Supreme Court E-Library

EN BANC

[G.R. No. 158885. October 2, 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. October 2, 2009]

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.*

SYLLABUS

1. STATUTORY CONSTRUCTION; INTERPRETATION OF STATUTES; THAT PROVISIONS OF A LAW MUST BE READ IN RELATION TO THE WHOLE LAW. — 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. 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. TAXATION; NATIONAL INTERNAL REVENUE CODE; THE TERM "GOODS *OR* PROPERTIES," DEFINED. — 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.

3. ID.; ID.; ID.; RESTRICTION ON THE DEFINITION OF "GOODS" UNDER SECTION 4.105-1 OF REVENUE

Supreme Court E-Library

REGULATION (RR) 7-95; NOT VALID. — 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, 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. 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.

4. ID.; ID.; ID.; ID.; EFFECTIVELY REPEALED BY RR 6-97 WHICH IS IN CONSONANCE WITH SECTION 100 OF THE NIRC, INSOFAR AS THE DEFINITION OF REAL PROPERTIES AS GOODS IS CONCERNED. — On January 1, 1997, RR 6-97 was issued by the Commissioner of Internal Revenue. RR 6-97 was basically a reiteration of the same Section 4.105-1 of RR 7-95, except that the RR 6-97 **deleted** the following paragraph: *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*

Supreme Court E-Library

effectivity of E.O. 273 (January 1, 1988). It is clear, therefore, that under RR 6-97, the allowable transitional input tax credit is not limited to improvements on real properties. The particular provision of RR 7-95 has effectively been repealed by RR 6-97 which is now in consonance with Section 100 of the NIRC, insofar as the definition of real properties as goods is concerned. The failure to add a specific repealing clause would not necessarily indicate that there was no intent to repeal RR 7-95. The fact that the aforequoted paragraph was deleted created an irreconcilable inconsistency and repugnancy between the provisions of RR 6-97 and RR 7-95.

5. STATUTORY CONSTRUCTION; INTERPRETATION OF STATUTES; THE COURTS MUST NOT READ INTO LAW WHAT IS NOT THERE; RE. SECTION 105 OF THE OLD NIRC, ON TRANSITIONAL INPUT TAX. — The language of Section 105 is explicit. It precludes reading into the law that the transitional input tax credit is limited to the amount of VAT previously paid. When the aforesaid section speaks of "*eight percent (8%) of the value of such inventory*" followed by the clause "*or the actual value-added tax paid on such goods, materials and supplies*," the implication is clear that under the first clause, "eight percent (8%) of the value of such inventory", the law does not contemplate the payment of any prior tax on such inventory. This is distinguished from the second clause, "the actual value-added tax paid on the goods, materials and supplies" where actual payment of VAT on the goods, materials and supplies is assumed. Had the intention of the law been to limit the amount to the actual VAT paid, there would have been no need to explicitly allow a claim based on 8% of the value of such inventory. The contention that the 8% transitional input tax credit in Section 105 presumes that a previous tax was paid, whether or not it was actually paid, requires a transaction where a tax has been imposed by law, is utterly without basis in law. xxx To give Section 105 a restrictive construction that transitional input tax credit applies only when taxes were previously paid on the properties in the beginning inventory and there is a law imposing the tax which is presumed to have been paid, is to impose conditions or requisites to the application of the transitional tax input credit which are not found in the law. The courts must not read into the law what is not there. To do so will violate the principle of separation of powers which prohibits this Court from engaging in judicial legislation.

Supreme Court E-Library

CARPIO, *J., dissenting opinion:*

1. TAXATION; NATIONAL INTERNAL REVENUE CODE; TRANSITIONAL INPUT TAX CREDIT; ELUCIDATED. — The transitional input tax credit was placed in the tax law to pave the smooth transition from the non-VAT to the VAT system. This input VAT works by deducting previously paid taxes from the output VAT liability in subsequent transactions involving the same product. The term "transitional" was placed to distinguish this from an ordinary input tax.

2. ID.; ID.; SECTION 105 ON THE 8% TRANSITIONAL INPUT TAX CREDIT PRESUMES THAT A PREVIOUS TAX HAS BEEN IMPOSED AND PAID; PETITIONER BUYER HERE OF GLOBAL CITY LAND FROM THE GOVERNMENT UNDER TAX FREE TRANSACTION, NOT ENTITLED TO ANY INPUT TAX CREDIT. — In 1995, when petitioner bought the Global City land from the national government, the sale was under a tax-free transaction and without any VAT component. Being tax-exempt, the national government did not pass on any previous input business tax, whether in the form of sales tax or VAT, to petitioner as part of the purchase price. **The 8% transitional input tax credit in Section 105 presumes that a previous tax was paid, whether or not it was actually paid.** Such presumption assumes the existence of a law imposing the tax presumed to have been paid. This can be inferred from the provision that a taxpayer is "allowed input tax on his beginning inventory xxx equivalent to 8% xxx, or the actual value-added tax paid xxx, whichever is higher." **The transitional input tax requires a transaction where a tax has been imposed by law. Otherwise, the presumption that the tax has been paid will have no basis.** Without any VAT or other input business tax imposed by law on real properties at the time of the sale in the present case, the 8% transitional input tax cannot be presumed to have been paid. Also, even before real estate dealers became subject to VAT under RA 7716, improvements on the land were already subject to VAT. However, since the land itself was not subject to VAT or to any input tax prior to RA 7716, the land then could not be considered part of the beginning inventory under Section 105. Thus, the 8% transitional input tax should apply only to improvements on land and not on the land itself. To repeat, at the time of the

Supreme Court E-Library

sale by the government of the Global City land in 1995, there was no VAT on the sale of land. In addition, the government, as seller, was not subject to VAT. Even if the sale transaction happens today with the VAT on real properties already in existence, and petitioner subsequently resells the land, petitioner will still not be entitled to any input tax credit. This is because the sale by the national government of government-owned land is not subject to VAT. Petitioner cannot now claim any input tax credit if it buys the same land today, and resells the same the following day. **Thus, if a real estate dealer like petitioner cannot claim an input tax today on its purchase of government land, when VAT on real properties is already in effect, then all the more petitioner cannot claim any input tax for its 1995 purchase of government land when the E-VAT law was still inexistent and petitioner had not yet been subjected to VAT.**

APPEARANCES OF COUNSEL

Estelito P. Mendoza and Lorenzo G. Timbol for petitioner.
The Solicitor General for 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 ₱28,413,783.00 representing the transitional input tax credit due it for the fourth quarter of 1996; and (2) directed to refund to petitioner the amount of ₱347,741,695.74 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.

Supreme Court E-Library

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

Supreme Court E-Library

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.]

Supreme Court E-Library

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 ₱500,000.00 or who voluntarily register even if their turnover does not exceed ₱500,000.00 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

Supreme Court E-Library

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

---

[1] *The Civil Service Commission v. Joson*, G.R. No. 154674, May 27, 2004, 429 SCRA 773,786.

[2] *Republic v. Reyes*, No. L-22550, May 19, 1966, 17 SCRA 170,173.

Supreme Court E-Library

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

[3] Art. 7. xxx

Supreme Court E-Library

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]

To recapitulate, RR 7-95, insofar as it restricts the definition of "*goods*" as basis of transitional input tax credit under Section 105 is a nullity.

On January 1, 1997, RR 6-97 was issued by the Commissioner of Internal Revenue. RR 6-97 was basically a reiteration of the same Section 4.105-1 of RR 7-95, except that the RR 6-97 **deleted** the following paragraph:

Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the constitution.

[4] *Francel Realty Corporation v. Sycip*, G.R. No. 154684, September 8, 2005, 469 SCRA 424, 436.

[5] *Sunga v. Commission on Elections*, G.R. No. 125629, March 25, 1998, 288 SCRA 78, 87.

Supreme Court E-Library

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 E.O. 273 (January 1, 1988).

It is clear, therefore, that under RR 6-97, the allowable transitional input tax credit is not limited to improvements on real properties. The particular provision of RR 7-95 has effectively been repealed by RR 6-97 which is now in consonance with Section 100 of the NIRC, insofar as the definition of real properties as goods is concerned. The failure to add a specific repealing clause would not necessarily indicate that there was no intent to repeal RR 7-95. The fact that the aforequoted paragraph was deleted created an irreconcilable inconsistency and repugnancy between the provisions of RR 6-97 and RR 7-95.

We now address the points raised in the dissenting opinion of the Honorable Justice Antonio T. Carpio.

At the outset, it must be stressed that FBDC sought the refund of the total amount of ₱347,741,695.74 which it had itself paid in cash to the BIR. It is argued that the transitional input tax credit applies only when taxes were previously paid on the properties in the beginning inventory and that there should be a law imposing the tax presumed to have been paid. The thesis is anchored on the argument that without any VAT or other input business tax imposed by law on the real properties at the time of the sale, the 8% transitional input tax cannot be presumed to have been paid.

The language of Section 105 is explicit. It precludes reading into the law that the transitional input tax credit is limited to the amount of VAT previously paid. When the aforesaid section speaks of "*eight percent (8%) of the value of such inventory*" followed by the clause "*or the actual value-added tax paid on such goods, materials and supplies,*" the implication is clear that under the first clause, "eight percent (8%) of the value of such inventory," the law does not contemplate the payment of any prior tax on such inventory. This is distinguished from the second clause, "the actual value-added tax paid on the goods, materials and supplies" where actual payment of VAT on the

Supreme Court E-Library

goods, materials and supplies is assumed. Had the intention of the law been to limit the amount to the actual VAT paid, there would have been no need to explicitly allow a claim based on 8% of the value of such inventory.

The contention that the 8% transitional input tax credit in Section 105 presumes that a previous tax was paid, whether or not it was actually paid, requires a transaction where a tax has been imposed by law, is utterly without basis in law. The rationale behind the provisions of Section 105 was aptly elucidated in the Decision sought to be reconsidered, thus:

> It is apparent that the transitional input tax credit operates to benefit newly VAT-registered persons, whether or not they previously paid taxes in the acquisition of their beginning inventory of goods, materials and supplies. During that period of transition from non-VAT to VAT status, the transitional input tax credit serves to alleviate the impact of the VAT on the taxpayer. At the very beginning, the VAT-registered taxpayer is obliged to remit a significant portion of the income it derived from its sales as output VAT. The transitional input tax credit mitigates this initial diminution of the taxpayer's income by affording the opportunity to offset the losses incurred through the remittance of the output VAT at a stage when the person is yet unable to credit input VAT payments.

As pointed out in Our Decision of April 2, 2009, to give Section 105 a restrictive construction that transitional input tax credit applies only when taxes were previously paid on the properties in the beginning inventory and there is a law imposing the tax which is presumed to have been paid, is to impose conditions or requisites to the application of the transitional tax input credit which are not found in the law. The courts must not read into the law what is not there. To do so will violate the principle of separation of powers which prohibits this Court from engaging in judicial legislation.[6]

WHEREFORE, premises considered, the Motion for Reconsideration is *DENIED WITH FINALITY* for lack of merit.

---

[6] *Alagad (Partido ng Maralitang-Lungsod) v. Commission on Elections*, G.R. No. 136795, October 6, 2000, 342 SCRA 244, 291.

Supreme Court E-Library

SO ORDERED.

Ynares-Santiago, Corona, Chico-Nazario, Velasco, Jr., Nachura, Peralta, Bersamin, Del Castillo, and *Abad, JJ.,* concur.

Carpio, J., see dissenting opinion.

Carpio Morales, J., maintains her vote for the denial of the petitions.

Puno, C.J., no part.

Quisumbing, J., on official leave.

*Brion, J.,*on sick leave.

DISSENTING OPINION

CARPIO, *J.*:

I vote to grant the motion for reconsideration filed by the Commissioner of Internal Revenue.

The decision dated 2 April 2009 grants to petitioner tax credit or refund of **₱347,741,695.74** when petitioner never in fact paid a single centavo of tax to the Bureau of Internal Revenue. A tax credit or tax refund requires that a previous tax was paid by the taxpayer. There can be no tax credit or refund if no prior tax was paid. In this case, the decision dated 2 April 2009 grants to petitioner **hundreds of millions** in tax credit or refund without the taxpayer ever having paid any previous tax to the government. Who will bear this burden of tax credit or refund? It is all taxpayers in this country except, of course, petitioner. What makes petitioner so privileged?

The Constitution mandates that "the rule of taxation shall be uniform and equitable."[1] There is certainly neither uniformity nor equity if this Court grants petitioner a ₱347,741,695.74 tax credit or refund when all other taxpayers seeking a tax credit or refund must first show prior payment of a tax, or at least the

[1] Section 28, Article VI, Constitution.

Supreme Court E-Library

existence of a law imposing the tax for which a credit or refund is sought.

The transitional input tax credit was placed in the tax law to pave the smooth transition from the non-VAT to the VAT system. This input VAT works by deducting previously paid taxes from the output VAT liability in subsequent transactions involving the same product. The term "transitional" was placed to distinguish this from an ordinary input tax.

In 1995, when petitioner bought the Global City land from the national government, the sale was under a tax-free transaction and without any VAT component. Being tax-exempt, the national government did not pass on any previous input business tax, whether in the form of sales tax or VAT, to petitioner as part of the purchase price.

The 8% transitional input tax credit in Section 105 presumes that a previous tax was paid, whether or not it was actually paid. Such presumption assumes the existence of a law imposing the tax presumed to have been paid. This can be inferred from the provision that a taxpayer is "allowed input tax on his beginning inventory xxx equivalent to 8% xxx, or the actual value-added tax paid xxx, whichever is higher." **The transitional input tax requires a transaction where a tax has been imposed by law. Otherwise, the presumption that the tax has been paid will have no basis.** Without any VAT or other input business tax imposed by law on real properties at the time of the sale in the present case, the 8% transitional input tax cannot be presumed to have been paid.

Also, even before real estate dealers became subject to VAT under RA 7716, improvements on the land were already subject to VAT. However, since the land itself was not subject to VAT or to any input tax prior to RA 7716, the land then could not be considered part of the beginning inventory under Section 105. Thus, the 8% transitional input tax should apply only to improvements on land and not on the land itself.

To repeat, at the time of the sale by the government of the Global City land in 1995, there was no VAT on the sale of

Supreme Court E-Library

land. In addition, the government, as seller, was not subject to VAT. Even if the sale transaction happens today with the VAT on real properties already in existence, and petitioner subsequently resells the land, petitioner will still not be entitled to any input tax credit. This is because the sale by the national government of government-owned land is not subject to VAT.[2] Petitioner cannot now claim any input tax credit if it buys the same land today, and resells the same the following day.

Thus, if a real estate dealer like petitioner cannot claim an input tax today on its purchase of government land, when VAT on real properties is already in effect, then all the more petitioner cannot claim any input tax for its 1995 purchase of government land when the E-VAT law was still inexistent and petitioner had not yet been subjected to VAT.

Accordingly, I vote to **GRANT** the Motion for Reconsideration.

---

[2] Under Section 105 of the present NIRC, the person liable for the payment of value-added tax is "any person who, in the course of trade or business, sells goods or properties." In Section 22 of the same statute, the term "person" is defined as an individual, a trust, estate, or corporation. The national government does not fall under any of the enumerated entities. It is neither an individual or a corporation which comes under the purview of the law.

Neither can it be said that the national government, in selling the Global City land, is engaged in "trade or business." The phrase "in the course of trade or business" as defined in Section 105, means the regular conduct or pursuit of a commercial or an economic activity. In this case, the objective of RA 9227 is to use the proceeds from the sale of portions of Fort Bonifacio to finance military-related activities and provide housing loan assistance. Accordingly, the national government, as the seller with these policies in mind, does not fall under the definition "engaged in the regular conduct or pursuit of an economic activity."

Thus, not being expressly included in the tax law as one liable for value-added tax, the national government is exempt therefrom.