REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

PTT PHILIPPINES TRADING CORPORATION,
Respondent.

CTA EB No. 2244
(CTA Case No. 9132)

Present:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID, *JJ.*

Promulgated:

JUN 14 2022 11:45 am

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DECISION

REYES-FAJARDO, *J.*:

The Petition for Review[1] dated June 29, 2020 filed by the Commissioner of Internal Revenue impugns the Decision[2] dated August 29, 2019 and Resolution[3] dated February 12, 2020 in CTA Case No. 9132, whereby the Court in Division granted the refund claim of PTT Philippines Trading Corporation amounting to ₱13,347,275.20, representing illegally collected or erroneously paid value-added tax (VAT) on its importation of diesel fuel.

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1 *Rollo,* pp. 7-12.
2 *Id.* at pp. 15-33.
3 *Id.* at pp. 34-37.

The facts follow.

Petitioner Commissioner of Internal Revenue (CIR) is the duly appointed official of the Bureau of Internal Revenue (BIR), empowered to perform the duties, including, among others, to act and approve claims for refund as provided by law. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Respondent is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at Brand Rex Compound, Argonaut Highway, Subic Bay Freeport Zone, Philippines. It is registered with the Subic Bay Metropolitan Authority (SBMA) as a Subic Bay Freeport Enterprise with Certificate of Registration and Tax Exemption Certificate No. 1997-0049.

On August 12, 2013, respondent imported 2,600,576 and 650,144 liters of diesel fuel covered by the Bureau of Customs (BOC) Import Entry and Internal Revenue Declaration (IEIRD) Nos. 2013 C-4122 and 2013 C-4123 respectively from the Cayman Islands, British West Indies.

On August 28, 2013, respondent paid the corresponding VAT for the two (2) importations involved amounting to Ten Million Six Hundred Seventy-Seven Thousand Three Hundred Sixty-Five and 48/100 Pesos (₱10,677,365.48) and Two Million Six Hundred Sixty-Nine Thousand Nine Hundred Nine and 72/100 Pesos (₱2,669,909.72), respectively pursuant to Revenue Regulations (RR) No. 2-2012 dated February 17, 2012.

Respondent then sold said imported diesel fuel to Clark Development Corporation (CDC).

In the Letters dated February 7, 2014 and November 5, 2014, respondent filed its administrative claims for refund of the VAT it paid on the diesel fuel covered by IEIRD Nos. 2013 C-4122 and 2013 C-4123.

On August 28, 2015, respondent filed a Petition for Review before the Court in Division, seeking for the refund of the VAT it paid on the importations covered by IEIRD Nos. 2013 C-4122 and

2013 C-4123 in the total amount of Thirteen Million Three Hundred Forty-Seven Thousand Two Hundred Seventy-Five and 20/100 Pesos (₱13,347,275.20), docketed as CTA Case No. 9132.

On August 29, 2019, the Court in Division rendered a Decision, the dispositive portion of which states:

> **WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, (petitioner) is hereby **ORDERED TO REFUND** in favor of (respondent) the amount of **₱13,347,275.20** representing the illegally collected or erroneously paid VAT by petitioner on its importation of diesel fuel.
>
> **SO ORDERED.**

On September 24, 2019, petitioner filed a Motion for Reconsideration to the Decision dated August 29, 2019.

In the Resolution dated February 12, 2020, the Court in Division denied petitioner's Motion for Reconsideration in this wise:

> **WHEREFORE**, premises considered, (petitioner's) Motion Reconsideration [re: Decision dated August 29, 2019] is **DENIED** for lack of merit.
>
> **SO ORDERED.**

Hence, this Petition for Review.

Petitioner argues that the Court in Division erred in granting respondent's refund on its VAT paid on importation of diesel fuel. Among the requirements for the grant thereof is that the claimant must prove that the petroleum products have been sold to a duly registered locator and have been utilized in the registered activity/operation of the locator. Specifically, proof that the petroleum products remained in the freeport zones (FPZ) and/or economic zones (ECOZONE) must be adduced by the refund claimant to warrant the grant of refund sought. Respondent failed to prove that CDC, the entity to whom it sold its imported diesel, was a registered enterprise within the Clark Freeport Zone (CFZ); that CDC used such diesel in its registered activity; and that the imported fuel

remained in the ECOZONE and/or FPZ; hence, the denial of respondent's refund is justified.

Petitioner further raises his apprehension that without proof that the imported diesel respondent sold to CDC remained in the FPZ and/or ECOZONE, there exists the possibility that the imported fuel was transferred by CDC from the FPZs and ECOZONEs to customs territory. Petitioner concludes that respondent is not entitled to its refund claim of the VAT it paid on its importation of diesel fuel.

By way of *Comment,*[4] respondent points out that the arguments set forth by petitioner in the instant Petition are a replica of his assertions in his answer and motion for reconsideration, all of which were found without merit by the Court in Division.

Respondent concedes that RR No. 2-2012 requires prior proof that the imported fuel never left the FPZs and/or ECOZONEs as a precondition for refund of the VAT paid on importations thereto. It however claims that RR No. 2-2012 was entirely declared unconstitutional by the Supreme Court in *Purisima v. Lazatin (Purisima)*[5] because it violates the tax exemption granted to ECOZONE and FPZ enterprises under the law.

Granting that RR No. 2012 has legal effect, respondent retorts that it had satisfactorily established that the imported fuel it sold to CDC was subsequently sold by CDC to registered enterprises within the CFZ. In fine, respondent concludes that the Court in Division committed no reversible error in granting the refund of the VAT it paid on the imported fuel.

OUR RULING

The Petition is denied.

The VAT system generally uses the destination principle as a basis for the jurisdictional reach of the tax.[6] Under the Destination Principle, goods and services are taxed only in the country where

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4 *Rollo*, pp. 113-126.

5 G.R. No. 210588, November 29, 2016.

6 *Commissioner of Internal Revenue v. Placer Dome Technical Services (Phils.), Inc.*, G.R. No. 164365, June 8, 2007.

these are consumed.[7] In turn, the destination of goods is determined by the specific place to which they are bound.[8]

In this regard, Section 12(b) and (c) of RA No. 7227[9] declares the Subic Special Economic Zone (SSEZ) a *separate* customs territory, and that no national or local taxes shall be imposed within the SSEZ, thus:

> SECTION 12. *Subic Special Economic Zone.* –
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> ...
>
> The abovementioned zone shall be subject to the following policies:
>
> ...
>
> (b) The Subic Special Economic Zone shall be operated and managed as a **separate customs territory** ensuring free flow or movement of goods and capital within, into and exported out of the Subic Special Economic Zone, as well as provide incentives such as tax and duty-free importations of raw materials, capital and equipment. However, exportation or removal of goods from the territory of the Subic Special Economic Zone to the other parts of the Philippine territory shall be subject to customs duties and taxes under the Customs and Tariff Code and other relevant tax laws of the Philippines;
>
> (c) The provision of existing laws, rules and regulations to the contrary notwithstanding, no taxes, local and national, shall be imposed within the Subic Special Economic Zone. In lieu of paying taxes, three percent (3%) of the gross income earned by all businesses and enterprise within the Subic Special Economic Zone... (Boldfacing supplied)

On March 20, 2007, RA No. 9400[10] was enacted, amending RA No. 7227. Among the amendments introduced by RA No. 9400 is the declaration of CFZ as a *separate* customs territory; and that no national or local taxes shall be imposed within the CFZ. Section 15 thereof reads:

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7 *Commissioner of Internal Revenue v. Filminera Resources Corporation*, G.R. No. 236325, September 16, 2020.

8 See *Commissioner of Internal Revenue v. American Express International, Inc.*, G.R. No. 152609, June 29, 2005.

9 Bases Conversion and Development Act of 1992.

10 AN ACT AMENDING REPUBLIC ACT NO. 7227, OTHERWISE KNOWN AS THE BASES CONVERSION AND DEVELOPMENT ACT OF 1992, AND FOR OTHER PURPOSES

> SEC. 15. *Clark Special Economic Zone (CSEZ) and Clark Freeport Zone (CFZ).* – ...
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> ...
>
> The CFZ shall be operated and managed as a **separate customs territory** ensuring free flow or movement of goods and capital equipment within, into and exported out of the CFZ, as well as provide incentives such as tax and duty-free importation of raw materials and capital equipment. However, exportation or removal of goods from the territory of the CFZ to the other parts of the Philippine territory shall be subject to customs duties and taxes under the Tariff and Customs Code of the Philippines, as amended, the National Internal Revenue Code of 1997, as amended, and other relevant tax laws of the Philippines.
>
> The provisions of existing laws, rules and regulations to the contrary notwithstanding, no national and local taxes shall be imposed on registered business enterprises within the CFZ. In lieu of said taxes, a five percent (5%) tax on gross income earned shall be paid by all registered business enterprises within the CFZ and shall be directly remitted as follows: three percent (3%) to the National Government, and two percent (2%) to the treasurer's office of the municipality or city where they are located.
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> ...[11]

Indeed, the SSEZ, including the Subic Freeport Zone (SBFZ),[12] CFZ and the Clark Special Economic Zone (CSEZ) are considered as separate customs territories under RA No. 7227, as amended by RA No. 9400. As such, they are deemed foreign territories by fiction of law.[13] For this reason, goods destined for consumption therein are not subject to VAT.

Additionally, an *exempt party* for VAT purposes is a person or entity granted VAT exemption under the Tax Code, a special law or an international agreement to which the Philippines is a signatory,

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11 Boldfacing supplied.

12 Section 12 of RA No. 7227 states in part: "**SEC.12.** *Subic Special Economic Zone.* – ..., there is hereby created a Special Economic and Free-port Zone consisting of the City of Olongapo and the Municipality of Subic, Province of Zambales, the lands occupied by the Subic Naval Base and its contiguous extensions as embraced, covered, and define by the 1947 Military Bases Agreement between the Philippines and the United States of America as amended, and within the territorial jurisdiction of the municipalities of Morong and Hermosa, Province of Bataan, hereinafter referred to as the Subic Special Economic Zone ..."

13 See *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue*, G.R. No. 190506, June 13, 2016; and *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.) Inc.*, G.R. No. 350154, August 9, 2005.

and by virtue of which its taxable transactions become exempt from VAT.[14]

Here, respondent imported 2,600,576 and 650,144 liters of diesel fuel (imported fuel) covered by the BOC IEIRD Nos. 2013 C-4122 and 2013 C-4123, respectively, from the Cayman Islands, British West Indies, and paid the corresponding VAT thereon totaling ₱13,347,275.20. Yet, petitioner may not collect VAT on respondent's imported fuel. Consider:

First, IEIRD Nos. 2013 C-4122[15] and 2013 C-4123[16] both state that the imported fuel was consigned to respondent, with address located at Brand Rex Compound, Argonaut Highway, Subic Bay Freeport Zone, 2222 Olongapo City, Philippines. Hence, VAT may not be imposed on the imported fuel bound for the SBFZ, a foreign territory by fiction of law.

Second, respondent is duly registered with the SBMA as a Subic Bay Freeport Enterprise with Certificate of Registration and Tax Exemption Certificate No. 1997-0049.[17] In item b., Article III thereof, respondent was granted tax and duty-free importation of raw materials, capital, equipment, and all articles in general.[18] The imported fuel is no exception.

Therefore, the Court in Division is correct in granting the refund of the VAT collected by petitioner from respondent on the imported fuel in the total amount of ₱13,347,275.20 since it is an illegal or erroneous tax, or one which was levied without statutory authority.[19]

Petitioner contends that the subject refund must be denied since respondent failed to prove three (3) requirements for the grant thereof, to wit: CDC is a registered entity in the CFZ; CDC utilized such goods in its registered activity; and the imported fuel remained in the ECOZONE and/or FPZ.

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14 See *Commissioner of Internal Revenue v. American Express International, Inc., supra* note 8.
15 Exhibit "P-18," docket (CTA Case No. 9132), pp. 1931-1932.
16 Exhibit "P-19," *id.* at pp. 1933-1934.
17 Exhibit "P-65," *id.* at pp. 1661-1667.
18 *Id.* at p. 1662.
19 See *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation,* G.R. No. 188497, April 25, 2012; and *Commissioner of Internal Revenue v. Philippine National Bank,* G.R. No. 161997, October 25, 2005.

The contention is erroneous.

Petitioner lifted his present contention from Section 3 of RR No. 2-2012 which, in turn, was adopted in his Answer[20] and Memorandum[21] before the Court in Division. However, in *Purisima,*[22] as reiterated in a recent case,[23] the Supreme Court declared RR No. 2-2012 invalid and unconstitutional, as follows:

> ...
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> On the merits of the case, **we rule that RR 2-2012 is invalid and unconstitutional** because: a) it illegally imposes taxes upon FEZ enterprises, which, by law, enjoy tax-exempt status, and b) it effectively amends the law (*i.e.*, RA 7227, as amended by RA 9400) and thereby encroaches upon the legislative authority reserved exclusively by the Constitution for Congress.
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> ...
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> As RR 2-2012, an executive issuance, attempts to withdraw the tax incentives clearly accorded by the legislative to FEZ enterprises, the petitioners have arrogated upon themselves a power reserved exclusively to Congress, in violation of the doctrine of separation of powers.
>
> In these lights, we hereby rule and declare that RR 2-2012 is null and void.
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> ...[24]

The Supreme Court has declared RR No. 2-2012 unconstitutional. Thus, RR No. 2-2012 may not be invoked by petitioner to justify the retention of the VAT paid by respondent on its imported fuel.

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20 Paragraph 7 of petitioner's Answer states: "It is provided under Section 3 of RR No. 2-2012 that no claim for refund shall be granted unless it is properly shown to the satisfaction of the BIR that petroleum products **imported have been sold to a duly registered locator and have been utilized in the registered activity/ operation of the locator**, or that such have been sold and have been used for international shipping or air transport operations, or that the entities to which the said goods were sold are statutorily zero-rated for VAT." Docket (CTA Case No. 9132), p. 1351. (Boldfacing supplied)

21 *Id.* at p. 2060.

22 *Supra* note 5.

23 *The Secretary of Finance and Commissioner of Customs v. Semirara Mining Corporation*, G.R. No. 211188, Resolution dated September 29, 2021.

24 Boldfacing supplied.

Besides, in *Chevron Philippines Inc., vs. Commissioner of Internal Revenue, (Chevron)*[25] the Supreme Court considered CDC as a duly-registered enterprise within the CSEZ; and that it enjoys exemption from both direct, and indirect taxes based on Section 24 of RA No. 7916,[26] in relation to Section 15 of RA No. 9400.

Respondent sold the imported fuel to CDC, a tax-exempt entity, and a duly registered enterprise within the CSEZ. CSEZ is a foreign territory by fiction of law because it was declared as an ECOZONE by virtue of Proclamation No. 163, April 3, 1993 issued by then President Fidel V. Ramos.[27] On these accounts, the imported fuel sold by respondent to a tax-exempt entity such as CDC, and bound for the CSEZ is not subject to VAT.

Lastly, Section 107(B) of the NIRC, as amended addresses petitioner's apprehension that CDC might have subsequently sold the fuel previously imported by respondent to entities outside the ECOZONE and/or FPZ. Specifically, should goods previously imported as tax-free in the Philippines are subsequently sold, transferred or exchanged to non-exempt persons or entities, the purchasers, transferees or recipients thereof shall be deemed importers and shall be liable for internal revenue taxes due thereon, to wit:

> **SEC. 107.** ***Value-Added Tax on Importation of Goods.*** -
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> ...
>
> ***(B) Transfer of Goods by Tax-exempt Persons.*** - In the case of **tax-free importation of goods into the Philippines by persons, entities or agencies exempt from tax where such goods are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers, transferees or recipients shall be considered the importers thereof, who shall be liable for any internal revenue tax on such importation.** The tax due on such importation shall constitute a lien on the goods superior to all charges or liens on the goods, irrespective of the possessor thereof.[28]

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25 G.R. No. 210836, September 01, 2015.

26 The Special Economic Zone Act of 1995

27 CREATING AND DESIGNATING THE AREA COVERED BY THE CLARK SPECIAL ECONOMIC ZONE AND TRANSFERRING THESE LANDS TO THE BASES CONVERSION AND DEVELOPMENT AUTHORITY PURSUANT TO REPUBLIC ACT NO. 7227

28 Boldfacing supplied.

Section 107(B) of the NIRC, as amended is implemented by Section 4.107-1(c) of RR No. 16-2005,[29] which reads:

> **SEC. 4.107-1.** ***VAT on Importation of Goods.*** **—**
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> ...
>
> **(c) Sale, transfer or exchange of imported goods by tax-exempt persons. —** In the case of goods imported into the Philippines by VAT-exempt persons, entities or agencies which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the latter shall be considered the importers thereof and shall be liable for VAT due on such importation. The tax due on such importation shall constitute a lien on the goods superior to all charges or liens on the goods, irrespective of the possessor thereof.

Adverting to our earlier discussion, the diesel fuel imported by respondent is exempt from VAT. Respondent then sold such imported fuel to CDC. *Chevron*[30] recognized CDC's exemption from direct and indirect taxes such as VAT. If CDC sold, transferred, or exchanged the imported fuel it acquired from respondent to persons or entities outside the ECOZONE and/or FPZ, the recourse of petitioner is not to retain the VAT respondent paid on the imported fuel. His remedy is to run after the non-exempt purchasers, transferees or recipients of the imported fuel since they are the persons or entities who are deemed by law as importers thereof and consequently liable for VAT due thereon.

WHEREFORE, the Petition for Review dated June 29, 2020, filed by the Commissioner of Internal Revenue is **DENIED**. The Decision dated August 29, 2019 and Resolution dated February 12, 2020 in CTA Case No. 9132 are **AFFIRMED**.

SO ORDERED.

MARIAN IVY F. REYES-FAJARDO
Associate Justice

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29 Otherwise known as the Consolidated Value-Added Tax Regulations of 2005.

30 *Supra* note 25.

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice