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22, 2016 of the Court of Appeals, and its Resolution dated July 10, 2016, in CA-G.R. SP No. 138514, are hereby **AFFIRMED**.

SO ORDERED.

Peralta (Chairperson), Leonen, Lazaro-Javier,* and *Inting, JJ.*, concur.

SECOND DIVISION

[G.R. No. 226556. July 3, 2019]

POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC); VALUE ADDED TAX (VAT); THE SALE OF THE GENERATING ASSETS — THE MASINLOC, AMBUKLAO-BINGA AND PANTABANGAN POWER PLANTS — IS NOT SUBJECT TO VAT, SINCE THE SALE IS NOT IN PURSUIT OF A COMMERCIAL OR ECONOMIC ACTIVITY BUT PURSUANT TO POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT'S (PSALM) GOVERNMENTAL FUNCTION FOR THE PURPOSE OF PRIVATIZING NPC GENERATION ASSETS UNDER THE ELECTRIC POWER INDUSTRY REFORM ACT OF 2001 (EPIRA). — The issue of whether the sale of power plants by PSALM is subject to VAT and the

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* Designated additional Member per Raffle dated June 26, 2019 *vice* Associate Justice Ramon Paul L. Hernando.

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arguments of both parties in this case have been passed upon and settled in G.R. No. 198146 (*Power Sector Assets and Liabilities Management Corporation v. Commissioner on Internal Revenue*), where the Court ruled: x x x. **We do not agree with the CIR's position, which is anchored on the wrong premise that PSALM is a successor-in-interest of NPC. PSALM is not a successor-in-interest of NPC**. x x x. **Clearly, NPC and PSALM have different functions. Since PSALM is not a successor-in-interest of NPC, the repeal by RA 9337 of NPC's VAT exemption does not affect PSALM. In any event, even if PSALM is deemed a successor-in-interest of NPC, still the sale of the power plants is not "in the course of trade or business" as contemplated under Section 105 of the NIRC , and thus, not subject to VAT**. **The sale of the power plants is not in pursuit of a commercial or economic activity but a governmental function mandated by law to privatize NPC generation assets. PSALM was created primarily to liquidate all NPC financial obligations and stranded contract costs in an optimal manner**. x x x. **Thus, it is very clear that the sale of the power plants was an exercise of a governmental function mandated by law for the primary purpose of privatizing NPC assets in accordance with the guidelines imposed by the EPIRA law.** x x x. **Similarly, the sale of the power plants in this case is not subject to VAT since the sale was made pursuant to PSALM's mandate to privatize NPC's assets, and was not undertaken in the course of trade or business. In selling the power plants, PSALM was merely exercising a governmental function for which it was created under the EPIRA law.** Applying our ruling in G.R. No. 198146 involving the same parties and similar issues, the sale of the generating assets — the Masinloc, Ambuklao-Binga and Pantabangan power plants — in the present case is likewise not subject to VAT, since the sale was pursuant to the mandate of PSALM under the EPIRA to privatize NPC assets. The sale of the power plants is not in pursuit of a commercial or economic activity but a governmental function mandated by law to privatize NPC generation assets. The sale of the power plants is clearly not the same as the sale of electricity by generation companies, transmission, and distribution companies, which is subject to VAT under Section 108 of the NIRC. Thus, we do not find any merit in the arguments raised by the CIR.

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2. ID.; ID.; ID.; THE LEASE OF NAGA COMPLEX AND COLLECTION OF INCOME AND RECEIVABLES ARE NOT SUBJECT TO VAT, AS THE SAME ARE WITHIN PSALM'S POWERS NECESSARY TO DISCHARGE ITS MANDATE UNDER THE LAW AND ARE UNDERTAKEN IN THE EXERCISE OF PSALM'S GOVERNMENTAL FUNCTION. — We likewise do not find PSALM liable to pay VAT on the lease of Naga Complex; collection of income from participation fee, site visit fee, plant CDs, photocopying charges and data room access fee; and collection of receivables from employees for the excess utilization of allowed mobile phone services, inventory variance receivable from custodian, refund from a successor-generation company of the insurance premiums paid by PSALM and interest received from mandatory dollar deposit. Under the EPIRA, PSALM, as the conservator of NPC assets, operates and maintains NPC assets and manages its liabilities in trust for the national government, until the NPC assets could be sold or disposed of. Thus, during its corporate life, PSALM has powers relating to the management of its personnel and leasing of its properties as may be necessary to discharge its mandate. x x x. Since the lease of Naga Complex and collection of income and receivables are within PSALM's powers necessary to discharge its mandate under the law and likewise undertaken in the exercise of PSALM's governmental function, we do not find these activities subject to VAT. To reiterate, VAT is ultimately a tax on consumption, and it is levied only on the sale, barter or exchange of goods or services by persons who engage in such activities, **in the course of trade or business.** Accordingly, the CTA Third Division and CTA EB erred in finding PSALM liable for deficiency VAT in the amount of ₱9,566,062,571.44.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
Office of the Solicitor General for respondent.

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D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review[1] assails the Decision[2] promulgated on 17 May 2016 as well as the Resolution[3] promulgated on 12 August 2016 by the Court of Tax Appeals *En Banc* (CTA EB) in CTA EB Case No. 1282. The CTA EB affirmed the Decision[4] dated 2 December 2014 and Resolution[5] dated 25 February 2015 of the Third Division of the Court of Tax Appeals (CTA Third Division) in CTA Case No. 8475. The CTA Third Division found petitioner Power Sector Assets and Liabilities Management Corporation (PSALM) liable to pay the amount of ₱9,566,062,571.44 as deficiency value-added tax (VAT) for the taxable year 2008, inclusive of the deficiency interest and delinquency interest.

The Facts

PSALM, a government-owned and controlled corporation created under Republic Act No. (RA) 9136 or the Electric Power Industry Reform Act of 2001 (EPIRA),[6] is mandated to manage the orderly sale, disposition, and privatization of the National

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[1] *Rollo*, pp. 12-36. Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Id*. at 54-67. Penned by Associate Justice Cielito N. Mindaro-Grulla, with Associate Justices Lovell R. Bautista, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Amelia R. Cotangco-Manalastas and Ma. Belen Ringpis-Liban concurring. Presiding Justice Roman G. Del Rosario penned a Dissenting Opinion, Associate Justice Juanito C. Castañeda, Jr. penned a Separate Concurring Opinion, and Associate Justice Erlinda P. Uy penned a Concurring and Dissenting Opinion.

[3] *Id*. at 101-103.

[4] *Id*. at 251-270. Penned by Associate Justice Ma. Belen M. Ringpis-Liban, with Associate Justices Lovell R. Bautista and Esperanza R. Fabon-Victorino concurring.

[5] *Id*. at 284-285.

[6] Section 49 of Republic Act No. 9136 provides:

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Power Corporation (NPC) generation assets, real estate and other disposable assets, and Independent Power Producer contracts with the objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner.[7]

On 9 June 2011, the Bureau of Internal Revenue (BIR) issued a Final Assessment Notice (FAN) covered by Assessment No. VT-08-00072[8] alleging that, for taxable year ending 31 December 2008, PSALM is liable to pay a deficiency VAT amounting to ₱10,103,158,715.06, inclusive of penalties and interests, computed as follows:

Taxable Sales per VAT Returns		
Add: Adjustments		
Proceeds from Sales of Generating Asset	₱53,859,322,483.00	

SEC. 49. *Creation of Power Sector Assets and Liabilities Management Corporation*. — There is hereby created a government-owned and-controlled corporation to be known as the "Power Sector Assets and Liabilities Management Corporation", hereinafter referred to as the "PSALM Corp.", which shall take ownership of all existing NPC generation assets, liabilities, IPP contracts, real estate and all other disposable assets. All outstanding obligations of the NPC arising from loans, issuances of bonds, securities and other instruments of indebtedness shall be transferred to and assumed by the PSALM Corp. within one hundred eighty (180) days from the approval of this Act.

[7] Section 50 of Republic Act No. 9136 provides:

SEC. 50. *Purpose and Objective, Domicile and Term of Existence*. — The principal purpose of the PSALM Corp. is to manage the orderly sale, disposition, and privatization of NPC generation assets, real estate and other disposable assets, and IPP contracts with the objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner.

The PSALM Corp. shall have its principal office and place of business within Metro Manila.

The PSALM Corp. shall exist for a period of twenty five (25) years from the effectivity of this Act, unless otherwise provided by law, and all assets held by it, all moneys and properties belonging to it, and all its liabilities outstanding upon the expiration of its term of existence shall revert to and be assumed by the National Government.

[8] *Rollo*, pp. 105-106, 108.

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Proceeds from Lease of Naga Complex	172,096,188.00	
Collection of Income	9,183,364.00	
Collection of receivables	1,148,257.00	54,041,750,292.00
Total Proceeds to be subjected to VAT		₱54,041,750,292.00
Output Tax		₱6,485,010,035.04
Less: Creditable Input Tax		
Input Tax Carried Over from Previous Quarter	₱30,364,192.07	
Input Tax Claimed per VAT Return	14,932,013.06	
Total Input Tax per VAT Return	45,296,205.13	
Less: Excess Input Tax Carried Over to Succeeding Period	45,296,205.13	
Value Added Tax		₱6,485,010,035.34
Less: VAT Payments		
Deficiency Value Added Tax		₱6,485,010,035.34
Add:Increments		
Interest	₱3,618,098,680.02	
Penalty	50,000.00	3,618,148,680.02
Total Amount Due		₱10,103,158,715.06

On 7 July 2011, PSALM filed its administrative protest against the FAN, alleging that the privatization of NPC assets is an original mandate of PSALM and not subject to VAT. On 5 September 2011, PSALM filed its supplemental protest reiterating its substantive defenses.

On 19 March 2012, respondent Commissioner of Internal Revenue (CIR) issued its Final Decision on Disputed Assessment,[9] which denied PSALM's protest for lack of factual and legal bases. The CIR held that the sale of electricity is subject to VAT under RA 9337[10] and the real properties sold

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[9] *Id.* at 130-132.

[10] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

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by PSALM are regarded as real properties used in trade or business.

Thus, on 18 April 2012, PSALM filed a petition for review before the CTA.

The Ruling of the CTA Third Division

In a Decision dated 2 December 2014, the CTA Third Division partially granted PSALM's petition, allowing PSALM to claim input tax credits, and holding that PSALM is not liable to pay the compromise penalty of ₱50,000.00.

However, the CTA Third Division ruled that PSALM is liable to pay the deficiency VAT, because the enactment of RA 9337 superseded BIR Ruling No. 020-2002, on which PSALM relied for its VAT exemption. The CTA Third Division found that the sale of generating assets of PSALM — the Masinloc, Ambuklao-Binga and Pantabangan power plants — fall under "all kinds of goods and properties" subject to VAT under Section 106 of the National Internal Revenue Code of 1997 (NIRC). The CTA Third Division thereafter modified the computation of the penalty interest and computed it from the last day prescribed by law for filing a return. Thus, the CTA Third Division computed PSALM's liability as follows:

Output Tax		₱6,485,010,035.04
Less: Credible Input Tax		
Input tax carried over from previous Quarter	₱30,364,192.07	
Input tax claimed per VAT Return	14,932,013.06	45,296,205.13
Value Added Tax Due		₱6,439,713,829.91
Less: VAT Payments		-
Deficiency Value Added Tax		₱6,439,713,829.91
Add: Increments		
Interest (01-25-2009 to 06-30-2011)	₱3,126,348,741.53	
Compromise Penalty	-	₱3,126,348,741.53
Total Deficiency VAT		**₱9,566,062,571.44**

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Thus, the dispositive portion of its Decision reads:

> WHEREFORE, premises considered, the instant Petition for Review is hereby PARTIALLY GRANTED. Accordingly, the assessments issued by respondent against petitioner covering taxable year 2008 for deficiency value-added tax are UPHELD but in the MODIFIED AMOUNT of NINE BILLION FIVE HUNDRED SIXTY SIX MILLION SIXTY TWO THOUSAND FIVE HUNDRED SEVENTY ONE and 44/100 PESOS (₱9,566,062,571.44), inclusive of twenty percent (20%) interest imposed upon Section 249(A) of the Tax Code, as amended.
>
> In addition, petitioner is hereby ORDERED TO PAY:
>
> a) Deficiency interest at the rate of 20% per annum on the basic deficiency VAT of ₱6,439,713,829.91 computed from June 30, 2011 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997;
>
> b) Delinquency interest at the rate of 20% per annum on the basic deficiency VAT of ₱6,439,713,829.91 [computed from] June 30, 2011 until full payment thereof pursuant to Section 249(C)(3) of the NIRC of 1997, as amended; and
>
> c) Delinquency interest at the rate of 20% per annum on the deficiency interest which have accrued as afore-stated in (a) computed from June 30, 2011 until full payment thereof pursuant to Section 249(C)(3) of the NIRC of 1997, as amended.
>
> SO ORDERED.[11]

PSALM filed a motion for partial reconsideration, which was denied for lack of merit by the CTA Third Division in its 25 February 2015 Resolution. Hence, PSALM appealed to the CTA EB.

The Ruling of the CTA En Banc

In a Decision dated 17 May 2016, the CTA EB affirmed the decision of the CTA Third Division and held that PSALM is subject to VAT for its sale of generating assets, lease of Naga Complex, and collection of income and receivables, because

[11] *Id.* at 268-269.

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these were done in the course of trade or business, and RA 9337 placed the electric power industry under the VAT system.

Thus, the dispositive portion of the CTA EB decision reads:

> WHEREFORE premises considered, the petition is DENIED for lack of merit. The Decision of the Third Division of this Court in CTA Case No. 8475, promulgated on December 2, 2014 and its Resolution, promulgated on February 25, 2015, are hereby AFFIRMED. No pronouncement as to costs.
>
> SO ORDERED.[12]

In a Dissenting Opinion, Presiding Justice Roman G. Del Rosario (Justice Del Rosario) opined that the assessment issued by the CIR against PSALM should be cancelled, insofar as it relates to the proceeds from sales of generating assets and from collection of income and receivables, because: (1) PSALM relied in good faith on BIR Ruling No. 020-02 dated 13 May 2002 declaring that the disposition or sale of assets as a consequence of PSALM's mandate is not subject to VAT; and (2) the collection of receivables is not in the nature of sale, barter, exchange, lease of goods or properties, performance of service, and importation of goods, so as to fall under a transaction subject to VAT under Section 105 of the NIRC.

However, Justice Del Rosario opined that the lease of Naga Complex should be excluded from the coverage of BIR Ruling No. 020-02, absent any showing that the property involved is among those transferred from NPC to PSALM. Also, he opined that the deficiency interest may not be imposed on the deficiency VAT assessed against PSALM, because deficiency interest may be imposed only on income tax, donor's tax and estate tax, under the NIRC.

In a Concurring and Dissenting Opinion, Associate Justice Erlinda P. Uy concurred with the majority opinion that PSALM is liable to pay VAT, but dissented as to the imposition of the deficiency interest, reasoning out that deficiency interest should

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[12] *Id.* at 66.

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be imposed only in cases of deficiency income tax, donor's tax and estate tax.

On 12 August 2016, the CTA EB denied the motion for reconsideration filed by PSALM, due to lack of merit. Hence, PSALM filed the present petition before the Court.

The Issues

PSALM raises the following issues for resolution:

A. WHETHER PSALM'S PRIVATIZATION ACTIVITIES ARE SUBJECT TO VAT[;]

B. WHETHER PSALM IS LIABLE FOR DEFICIENCY VAT FOR TRANSACTIONS INCIDENTAL TO ITS PRIVATIZATION ACTIVITIES[;] [and]

C. WHETHER PSALM IS LIABLE FOR DEFICIENCY VAT FOR RECEIVABLES NOT ARISING FROM SALE OF GOODS OR SERVICES[.][13]

The Ruling of the Court

We find merit in the petition.

The relevant provisions of the NIRC, as amended, state:

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 7716.

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,

[13] *Id*. at 18.

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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.

x x x x x x x x x

SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties*. —

(A) *Rate and Base of Tax.* — There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties: *Provided*, That the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%), after any of the following conditions has been satisfied:

(i) Value-added tax collection as a percentage of Gross Domestic Product (GDP) of the previous year exceeds two and four-fifth percent (2 4/5%); or

(ii) National government deficit as a percentage of GDP of the previous year exceeds one and one-half percent (1 1/2%).

The phrase "***sale or exchange of services***" means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, rest houses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire another domestic common carriers by land relative to their transport of goods or cargoes; common carriers by air and sea relative to their transport of passengers, goods or cargoes from one place in the

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Philippines to another place in the Philippines; **sales of electricity by generation companies, transmission, and distribution companies;** services of franchise grantees of electric utilities; telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under section 119 of this Code, and non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity, and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. (Emphasis supplied)

The issue of whether the sale of power plants by PSALM is subject to VAT and the arguments of both parties in this case have been passed upon and settled in G.R. No. 198146 (*Power Sector Assets and Liabilities Management Corporation v. Commissioner on Internal Revenue*),[14] where the Court ruled:

> Under Section 50 of the EPIRA law, PSALM's principal purpose is to manage the orderly sale, disposition, and privatization of the NPC generation assets, real estate and other disposable assets, and IPP's contracts with the objective of liquidating all NPC's financial obligations and stranded contract costs in an optimal manner.
>
> PSALM asserts that the privatization of NPC's assets, such as the sale of the Pantabangan-Masiway and Magat Power Plants, is pursuant to PSALM's mandate under the EPIRA law and is not conducted in the course of trade or business. PSALM cited the 13 May 2002 BIR Ruling No. 020-02, that PSALM's sale of assets is not conducted in pursuit of any commercial or profitable activity as to fall within the ambit of a VAT-able transaction under Sections 105 and 106 of the NIRC. The pertinent portion of the ruling adverted to states:
>
> *2. Privatization of assets by PSALM is not subject to VAT*
>
> Pursuant to Section 105 in relation to Section 106, both of the Tax Code of 1997, a value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods, is collected from any person, who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, which tax shall be paid by the seller or transferor.

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[14] G.R. No. 198146, 8 August 2017, 835 SCRA 235.

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> The phrase "in the course of trade or business" means the regular conduct or pursuit of a commercial activity, including transactions incidental thereto.
>
> Since the disposition or sale of the assets is a consequence of PSALM's mandate to ensure the orderly sale or disposition of the property and thereafter to liquidate the outstanding loans and obligations of NPC, utilizing the proceeds from sales and other property contributed to it, including the proceeds from the Universal Charge, and not conducted in pursuit of any commercial or profitable activity, including transactions incidental thereto, the same will be considered an isolated transaction, which will therefore not be subject to VAT. (BIR Ruling No. 113-98 dated July 23, 1998)

On the other hand, the CIR argues that the previous exemption of NPC from VAT under Section 13 of Republic Act No. 6395 (RA 6395) was expressly repealed by Section 24 of Republic Act No. 9337 (RA 9337), which reads:

> SEC. 24. *Repealing Clause*. — The following laws or provisions of laws are hereby repealed and the persons and/or transactions affected herein are made subject to the value-added tax subject to the provisions of Title IV of the National Internal Revenue Code of 1997, as amended:
>
> (A) Section 13 of R.A. No. 6395 on the exemption from value-added tax of National Power Corporation (NPC);
>
> (B) Section 6, fifth paragraph of R.A. No. 9136 on the zero VAT rate imposed on the sale of generated power by generation companies; and
>
> (C) All other laws, acts, decrees, executive orders, issuances and rules and regulations or parts thereof which are contrary to and inconsistent with any provisions of this Act are hereby repealed, amended or modified accordingly.

As a consequence, the CIR posits that the VAT exemption accorded to PSALM under BIR Ruling No. 020-02 is also deemed revoked since PSALM is a successor-in-interest of NPC. Furthermore, the CIR avers that prior to the sale, NPC still owned the power plants and not PSALM, which is just considered as the trustee of the NPC properties. Thus, the sale made by NPC or its successors-in-interest of its power plants should be subject to the 10% VAT beginning 1 November 2005 and 12% VAT beginning 1 February 2007.

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We do not agree with the CIR's position, which is anchored on the wrong premise that PSALM is a successor-in-interest of NPC. PSALM is not a successor-in-interest of NPC. Under its charter, NPC is mandated to "undertake the development of hydroelectric generation of power and the production of electricity from nuclear, geothermal and other sources, as well as the transmission of electric power on a nationwide basis." With the passage of the EPIRA law which restructured the electric power industry into generation, transmission, distribution, and supply sectors, the NPC is now primarily mandated to perform missionary electrification function through the Small Power Utilities Group (SPUG) and is responsible for providing power generation and associated power delivery systems in areas that are not connected to the transmission system. On the other hand, PSALM, a government-owned and-controlled corporation, was created under the EPIRA law to manage the orderly sale and privatization of NPC's assets with the objective of liquidating all of NPC's financial obligations in an optimal manner. **Clearly, NPC and PSALM have different functions. Since PSALM is not a successor-in-interest of NPC, the repeal by RA 9337 of NPC's VAT exemption does not affect PSALM.**

In any event, even if PSALM is deemed a successor-in-interest of NPC, still the sale of the power plants is not "in the course of trade or business" as contemplated under Section 105 of the NIRC, and thus, not subject to VAT. The sale of the power plants is not in pursuit of a commercial or economic activity but a governmental function mandated by law to privatize NPC generation assets. PSALM was created primarily to liquidate all NPC financial obligations and stranded contract costs in an optimal manner. The purpose and objective of PSALM are explicitly stated in Section 50 of the EPIRA law, x x x.

x x x x x x x x x

PSALM is limited to selling only NPC assets and IPP contracts of NPC. The sale of NPC assets by PSALM is not "in the course of trade or business" but purely for the specific purpose of privatizing NPC assets in order to liquidate all NPC financial obligations. PSALM is tasked to sell and privatize the NPC assets within the term of its existence. The EPIRA law even requires PSALM to submit a plan for the endorsement by the Joint Congressional Power Commission and the approval of the President of the total privatization of the NPC assets and IPP contracts. Section 47 of the EPIRA law provides:

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SEC 47. *NPC Privatization*. — Except for the assets of SPUG, the generation assets, real estate, and other disposable assets as well as IPP contracts of NPC shall be privatized in accordance with this Act. Within six (6) months from the effectivity of this Act, the PSALM Corp. shall submit a plan for the endorsement by the Joint Congressional Power Commission and the approval of the President of the Philippines, on the total privatization of the generation assets, real estate, other disposable assets as well as existing IPP contracts of NPC and thereafter, implement the same, in accordance with the following guidelines, except as provided for in Paragraph (f) herein:

(a) The privatization value to the National Government of the NPC generation assets, real estate, other disposable assets as well as IPP contracts shall be optimized;

(b) The participation by Filipino citizens and corporations in the purchase of NPC assets shall be encouraged.

In the case of foreign investors, at least seventy-five percent (75%) of the funds used to acquire NPC-generation assets and IPP contracts shall be inwardly remitted and registered with the *Bangko Sentral ng Pilipinas*;

(c) The NPC plants and/or its IPP contracts assigned to IPP Administrators, its related assets and assigned liabilities, if any, shall be grouped in a manner which shall promote the viability of the resulting generation companies (gencos), ensure economic efficiency, encourage competition, foster reasonable electricity rates and create market appeal to optimize returns to the government from the sale and disposition of such assets in a manner consistent with the objectives of this Act. In the grouping of the generation assets and IPP contracts of NPC, the following criteria shall be considered:

(1) A sufficient scale of operations and balance sheet strength to promote the financial viability of the restructured units;

(2) Broad geographical groupings to ensure efficiency of operations but without the formation of regional companies or consolidation of market power;

(3) Portfolio of plants and IPP contracts to achieve management and operational synergy without dominating any part of the market or the load curve; and

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(4) Such other factors as may be deemed beneficial to the best interest of the National Government while ensuring attractiveness to potential investors.

(d) All assets of NPC shall be sold in open and transparent manner through public bidding, and the same shall apply to the disposition of IPP contracts;

(e) In cases of transfer of possession, control, operation or privatization of multi-purpose hydro facilities, safeguards shall be prescribed to ensure that the national government may direct water usage in cases of shortage to protect potable water, irrigation, and all other requirements imbued with public interest;

(f) The Agus and Pulangi complexes in Mindanao shall be excluded from among the generation companies that will be initially privatized. Their ownership shall be transferred to the PSALM Corp. and both shall continue to be operated by the NPC. Said complexes may be privatized not earlier than ten (10) years from the effectivity of this Act, and, except for Agus III, shall not be subject to Build-Operate-Transfer (B-O-T), Build-Rehabilitate-Operate-Transfer (B-R-O-T) and other variations thereof pursuant to Republic Act No. 6957, as amended by Republic Act No. 7718. The privatization of Agus and Pulangi complexes shall be left to the discretion of PSALM Corp. in consultation with Congress;

(g) The steamfield assets and generating plants of each geothermal complex shall not be sold separately. They shall be combined and each geothermal complex shall be sold as one package through public bidding. The geothermal complexes covered by this requirement include, but are not limited to, Tiwi-Makban, Leyte A and B (Tongonan), Palinpinon, and Mt. Apo;

(h) The ownership of the Caliraya-Botokan-Kalayaan (CBK) pump storage complex shall be transferred to the PSALM Corporation;

(i) Not later than three (3) years from the effectivity of this Act, and in no case later than the initial implementation of open access, at least seventy percent (70%) of the total capacity of generating assets of NPC and of the total capacity of the power plants under contract with NPC located in Luzon and Visayas shall have been privatized: *Provided*, That any unsold capacity

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shall be privatized not later than eight (8) years from the effectivity of this Act; and

(j) NPC may generate and sell electricity only from the undisposed generating assets and IPP contracts of PSALM Corp. and shall not incur any new obligations to purchase power through bilateral contracts with generation companies or other suppliers.

Thus, it is very clear that the sale of the power plants was an exercise of a governmental function mandated by law for the primary purpose of privatizing NPC assets in accordance with the guidelines imposed by the EPIRA law.

In the 2006 case of *Commissioner of Internal Revenue v. Magsaysay Lines, Inc. (Magsaysay)*, the Court ruled that the sale of the vessels of the National Development Company (NDC) to Magsaysay Lines, Inc. is not subject to VAT since it was not in the course of trade or business, as it was involuntary and made pursuant to the government's policy of privatization. The Court cited the CTA's ruling that the phrase "course of business" or "doing business" connotes regularity of activity. Thus, since the sale of the vessels was an isolated transaction, made pursuant to the government's privatization policy, and which transaction could no longer be repeated or carried on with regularity, such sale was not in the course of trade or business and was not subject to VAT.

Similarly, the sale of the power plants in this case is not subject to VAT since the sale was made pursuant to PSALM's mandate to privatize NPC's assets, and was not undertaken in the course of trade or business. In selling the power plants, PSALM was merely exercising a governmental function for which it was created under the EPIRA law.[15] (Boldfacing and underscoring supplied)

Applying our ruling in G.R. No. 198146 involving the same parties and similar issues, the sale of the generating assets — the Masinloc, Ambuklao-Binga and Pantabangan power plants — in the present case is likewise not subject to VAT, since the sale was pursuant to the mandate of PSALM under the EPIRA to privatize NPC assets. The sale of the power plants is not in pursuit of a commercial or economic activity but a governmental function mandated by law to privatize NPC generation assets.[16]

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[15] *Id.* at 275-285.

[16] *Id.* at 279.

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The sale of the power plants is clearly not the same as the sale of electricity by generation companies, transmission, and distribution companies, which is subject to VAT under Section 108 of the NIRC. Thus, we do not find any merit in the arguments raised by the CIR.

We likewise do not find PSALM liable to pay VAT on the lease of Naga Complex; collection of income from participation fee, site visit fee, plant CDs, photocopying charges and data room access fee; and collection of receivables from employees for the excess utilization of allowed mobile phone services, inventory variance receivable from custodian, refund from a successor-generation company of the insurance premiums paid by PSALM and interest received from mandatory dollar deposit.

Under the EPIRA, PSALM, as the conservator of NPC assets, operates and maintains NPC assets and manages its liabilities in trust for the national government, until the NPC assets could be sold or disposed of.[17] Thus, during its corporate life, PSALM has powers relating to the management of its personnel and leasing of its properties as may be necessary to discharge its mandate. Section 51 of the EPIRA law provides:

SECTION 51. *Powers.* — The Corporation shall, in the performance of its functions and for the attainment of its objective, have the following powers:

> (a) To formulate and implement a program for the sale and privatization of the NPC assets and IPP contracts and the liquidation of NPC debts and stranded contract costs, such liquidation to be completed within the term of existence of the PSALM Corp.;
>
> (b) To take title to and possession of, administer and conserve the assets transferred to it; to sell or dispose of the same at such price and under such terms and conditions as it may deem necessary or proper, subject to applicable laws, rules and regulations;

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[17] *Power Generation Employees Association-NPC v. National Power Corporation*, G.R. No. 187420, 9 August 2017, 835 SCRA 645, 670.

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(c) To take title to and possession of the NPC IPP contracts and to appoint, after public bidding in transparent and open manner, qualified independent entities who shall act as the IPP Administration in accordance with this Act;

(d) To calculate the amount of the stranded debts and stranded contract costs of NPC which shall form the basis for ERC in the determination of the universal charge;

(e) To liquidate the NPC stranded contract costs, utilizing the proceeds from sales and other property contributed to it, including the proceeds from the universal charge;

(f) To adopt rules and regulations as may be necessary or proper for the orderly conduct of its business or operations;

(g) To sue and be sued in its name;

(h) **To appoint or hire, transfer, remove and fix the compensation of its personnel;** *Provided, however*, That the Corporation shall hire its own personnel only if absolutely necessary, and as far as practicable, shall avail itself of the services of personnel detailed from other government agencies;

(i) **To own, hold, acquire, or lease real and personal properties as may be necessary or required in the discharge of its functions**;

(j) To borrow money and incur such liabilities, including the issuance of bonds, securities or other evidences of indebtedness utilizing its assets as collateral and/or through the guarantees of the National Government: *Provided, however*, That all such debts or borrowings shall have been paid off before the end of its corporate life;

(k) To restructure existing loans of the NPC;

(l) To collect, administer, and apply NPC's portion of the universal charge; and

(m) To structure the sale, privatization or disposition of NPC assets and IPP contracts and/or their energy output based on such terms and conditions which shall optimize the value and sale prices of said assets. (Emphasis supplied)

Since the lease of Naga Complex and collection of income and receivables are within PSALM's powers necessary to discharge

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its mandate under the law and likewise undertaken in the exercise of PSALM's governmental function, we do not find these activities subject to VAT. To reiterate, VAT is ultimately a tax on consumption, and it is levied only on the sale, barter or exchange of goods or services by persons who engage in such activities, **in the course of trade or business**.[18]

Accordingly, the CTA Third Division and CTA EB erred in finding PSALM liable for deficiency VAT in the amount of ₱9,566,062,571.44. Since PSALM has no VAT liability in this case, there is no necessity to rule upon the issue of deficiency interest and delinquency interest.

WHEREFORE, we **GRANT** the petition. The Decision of the Court of Tax Appeals in CTA Case No. 8475, dated 2 December 2014, which found petitioner Power Sector Assets and Liabilities Management Corporation liable to pay the amount of ₱9,566,062,571.44 as deficiency value-added tax for the taxable year 2008, inclusive of the deficiency interest and delinquency interest, is **REVERSED** and **SET ASIDE**. Assessment No. VT-08-00072 is hereby ordered **CANCELLED**.

SO ORDERED.

Perlas-Bernabe, Caguioa, Reyes, J. Jr., and *Lazaro-Javier, JJ.*, concur.

FIRST DIVISION

[G.R. No. 229509. July 3, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BABYLYN MANANSALA *y* CRUZ,** *accused-appellant.*

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[18] *Commissioner of Internal Revenue v. Magsaysay Lines, Inc.*, 529 Phil. 64 (2006).