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and attorney's fees to Atty. Victor A.L. Valero is *DELETED*. No pronouncement as to costs.

SO ORDERED.

Puno (Chairman), *Callejo, Sr.*, and *Tinga, JJ.*, concur.

Austria-Martinez, J., on leave.

SECOND DIVISION

[G.R. No. 151135. July 2, 2004]

CONTEX CORPORATION, *petitioner, vs.* **HON. COMMISSIONER OF INTERNAL REVENUE,** *respondent*.

SYNOPSIS

Petitioner Corporation was a Subic Bay Freeport Enterprise registered with the Subic Bay Metropolitan Authority (SBMA) pursuant to RA No. 7227. As such, it was exempt from all local and national internal revenue taxes. Further, petitioner was a non-VAT taxpayer registered with the Bureau of Internal Revenue (BIR). From January 1, 1997 to December 31, 1998, where petitioner purchased various supplies for its business, the suppliers shifted unto petitioner the 10% VAT on the purchased items. Whether petitioner was VAT exempt and thus entitled to tax refund, the Court ruled that only VAT-Registered entities can claim Input VAT Credit/Refund. That while it was true that petitioner should not have been liable for the VAT inadvertently passed on it by its supplier since the transaction was a zero-rated sale on the part of the supplier, the petitioner was not the proper party to claim the VAT refund. It was the petitioner's supplier who may claim an Input VAT credit with no corresponding Output VAT passed on to the petitioner. Thus, it was the petitioner's suppliers who should

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claim the tax credit and accordingly refund the petitioner the VAT erroneously passed on to the latter.

SYLLABUS

1. TAXATION; VALUE ADDED TAX; ELUCIDATED. — The VAT is an indirect tax. As such, the amount of tax paid on the goods, properties or services bought, transferred, or leased may be shifted or passed on by the seller, transferor, or lessor to the buyer, transferee or lessee. Unlike a direct tax, such as the income tax, which primarily taxes an individual's ability to pay based on his income or net wealth, an indirect tax, such as the VAT, is a tax on consumption of goods, services, or certain transactions involving the same. The VAT, thus, forms a substantial portion of consumer expenditures. Further, in indirect taxation, there is a need to distinguish between the liability for the tax and the burden of the tax. As earlier pointed out, the amount of tax paid may be shifted or passed on by the seller to the buyer. What is transferred in such instances is not the liability for the tax, but the tax burden. In adding or including the VAT due to the selling price, the seller remains the person primarily and legally liable for the payment of the tax. What is shifted only to the intermediate buyer and ultimately to the final purchaser is the burden of the tax. Stated differently, a seller who is directly and legally liable for payment of an indirect tax, such as the VAT on goods or services is not necessarily the person who ultimately bears the burden of the same tax. It is the final purchaser or consumer of such goods or services who, although not directly and legally liable for the payment thereof, ultimately bears the burden of the tax.

2. ID.; ID.; EXEMPTIONS; ELUCIDATED. — Exemptions from VAT are granted by express provision of the Tax Code or special laws. Under VAT, the transaction can have preferential treatment in the following ways: (a) VAT Exemption. An exemption means that the sale of goods or properties and/or services and the use or lease of properties is not subject to VAT (output tax) and the seller is not allowed any tax credit on VAT (input tax) previously paid. This is a case wherein the VAT is removed at the exempt stage (*i.e.*, at the point of the sale, barter or exchange of the goods or properties). The person making the exempt sale of goods, properties or services shall not bill any output tax to his customers because the said transaction is not subject

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to VAT. On the other hand, a VAT-registered purchaser of VAT-exempt goods/properties or services which are exempt from VAT is not entitled to any input tax on such purchase despite the issuance of a VAT invoice or receipt. (b) Zero-rated Sales. There are sales by VAT-registered persons which are subject to 0% rate, meaning the tax burden is not passed on to the purchaser. A zero-rated sale by a VAT-registered person, which is a taxable transaction for VAT purposes, shall not result in any output tax. However, the input tax on his purchases of goods, properties or services related to such zero-rated sale shall be available as tax credit or refund in accordance with these regulations. Under Zero-rating, all VAT is removed from the zero-rated goods, activity or firm. In contrast, exemption only removes the VAT at the exempt stage, and it will actually increase, rather than reduce the total taxes paid by the exempt firm's business or non-retail customers. It is for this reason that a sharp distinction must be made between zero-rating and exemption in designating a value-added tax.

3. ID.; ID.; ID.; INPUT VAT CREDIT/REFUND, PROPER ONLY FOR VAT-REGISTERED ENTITIES. — The petitioner's claim to VAT exemption in the instant case for its purchases of supplies and raw materials is founded mainly on Section 12 (b) and (c) of Rep. Act No. 7227, which basically exempts them from all national and local internal revenue taxes, including VAT and Section 4 (A)(a) of BIR Revenue Regulations No. 1-95. On this point, petitioner rightly claims that it is indeed VAT-Exempt and this fact is not controverted by the respondent. In fact, petitioner is registered as a NON-VAT taxpayer per Certificate of Registration issued by the BIR. As such, it is exempt from VAT on all its sales and importations of goods and services. Petitioner's claim, however, for exemption from VAT for its purchases of supplies and raw materials is incongruous with its claim that it is VAT-Exempt, for only VAT-Registered entities can claim Input VAT Credit/Refund. The point of contention here is whether or not the petitioner may claim a refund on the Input VAT erroneously passed on to it by its suppliers. While it is true that the petitioner should not have been liable for the VAT inadvertently passed on to it by its supplier since such is a zero-rated sale on the part of the supplier, the petitioner is not the proper party to claim such VAT refund. It is the petitioner's supplier who may claim an Input VAT credit with no corresponding Output VAT liability.

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Congruently, no Output VAT may be passed on to the petitioner. Therefore, it is the petitioner's suppliers who are the proper parties to claim the tax credit and accordingly refund the petitioner of the VAT erroneously passed on to the latter.

APPEARANCES OF COUNSEL

Ponce Enrile Reyes & Manalastas for petitioner.
The Solicitor General and *Pablo M. Bastes, Jr.* and *Rhodora J. Corcuera-Menzon for B.I. R.*

D E C I S I O N

QUISUMBING, *J.*:

For review is the Decision[1] dated September 3, 2001, of the Court of Appeals, in CA-G.R. SP No. 62823, which reversed and set aside the decision[2] dated October 13, 2000, of the Court of Tax Appeals (CTA). The CTA had ordered the Commissioner of Internal Revenue (CIR) to refund the sum of ₱683,061.90 to petitioner as erroneously paid input value-added tax (VAT) or in the alternative, to issue a tax credit certificate for said amount. Petitioner also assails the appellate court's Resolution,[3] dated December 19, 2001, denying the motion for reconsideration.

Petitioner is a domestic corporation engaged in the business of manufacturing hospital textiles and garments and other hospital supplies for export. Petitioner's place of business is at the Subic Bay Freeport Zone (SBFZ). It is duly registered with the Subic Bay Metropolitan Authority (SBMA) as a Subic Bay Freeport Enterprise, pursuant to the provisions of Republic Act No. 7227.[4] As an SBMA-registered firm, petitioner is exempt from all local

[1] *Rollo*, pp. 29-38. Penned by Associate Justice Rodrigo V. Cosico, with Associate Justices Ramon A. Barcelona, and Bienvenido L. Reyes concurring.

[2] *Id.* at 59-70.

[3] *Id.* at 40-41.

[4] The Bases Conversion and Development Act of 1992.

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and national internal revenue taxes except for the preferential tax provided for in Section 12(c)[5] of Rep. Act No. 7227. Petitioner also registered with the Bureau of Internal Revenue (BIR) as a non-VAT taxpayer under Certificate of Registration RDO Control No. 95-180-000133.

From January 1, 1997 to December 31, 1998, petitioner purchased various supplies and materials necessary in the conduct of its manufacturing business. *The suppliers of these goods shifted unto petitioner the 10% VAT on the purchased items, which led the petitioner to pay input taxes in the amounts of ₱539,411.88 and ₱504,057.49 for 1997 and 1998, respectively.*[6]

Acting on the belief that it was exempt from all national and local taxes, including VAT, pursuant to Rep. Act No. 7227,

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[5] SEC. 12. *Subic Special Economic Zone*. — Subject to the concurrence by resolution of the *sangguniang panlungsod* of the City of Olongapo and the *sangguniang bayan* of the Municipalities of Subic, Morong and Hermosa, there is hereby created a Special Economic and Freeport Zone consisting of the City of Olongapo and the Municipality of Subic, Province of Zambales . . .

The abovementioned zone shall be subject to the following policies:

... ...

(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* (stress supplied). In lieu of paying taxes, three percent (3%) of the gross income earned by all businesses and enterprises within the Subic Special Economic Zone shall be remitted to the National Government, one percent (1%) each to the local government units affected by the declaration of the zone in proportion to their population area, and other factors. In addition, there is hereby established a development fund of one percent (1%) of the gross income earned by all businesses and enterprises within the Subic Special Economic Zone to be utilized for the development of municipalities outside the City of Olongapo and the Municipality of Subic, and other municipalities contiguous to the base areas.

In case of conflict between national and local laws with respect to tax exemption privileges in the Subic Special Economic Zone, the same shall be resolved in favor of the latter (stress supplied).

... ...

[6] Italics supplied.

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petitioner filed two applications for tax refund or tax credit of the VAT it paid. Mr. Edilberto Carlos, revenue district officer of BIR RDO No. 19, denied the first application letter, dated December 29, 1998.

Unfazed by the denial, petitioner on May 4, 1999, filed another application for tax refund/credit, this time directly with Atty. Alberto Pagabao, the regional director of BIR Revenue Region No. 4. The second letter sought a refund or issuance of a tax credit certificate in the amount of ₱1,108,307.72, representing erroneously paid input VAT for the period January 1, 1997 to November 30, 1998.

When no response was forthcoming from the BIR Regional Director, petitioner then elevated the matter to the Court of Tax Appeals, in a petition for review docketed as CTA Case No. 5895. Petitioner stressed that Section 112(A)[7] if read in relation to Section 106(A)(2)(a)[8] of the National Internal Revenue Code, as amended and Section 12(b)[9] and (c) of Rep. Act No.

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[7] 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: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP): . . .

[8] SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* —

... ...

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) *Export Sales.* — The term '*export sales*' means:

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon . . .

[9] SEC. 12. (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

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7227 would show that it was not liable in any way for any value-added tax.

In opposing the claim for tax refund or tax credit, the BIR asked the CTA to apply the rule that claims for refund are strictly construed against the taxpayer. Since petitioner failed to establish both its right to a tax refund or tax credit and its compliance with the rules on tax refund as provided for in Sections 204[10] and 229[11] of the Tax Code, its claim should be denied, according to the BIR.

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.

[10] SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —

(A) Compromise the payment of any internal revenue tax, when:

(1) A reasonable doubt as to the validity of the claim against the taxpayer exists; or

(2) The financial position of the taxpayer demonstrates a clear inability to pay the assessed tax.

... ...

(B) Abate or cancel a tax liability, when:

(1) The tax or any portion thereof appears to be unjustly or excessively assessed; or

(2) The administration and collection costs involved do not justify the collection of the amount due.

... ...

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition . . . No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: . . .

... ...

[11] SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.*— . . .

. . . *no such suit or proceeding shall be filed after the* expiration of *two (2) years from the date of payment of the tax or penalty* regardless of any supervening cause that may arise after payment: *Provided, however,*

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On October 13, 2000, the CTA decided CTA Case No. 5895 as follows:

> WHEREFORE, in view of the foregoing, the Petition for Review is hereby PARTIALLY GRANTED. Respondent is hereby ORDERED to REFUND or in the alternative to ISSUE A TAX CREDIT CERTIFICATE in favor of Petitioner the sum of ₱683,061.90, representing erroneously paid input VAT.
>
> SO ORDERED.[12]

In granting a partial refund, the CTA ruled that petitioner misread Sections 106(A)(2)(a) and 112(A) of the Tax Code. The tax court stressed that these provisions apply only to those entities registered as VAT taxpayers whose sales are zero-rated. Petitioner does not fall under this category, since it is a non-VAT taxpayer as evidenced by the Certificate of Registration RDO Control No. 95-180-000133 issued by RDO Rosemarie Ragasa of BIR RDO No. 18 of the Subic Bay Freeport Zone and thus it is exempt from VAT, pursuant to Rep. Act No. 7227, said the CTA.

Nonetheless, the CTA held that the petitioner is exempt from the imposition of input VAT on its purchases of supplies and materials. It pointed out that under Section 12(c) of Rep. Act No. 7227 and the Implementing Rules and Regulations of the Bases Conversion and Development Act of 1992, all that petitioner is required to pay as a SBFZ-registered enterprise is a 5% preferential tax.

The CTA also disallowed all refunds of input VAT paid by the petitioner prior to June 29, 1997 for being barred by the two-year prescriptive period under Section 229 of the Tax Code. The tax court also limited the refund only to the input VAT paid by the petitioner on the supplies and materials directly used by the petitioner in the manufacture of its goods. It struck down all claims for input VAT paid on maintenance, office

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That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

[12] *Rollo*, p. 69.

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supplies, freight charges, and all materials and supplies shipped or delivered to the petitioner's Makati and Pasay City offices.

Respondent CIR then filed a petition, docketed as CA-G.R. SP No. 62823, for review of the CTA decision by the Court of Appeals. Respondent maintained that the exemption of Contex Corp. under Rep. Act No. 7227 was limited only to direct taxes and not to indirect taxes such as the input component of the VAT. The Commissioner pointed out that from its very nature, the value-added tax is a burden passed on by a VAT registered person to the end users; hence, the direct liability for the tax lies with the suppliers and not Contex.

Finding merit in the CIR's arguments, the appellate court decided CA-G.R. SP No. 62823 in his favor, thus:

> WHEREFORE, premises considered, the appealed decision is hereby REVERSED AND SET ASIDE. Contex's claim for refund of erroneously paid taxes is DENIED accordingly.
>
> SO ORDERED.[13]

In reversing the CTA, the Court of Appeals held that the exemption from duties and taxes on the importation of raw materials, capital, and equipment of SBFZ-registered enterprises under Rep. Act No. 7227 and its implementing rules covers only "the VAT imposable under Section 107 of the [Tax Code], which is a direct liability of the importer, and in no way includes the value-added tax of the seller-exporter the burden of which was passed on to the importer as an additional costs of the goods."[14] This was because the exemption granted by Rep. Act No. 7227 relates to the act of importation and Section 107[15] of

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[13] *Id*. at 38.

[14] *Id*. at 37.

[15] SEC. 107. *Value-Added Tax on Importation of Goods.* —

(A) *In General*. — There shall be levied, assessed and collected on every importation of goods a value-added tax equivalent to ten percent (10%) based on the total value used by the Bureau of Customs in determining tariff and customs duties, plus customs duties, excise taxes, if any, and other charges, such tax to be paid by the importer prior to the release of such goods from customs custody: *Provided*, That where the customs duties are determined

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the Tax Code specifically imposes the VAT on importations. The appellate court applied the principle that tax exemptions are strictly construed against the taxpayer. The Court of Appeals pointed out that under the implementing rules of Rep. Act No. 7227, the exemption of SBFZ-registered enterprises from internal revenue taxes is qualified as pertaining only to those for which they may be directly liable. It then stated that apparently, the legislative intent behind Rep. Act No. 7227 was to grant exemptions only to direct taxes, which SBFZ-registered enterprise may be liable for and only in connection with their importation of raw materials, capital, and equipment as well as the sale of their goods and services.

Petitioner timely moved for reconsideration of the Court of Appeals decision, but the motion was denied.

Hence, the instant petition raising as issues for our resolution the following:

A. WHETHER OR NOT THE EXEMPTION FROM ALL LOCAL AND NATIONAL INTERNAL REVENUE TAXES PROVIDED IN REPUBLIC ACT NO. 7227 COVERS THE VALUE ADDED TAX PAID BY PETITIONER, A SUBIC BAY FREEPORT ENTERPRISE ON ITS PURCHASES OF SUPPLIES AND MATERIALS.

B. WHETHER OR NOT THE COURT OF TAX APPEALS CORRECTLY HELD THAT PETITIONER IS ENTITLED TO A TAX CREDIT OR REFUND OF THE VAT PAID ON ITS PURCHASES OF SUPPLIES AND RAW MATERIALS FOR THE YEARS 1997 AND 1998.[16]

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on the basis of the quantity or volume of the goods, the value-added tax shall be based on the landed cost plus excise taxes, if any.

(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.

[16] *Rollo,* p. 11.

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Simply stated, we shall resolve now the issues concerning: (1) the correctness of the finding of the Court of Appeals that the VAT exemption embodied in Rep. Act No. 7227 does not apply to petitioner as a purchaser; and (2) the entitlement of the petitioner to a tax refund on its purchases of supplies and raw materials for 1997 and 1998.

On the *first issue*, petitioner argues that the appellate court's restrictive interpretation of petitioner's VAT exemption as limited to those covered by Section 107 of the Tax Code is erroneous and devoid of legal basis. It contends that the provisions of Rep. Act No. 7227 clearly and unambiguously mandate that no local and national taxes shall be imposed upon SBFZ-registered firms and hence, said law should govern the case. Petitioner calls our attention to regulations issued by both the SBMA and BIR clearly and categorically providing that the tax exemption provided for by Rep. Act No. 7227 includes exemption from the imposition of VAT on purchases of supplies and materials.

The respondent takes the diametrically opposite view that while Rep. Act No. 7227 does grant tax exemptions, such grant is not all-encompassing but is limited only to those taxes for which a SBFZ-registered business may be directly liable. Hence, SBFZ locators are not relieved from the indirect taxes that may be shifted to them by a VAT-registered seller.

At this juncture, it must be stressed that the VAT is an indirect tax. As such, the amount of tax paid on the goods, properties or services bought, transferred, or leased may be shifted or passed on by the seller, transferor, or lessor to the buyer, transferee or lessee.[17] Unlike a direct tax, such as the income

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[17] SEC. 105. *Persons Liable.* — Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.

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 Republic Act No. 7716.

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tax, which primarily taxes an individual's ability to pay based on his income or net wealth, an indirect tax, such as the VAT, is a tax on consumption of goods, services, or certain transactions involving the same. The VAT, thus, forms a substantial portion of consumer expenditures.

Further, in indirect taxation, there is a need to distinguish between the liability for the tax and the burden of the tax. As earlier pointed out, the amount of tax paid may be shifted or passed on by the seller to the buyer. What is transferred in such instances is not the liability for the tax, but the tax burden. In adding or including the VAT due to the selling price, the seller remains the person primarily and legally liable for the payment of the tax. What is shifted only to the intermediate buyer and ultimately to the final purchaser is the burden of the tax.[18] Stated differently, a seller who is directly and legally liable for payment of an indirect tax, such as the VAT on goods or services is not necessarily the person who ultimately bears the burden of the same tax. It is the final purchaser or consumer of such goods or services who, although not directly and legally liable for the payment thereof, ultimately bears the burden of the tax.[19]

Exemptions from VAT are granted by express provision of the Tax Code or special laws. Under VAT, the transaction can have preferential treatment in the following ways:

The phrase '*in the course of trade or business*' means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.

The rule of regularity, to the contrary notwithstanding, services as defined in this Code rendered in the Philippines by nonresident foreign persons shall be considered as being rendered in the course of trade or business.

[18] DEOFERIO, JR. and MAMALATEO, *THE VALUE ADDED TAX IN THE PHILIPPINES* 35–36 (1st ed. 2000).

[19] DEOFERIO, JR. and MAMALATEO, *op.cit*. 117.

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(a) VAT Exemption. — An exemption means that the sale of goods or properties and/or services and the use or lease of properties is not subject to VAT (output tax) and the seller is not allowed any tax credit on VAT (input tax) previously paid.[20] This is a case wherein the VAT is removed at the exempt stage (i.e., at the point of the sale, barter or exchange of the goods or properties).

The person making the exempt sale of goods, properties or services shall not bill any output tax to his customers because the said transaction is not subject to VAT. On the other hand, a VAT-registered purchaser of VAT-exempt goods/properties or services which are exempt from VAT is not entitled to any input tax on such purchase despite the issuance of a VAT invoice or receipt.[21]

(b) Zero-rated Sales. — These are sales by VAT-registered persons which are subject to 0% rate, meaning the tax burden is not passed on to the purchaser. A zero-rated sale by a VAT-registered person, which is a taxable transaction for VAT purposes, shall not result in any output tax. However, the input tax on his purchases of goods, properties or services related to such zero-rated sale shall be available as tax credit or refund in accordance with these regulations.[22]

Under Zero-rating, all VAT is removed from the zero-rated goods, activity or firm. In contrast, exemption only removes the VAT at the exempt stage, and it will actually increase, rather than reduce the total taxes paid by the exempt firm's business or non-retail customers. It is for this reason that a sharp distinction must be made between zero-rating and exemption in designating a value-added tax.[23]

Apropos, the petitioner's claim to VAT exemption in the instant case for its purchases of supplies and raw materials is founded mainly on Section 12(b) and (c) of Rep. Act No. 7227, which basically exempts them from all national and local internal revenue

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[20] BIR Revenue Regulations No. 7-95, Section 4.103-1.

[21] *Ibid*.

[22] *Id.* at Section 4.100-2.

[23] Vitug and Acosta. *TAX LAW AND JURISPRUDENCE 241* (2nd ed. 2000).

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taxes, including VAT and Section 4(A)(a) of BIR Revenue Regulations No. 1-95.[24]

On this point, petitioner rightly claims that it is indeed VAT-Exempt and this fact is not controverted by the respondent. In fact, petitioner is registered as a NON-VAT taxpayer per Certificate of Registration[25] issued by the BIR. As such, it is exempt from VAT on all its sales and importations of goods and services.

Petitioner's claim, however, for exemption from VAT for its purchases of supplies and raw materials is incongruous with its claim that it is VAT-Exempt, for only VAT-Registered entities can claim Input VAT Credit/Refund.

The point of contention here is whether or not the petitioner may claim a refund on the Input VAT erroneously passed on to it by its suppliers.

While it is true that the petitioner should not have been liable for the VAT inadvertently passed on to it by its supplier since such is a zero-rated sale on the part of the supplier, the petitioner is not the proper party to claim such VAT refund.

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[24] BIR Revenue Regulations No. 1-95, or the "Rules and Regulations to Implement the Tax Incentives Provisions under Paragraphs (b) and (c) of Section 12, Republic Act No. 7227 Otherwise Known as the Bases Conversion and Development Act of 1992."

"Section 4. Exemptions and Incentives. —

A. All SBMA registered enterprises doing business within the Secured Area in the Zone shall enjoy the following:

a. Exemption from customs and import duties and national internal revenue taxes on importations of raw materials for manufacture into finished products and capital goods and equipment needed for their business operation within the Secured Area . . .

... ...

e. Purchases of raw materials, capital goods and equipment and services by the SBMA and SBF accredited enterprises from enterprises in the Customs Territory shall be considered effectively zero-rated for VAT purposes . . ."

[25] *Rollo*, p. 49.

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Section 4.100-2 of BIR's Revenue Regulations 7-95, as amended, or the "*Consolidated Value-Added Tax Regulations*" provide:

> Sec. 4.100-2. Zero-rated Sales. — A zero-rated sale by a VAT-registered person, which is a taxable transaction for VAT purposes, shall not result in any output tax. However, the input tax on his purchases of goods, properties or services related to such zero-rated sale shall be available as tax credit or refund in accordance with these regulations.
>
> The following sales by VAT-registered persons shall be subject to 0%:
>
> (a) Export Sales
>
> "Export Sales" shall mean
>
> ... ...
>
> (5) Those considered export sales under Articles 23 and 77 of Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws, *e.g.* Republic Act No. 7227, otherwise known as the Bases Conversion and Development Act of 1992.
>
> ... ...
>
> (c) Sales to persons or entities whose exemption under special laws, *e.g.* R.A. No. 7227 duly registered and accredited enterprises with Subic Bay Metropolitan Authority (SBMA) and Clark Development Authority (CDA), R.A. No. 7916, Philippine Economic Zone Authority (PEZA), or international agreements, *e.g.* Asian Development Bank (ADB), International Rice Research Institute (IRRI), *etc.* to which the Philippines is a signatory effectively subject such sales to zero-rate."

Since the transaction is deemed a zero-rated sale, petitioner's supplier may claim an Input VAT credit with no corresponding Output VAT liability. Congruently, no Output VAT may be passed on to the petitioner.

On the *second issue*, it may not be amiss to re-emphasize that the petitioner is registered as a NON-VAT taxpayer and

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thus, is exempt from VAT. As an exempt VAT taxpayer, it is not allowed any tax credit on VAT (input tax) previously paid. In fine, even if we are to assume that exemption from the burden of VAT on petitioner's purchases did exist, petitioner is still not entitled to any tax credit or refund on the input tax previously paid as petitioner is an exempt VAT taxpayer.

Rather, it is the petitioner's suppliers who are the proper parties to claim the tax credit and accordingly refund the petitioner of the VAT erroneously passed on to the latter.

Accordingly, we find that the Court of Appeals did not commit any reversible error of law in holding that petitioner's VAT exemption under Rep. Act No. 7227 is limited to the VAT on which it is directly liable as a seller and hence, it cannot claim any refund or exemption for any input VAT it paid, if any, on its purchases of raw materials and supplies.

WHEREFORE, the petition is *DENIED* for lack of merit. The Decision dated September 3, 2001, of the Court of Appeals in CA-G.R. SP No. 62823, as well as its Resolution of December 19, 2001 are *AFFIRMED*. No pronouncement as to costs.

SO ORDERED.

Puno (Chairman), *Callejo, Sr.*, and *Tinga, JJ.*, concur.

Austria-Martinez, J., on leave.