or Tax Credits of Input Tax. –

(A) Zero-rated or Effectively Zero-rated Sales. – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: x x x. (Emphasis supplied.)

Third. Contrary to the Dissent, Section 112 of the Tax Code does not prohibit cash refund or tax credit of transitional input tax in the case of zero-rated or effectively