

EN BANC

[G.R. No. 173425, September 04, 2012]

**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.**

D E C I S I O N

DEL CASTILLO, J.:

Courts cannot limit the application or coverage of a law, nor can it impose conditions not provided therein. To do so constitutes judicial legislation.

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assails the July 7, 2006 Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 61436, the dispositive portion of which reads:

WHEREFORE, the instant petition is hereby **DISMISSED**. **ACCORDINGLY**, the Decision dated October 12, 2000 of the Court of Tax Appeals in CTA Case No. 5735, denying petitioner's claim for refund in the amount of Three Hundred Fifty-Nine Million Six Hundred Fifty-Two Thousand Nine Pesos and Forty-Seven Centavos (P359,652,009.47), is hereby **AFFIRMED**.

SO ORDERED.^[2]

Factual Antecedents

Petitioner Fort Bonifacio Development Corporation (FBDC) is a duly registered domestic corporation engaged in the development and sale of real property.^[3] The Bases Conversion Development Authority (BCDA), a wholly owned government corporation created under Republic Act (RA) No. 7227,^[4] owns 45% of petitioner's issued and outstanding capital stock; while the Bonifacio Land Corporation, a consortium of private domestic corporations, owns the remaining 55%.^[5]

On February 8, 1995, by virtue of RA 7227 and Executive Order No. 40,^[6] dated December 8, 1992, petitioner purchased from the national government a portion of the Fort Bonifacio reservation, now known as the Fort Bonifacio Global City (Global City).^[7]

On January 1, 1996, RA 7716^[8] restructured the Value-Added Tax (VAT) system by amending certain provisions of the old National Internal Revenue Code (NIRC). RA

7716 extended the coverage of VAT to real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business.^[9]

On September 19, 1996, petitioner submitted to the Bureau of Internal Revenue (BIR) Revenue District No. 44, Taguig and Pateros, an inventory of all its real properties, the book value of which aggregated P71,227,503,200.10 Based on this value, petitioner claimed that it is entitled to a transitional input tax credit of P5,698,200,256,^[11] pursuant to Section 105^[12] of the old NIRC.

In October 1996, petitioner started selling Global City lots to interested buyers.^[13]

For the first quarter of 1997, petitioner generated a total amount of P3,685,356,539.50 from its sales and lease of lots, on which the output VAT payable was P368,535,653.95.^[14] Petitioner paid the output VAT by making cash payments to the BIR totalling P359,652,009.47 and crediting its unutilized input tax credit on purchases of goods and services of P8,883,644.48.^[15]

Realizing that its transitional input tax credit was not applied in computing its output VAT for the first quarter of 1997, petitioner on November 17, 1998 filed with the BIR a claim for refund of the amount of P359,652,009.47 erroneously paid as output VAT for the said period.^[16]

Ruling of the Court of Tax Appeals

On February 24, 1999, due to the inaction of the respondent Commissioner of Internal Revenue (CIR), petitioner elevated the matter to the Court of Tax Appeals (CTA) via a Petition for Review.^[17]

In opposing the claim for refund, respondents interposed the following special and affirmative defenses:

x x x x

8. 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.

9. Petitioner, by submitting its inventory listing of real properties only on September 19, 1996, failed to comply with the aforesaid revenue regulations mandating that for 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 should be filed with the RDO no later than January 31, 1996. x x x"^[18]

On October 12, 2000, the CTA denied petitioner's claim for refund. According to the CTA, "the benefit of transitional input tax credit comes with the condition that

business taxes should have been paid first.”^[19] In this case, since petitioner acquired the Global City property under a VAT-free sale transaction, it cannot avail of the transitional input tax credit.^[20] The CTA likewise pointed out that under Revenue Regulations No. (RR) 7-95, implementing Section 105 of the old NIRC, the 8% transitional input tax credit should be based on the value of the improvements on land such as buildings, roads, drainage system and other similar structures, constructed on or after January 1, 1998, and not on the book value of the real property.^[21] Thus, the CTA disposed of the case in this manner:

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.^[22]

Ruling of the Court of Appeals

Aggrieved, petitioner filed a Petition for Review^[23] under Rule 43 of the Rules of Court before the CA.

On July 7, 2006, the CA affirmed the decision of the CTA. The CA agreed that petitioner is not entitled to the 8% transitional input tax credit since it did not pay any VAT when it purchased the Global City property.^[24] The CA opined that transitional input tax credit is allowed only when business taxes have been paid and passed-on as part of the purchase price.^[25] In arriving at this conclusion, the CA relied heavily on the historical background of transitional input tax credit.²⁶ As to the validity of RR 7-95, which limited the 8% transitional input tax to the value of the improvements on the land, the CA said that it is entitled to great weight as it was issued pursuant to Section 245^[27] of the old NIRC.^[28]

Issues

Hence, the instant petition with the principal issue of whether petitioner is entitled to a refund of P359,652,009.47 erroneously paid as output VAT for the first quarter of 1997, the resolution of which depends on:

- 3.05.a. Whether Revenue Regulations No. 6-97 effectively repealed or repudiated Revenue Regulations No. 7-95 insofar as the latter limited the transitional/presumptive input tax credit which may be claimed under Section 105 of the National Internal Revenue Code to the “improvements” on real properties.
- 3.05.b. Whether Revenue Regulations No. 7-95 is a valid implementation of Section 105 of the National Internal Revenue Code.
- 3.05.c. Whether the issuance of Revenue Regulations No. 7-95 by the Bureau of Internal Revenue, and declaration of validity of said Regulations by the Court of Tax Appeals and Court

- of Appeals, [were] in violation of the fundamental principle of separation of powers.
- 3.05.d. Whether there is basis and necessity to interpret and construe the provisions of Section 105 of the National Internal Revenue Code.
 - 3.05.e. Whether there must have been previous payment of business tax by petitioner on its land before it may claim the input tax credit granted by Section 105 of the National Internal Revenue Code.
 - 3.05.f. Whether the Court of Appeals and Court of Tax Appeals merely speculated on the purpose of the transitional/presumptive input tax provided for in Section 105 of the National Internal Revenue Code.
 - 3.05.g. Whether the economic and social objectives in the acquisition of the subject property by petitioner from the Government should be taken into consideration.^[29]

Petitioner's Arguments

Petitioner claims that it is entitled to recover the amount of P359,652,009.47 erroneously paid as output VAT for the first quarter of 1997 since its transitional input tax credit of P5,698,200,256 is more than sufficient to cover its output VAT liability for the said period.^[30]

Petitioner assails the pronouncement of the CA that prior payment of taxes is required to avail of the 8% transitional input tax credit.^[31] Petitioner contends that there is nothing in Section 105 of the old NIRC to support such conclusion.^[32] Petitioner further argues that RR 7-95, which limited the 8% transitional input tax credit to the value of the improvements on the land, is invalid because it goes against the express provision of Section 105 of the old NIRC, in relation to Section 100^[33] of the same Code, as amended by RA 7716.^[34]

Respondents' Arguments

Respondents, on the other hand, maintain that petitioner is not entitled to a transitional input tax credit because no taxes were paid in the acquisition of the Global City property.^[35] Respondents assert that prior payment of taxes is inherent in the nature of a transitional input tax.^[36] Regarding RR 7-95, respondents insist that it is valid because it was issued by the Secretary of Finance, who is mandated by law to promulgate all needful rules and regulations for the implementation of Section 105 of the old NIRC.^[37]

Our Ruling

The petition is meritorious.

The issues before us are no longer new or novel as these have been resolved in the related case of *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*.^[38]

Prior payment of taxes is not required for a taxpayer to avail of the 8% transitional input tax credit

Section 105 of the old NIRC 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. (Emphasis supplied.)

Contrary to the view of the CTA and the CA, there is nothing in the above-quoted provision to indicate that prior payment of taxes is necessary for the availment of the 8% transitional input tax credit. Obviously, all that is required is for the taxpayer to file a beginning inventory with the BIR.

To require prior payment of taxes, as proposed in the Dissent is not only tantamount to judicial legislation but would also render nugatory the provision in Section 105 of the old NIRC that the transitional input tax credit shall be “8% of the value of [the beginning] inventory or the actual [VAT] paid on such goods, materials and supplies, whichever is higher” because the actual VAT (now 12%) paid on the goods, materials, and supplies would always be higher than the 8% (now 2%) of the beginning inventory which, following the view of Justice Carpio, would have to exclude all goods, materials, and supplies where no taxes were paid. Clearly, limiting the value of the beginning inventory only to goods, materials, and supplies, where prior taxes were paid, was not the intention of the law. Otherwise, it would have specifically stated that the beginning inventory excludes goods, materials, and supplies where no taxes were paid. As retired Justice Consuelo Ynares-Santiago has pointed out in her Concurring Opinion in the earlier case of *Fort Bonifacio*:

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.^[39]

Moreover, prior payment of taxes is not required to avail of the transitional input tax credit because it is not a tax refund *per se* but a tax credit. Tax 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.^[40] Tax credit, on the other hand, is an amount subtracted directly from one’s total tax liability.^[41] It is any amount given to a taxpayer as a subsidy, a refund, or an incentive to encourage