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[G.R. No. 158885, April 02, 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]

FORT BONIFACIO DEVELOPMENT CORPORATION, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE AND REVENUE DISTRICT OFFICER, REVENUE DISTRICT NO. 44, TAGUIG AND PATEROS, BUREAU OF INTERNAL REVENUE, RESPONDENTS.

D E C I S I O N

TINGA, J.:

The value-added tax (VAT) system was first introduced in the Philippines on 1 January 1988, with the tax imposable on "any person who, in the course of trade or business, sells, barters or exchanges goods, renders services, or engages in similar transactions and any person who imports goods."[1] The first VAT law is found in Executive Order No. 273 (E.O. 273), which amended several provisions of the then National Internal Revenue Code of 1986 (Old NIRC). E.O. No. 273 likewise accommodated the potential burdens of the shift to the VAT system by allowing newly liable VAT-registered persons to avail of a transitional input tax credit, as provided for in Section 105 of the old NIRC, as amended by E.O. No. 273. Said Section 105 is quoted, thus:

> 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.[2]

There are other measures contained in E.O. No. 273 which were similarly intended to ease the shift to the VAT system. These measures also took the form of "transitional input taxes which can be credited against output tax,"[3] and are found in Section 25 of E.O. No. 273, the section entitled "Transitory Provisions." Said transitory provisions, which were never incorporated in the Old NIRC, read:

> Sec. 25. *Transitory provisions*. (a) All VAT-registered persons shall be allowed transitional input taxes which can be credited against output tax in the same manner as provided in Sections 104 of the National Internal Revenue Code as follows:
>
> > 1) The balance of the deferred sales tax credit account as of December 31, 1987 which are accounted for in accordance with regulations prescribed therefor;
> >
> > 2) A presumptive input tax equivalent to 8% of the value of the inventory as of December 31, 1987 of materials and supplies which are not for sale, the tax on which was not taken up or claimed as deferred sales tax credit; and
> >
> > 3) A presumptive input tax equivalent to 8% of the value of the inventory as of December 31, 1987 as goods for sale, the tax on which was not taken up or claimed as deferred sales tax credit.
>
> Tax credit prescribed in paragraphs (2) and (3) above shall be allowed only to a VAT-registered person who files an inventory of the goods referred to in said paragraphs as provided in regulations.
>
> (b) Any unused tax credit certificate issued prior to January 1, 1988 for excess tax credits which are applicable against advance sales tax shall be surrendered to, and replaced by the Commissioner with new tax credit certificates which can be used in payment for value-added tax liabilities.
>
> (c) Any person already engaged in business whose gross sales or receipts for a 12-month period from September 1, 1986 to August 1, 1987, exceed the amount of P200,000.00, or any person who has been in business for less than 12 months as of August 1, 1987 but expects his gross sales or receipts to exceed P200,000 on or before December 31, 1987, shall apply for registration on or before October 29, 1987.[4]

On 1 January 1996, Republic Act (Rep. Act) No. 7716 took effect.[5] It amended provisions of the Old NIRC principally by restructuring the VAT system. It was under Rep. Act No. 7716 that VAT was imposed for the first time on the sale of real properties. This was accomplished by amending Section 100 of the NIRC to include "real properties" among the "goods or properties," the sale, barter or exchange of which is made subject to

VAT. The relevant portions of Section 100, as amended by Rep. Act No. 7716, thus read:

> 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[6]

The provisions of Section 105 of the NIRC, on the transitional input tax credit, had remained intact despite the enactment of Rep. Act No. 7716. Said provisions would however be amended following the passage of the new National Internal Revenue Code of 1997 (New NIRC), also officially known as Rep Act No. 8424. The section on the transitional input tax credit was renumbered from Section 105 of the Old NIRC to Section 111(A) of the New NIRC. The new amendments on the transitional input tax credit are relatively minor, hardly material to the case at bar. They are highlighted below for easy reference:

> **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 eight percent (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.[7] (Emphasis supplied).

Rep. Act No. 8424 also made part of the NIRC, for the first time, the concept of "presumptive input tax credits," with Section 111(b) of the New NIRC providing as follows:

> (B) *Presumptive Input Tax Credits.*-
>
> > (1) Persons or firms engaged in the processing of sardines, mackerel and milk, and in manufacturing refined sugar and cooking oil, shall be allowed a presumptive input tax, creditable against the output tax, equivalent to

> one and one-half percent (1 1/2%) of the gross value in money of their purchases of primary agricultural products which are used as inputs to their production.
>
> As used in this Subsection, the term 'processing' shall mean pasteurization, canning and activities which through physical or chemical process alter the exterior texture or form or inner substance of a product in such manner as to prepare it for special use to which it could not have been put in its original form or condition.
>
> (2) Public works contractors shall be allowed a presumptive input tax equivalent to one and one-half percent (1 1/2%) of the contract price with respect to government contracts only in lieu of actual input taxes therefrom.[8]

What we have explained above are the statutory antecedents that underlie the present petitions for review. We now turn to the factual antecedents.

I.

Petitioner Fort Bonifacio Development Corporation (FBDC) is engaged in the development and sale of real property. On 8 February 1995, FBDC acquired by way of sale from the national government, a vast tract of land that formerly formed part of the Fort Bonifacio military reservation, located in what is now the Fort Bonifacio Global City (Global City) in Taguig City.[9] Since the sale was consummated prior to the enactment of Rep. Act No. 7716, no VAT was paid thereon. FBDC then proceeded to develop the tract of land, and from October, 1966 onwards it has been selling lots located in the Global City to interested buyers.[10]

Following the effectivity of Rep. Act No. 7716, real estate transactions such as those regularly engaged in by FBDC have since been made subject to VAT. As the vendor, FBDC from thereon has become obliged to remit to the Bureau of Internal Revenue (BIR) output VAT payments it received from the sale of its properties to the Bureau of Internal Revenue (BIR). FBDC likewise invoked its right to avail of the transitional input tax credit and accordingly submitted an inventory list of real properties it owned, with a total book value of P71,227,503,200.00.[11]

On 14 October 1996, FBDC executed in favor of Metro Pacific Corporation two (2) contracts to sell, separately conveying two (2) parcels of land within the Global City in consideration of the purchase prices at P1,526,298,949.00 and P785,009,018.00, both payable in installments.[12] For the fourth quarter of 1996, FBDC earned a total of P3,498,888,713.60 from the sale of its lots, on which the output VAT payable to the BIR was P318,080,792.14. In the context of remitting its output VAT payments to the BIR, FBDC paid a total of P269,340,469.45 and utilized (a) P28,413,783.00 representing a portion of its then total transitional/presumptive input tax credit of P5,698,200,256.00, which petitioner allocated for the two (2) lots sold to Metro Pacific; and (b) its regular input tax credit of P20,326,539.69 on the purchase of goods and services.[13]

Between July and October 1997, FBDC sent two (2) letters to the BIR requesting appropriate action on whether its use of its presumptive input VAT on its land inventory, to the extent of P28,413,783.00 in partial payment of its output VAT for the fourth quarter of 1996, was in order. After investigating the matter, the BIR recommended that the claimed presumptive input tax credit be disallowed.[14] Consequently, the BIR issued to FBDC a Pre-Assessment Notice (PAN) dated 23 December 1997 for deficiency VAT for the 4th quarter of 1996. This was followed by a letter of respondent Commissioner of Internal Revenue (CIR),[15] addressed to and received by FBDC on 5 March 1998, disallowing the 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). Section 4.105-1 of RR 7-95 provided the basis in main for the CIR's opinion, the section reading, thus:

> 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 P500,000.00 or who voluntarily register even if their turnover does not exceed P500,000.00 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.

The CIR likewise cited from the Transitory Provisions of RR 7-95, particularly the following:

> (a) Presumptive Input Tax Credits -
>
> xxx
>
> (iii) For real estate dealers, the presumptive input tax of 8% of the book value of

> improvements on or after January 1, 1988 (the effectivity of E.O. 273) shall be allowed.
>
> For purposes of sub-paragraphs (i), (ii) and (iii) above, an inventory as of December 31, 1995 of such goods or properties and improvements showing the quantity, description and amount filed with the RDO not later than Janaury 31, 1996.

xxx

Consequently, FBDC received an Assessment Notice in the amount of P45,188,708.08, representing deficiency VAT for the 4th quarter of 1996, including surcharge, interest and penalty. After respondent Regional Director denied FBDC's motion for reconsideration/protest, FBDC filed a petition for review with the Court of Tax Appeals (CTA), docketed as C.T.A. Case No. 5665.[16] On 11 August 2000, the CTA rendered a decision affirming the assessment made by the respondents.[17] FBDC assailed the CTA decision through a petition for review filed with the Court of Appeals, docketed as CA-G.R. SP No. 60477. On 15 November 2002, the Court of Appeals rendered a decision affirming the CTA decision, but removing the surcharge, interests and penalties, thus reducing the amount due to P28,413,783.00.[18] From said decision, FBDC filed a petition for review with this Court, the first of the two petitions now before us, seeking the reversal of the CTA decision dated 11 August 2000 and a pronouncement that FBDC is entitled to the transitional/presumptive input tax credit of P28,413,783.00. This petition has been docketed as **G.R. No. 158885**.

The second petition, which is docketed as **G.R. No. 170680**, involves the same parties and legal issues, but concerns the claim of FBDC that it is entitled to claim a similar transitional/presumptive input tax credit, this time for the third quarter of 1997. A brief recital of the anteceding facts underlying this second claim is in order.

For the third quarter of 1997, FBDC derived the total amount of P3,591,726,328.11 from its sales and lease of lots, on which the output VAT payable to the BIR was P359,172,632.81.[19] Accordingly, FBDC made cash payments totaling P347,741,695.74 and utilized its regular input tax credit of P19,743,565.73 on purchases of goods and services.[20] On 11 May 1999, FBDC filed with the BIR a claim for refund of the amount of P347,741,695.74 which it had paid as VAT for the third quarter of 1997.[21] No action was taken on the refund claim, leading FBDC to file a petition for review with the CTA, docketed as CTA Case No. 5926. Utilizing the same valuation[22] of 8% of the total book value of its beginning inventory of real properties (or P71,227,503,200.00) FBDC argued that its input tax credit was more than enough to offset the VAT paid by it for the third quarter of 1997.[23]

On 17 October 2000, the CTA promulgated its decision[24] in CTA Case No. 5926, denying the claim for refund. FBDC then filed a petition for review with the Court of Appeals, docketed as CA-G.R. SP No. 61517. On 3 October 2003, the Court of Appeals rendered a decision[25] affirming the judgment of the CTA. As a result, FBDC filed its second petition, docketed as G.R. No. 170680.

II.

The two petitions were duly consolidated[26] and called for oral argument on 18 April 2006. During the oral arguments, the parties were directed to discuss the following issues:

> 1. In determining the 10% value-added tax in Section 100 of the [Old NIRC] on the sale of real properties by real estate dealers, is the 8% transitional input tax credit in Section 105 applied only to the improvements on the real property or is it applied on the value of the entire real property?
>
> 2. Are Section 4.105.1 and paragraph (a)(III) of the Transitory Provisions of Revenue Regulations No. 7-95 valid in limiting the 8% transitional input tax to the improvements on the real property?

While the two issues are linked, the main issue is evidently whether Section 105 of the Old NIRC may be interpreted in such a way as to restrict its application in the case of real estate dealers only to the improvements on the real property belonging to their beginning inventory, and not the entire real property itself. There would be no controversy before us if the Old NIRC had itself supplied that limitation, yet the law is tellingly silent in that regard. RR 7-95, which imposes such restrictions on real estate dealers, is discordant with the Old NIRC, so it is alleged.

III.

On its face, there is nothing in Section 105 of the Old NIRC that prohibits the inclusion of real properties, together with the improvements thereon, in the beginning inventory of goods, materials and supplies, based on which inventory the transitional input tax credit is computed. It can be conceded that when it was drafted Section 105 could not have possibly contemplated concerns specific to real properties, as real estate transactions were not originally subject to VAT. At the same time, when transactions on real properties were finally made subject to VAT beginning with Rep. Act No. 7716, no corresponding amendment was adopted as regards Section 105 to provide for a differentiated treatment in the application of the transitional input tax credit with respect to real properties or real estate dealers.

It was Section 100 of the Old NIRC, as amended by Rep. Act No. 7716, which made real estate transactions subject to VAT for the first time. Prior to the amendment, Section 100 had imposed the VAT "on every sale, barter or exchange of goods," without however specifying the kind of properties that fall within or under the generic class "goods" subject to the tax.

Rep. Act No. 7716, which significantly is also known as the Expanded Value-Added Tax (EVAT) law, expanded the coverage of the VAT by amending Section 100 of the Old NIRC in several respects, some of which we will enumerate. *First*, it made every sale, barter or exchange of "goods **or properties**" subject to VAT.[27] *Second*, it generally defined "goods or properties" as "all tangible and intangible objects which are capable of pecuniary estimation."[28] *Third*, it included a non-exclusive enumeration of various objects that fall under the class "goods or properties" subject to VAT, including "[r]eal properties held primarily for sale to customers or held for lease in the ordinary course of trade or business."[29]

From these amendments to Section 100, is there any differentiated VAT treatment on real properties or real estate dealers that would justify the suggested limitations on the application of the transitional input tax on them? We see none.

Rep. Act No. 7716 clarifies that it is the real properties "held primarily for sale to customers or held for lease in the ordinary course of trade or business" that are subject to the VAT, and not when the real estate transactions are engaged in by persons who do not sell or lease properties in the ordinary course of trade or business. It is clear that those regularly engaged in the real estate business are accorded the same treatment as the merchants of other goods or properties available in the market. In the same way that a milliner considers hats as his goods and a rancher considers cattle as his goods, a real estate dealer holds real property, whether or not it contains improvements, as his goods.

Had Section 100 itself supplied any differentiation between the treatment of real properties or real estate dealers and the treatment of the transactions involving other commercial goods, then such differing treatment would have constituted the statutory basis for the CIR to engage in such differentiation which said respondent did seek to accomplish in this case through Section 4.105-1 of RR 7-95. Yet the amendments introduced by Rep. Act No. 7716 to Section 100, coupled with the fact that the said law left Section 105 intact, reveal the lack of any legislative intention to make persons or entities in the real estate business subject to a VAT treatment different from those engaged in the sale of other goods or properties or in any other commercial trade or business.

If the plain text of Rep. Act No. 7716 fails to supply any apparent justification for limiting the beginning inventory of real estate dealers only to the improvements on their properties, how then were the CIR and the courts a *quo* able to justify such a view?

IV.

The fact alone that the denial of FBDC's claims is in accord with Section 4.105-1 of RR 7-95 does not, of course, put this inquiry to rest. If Section 4.105-1 is itself incongruent to Rep. Act No. 7716, the incongruence cannot by itself justify the denial of the claims. We need to inquire into the rationale behind Section 4.105-1, as well as the question whether the interpretation of the law embodied therein is validated by the law itself.

The CTA, in its rulings, proceeded from a thesis which is not readily apparent from the texts of the laws we have cited. The transitional input tax credit is conditioned on the prior payment of sales taxes or the VAT, so the CTA observed. The introduction of the VAT through E.O. No. 273 and its subsequent expansion through Rep. Act No. 7716 subjected various persons to the tax for the very first time, leaving them unable to claim the input tax credit based on their purchases before they became subject to the VAT. Hence, the transitional input tax credit was designed to alleviate that relatively iniquitous loss. Given that rationale, according to the CTA, it would be improper to allow FBDC, which had acquired its properties through a tax-free purchase, to claim the transitional input tax credit. The CTA added that Section 105.4.1 of RR 7-95 is consonant with its perceived rationale behind the transitional input tax credit since the materials used for the construction of improvements would have most likely involved the payment of VAT on their purchase.

Concededly, this theory of the CTA has some sense, extravagantly extrapolated as it is though from the seeming silence on the part of the provisions of the law. Yet ultimately, the theory is woefully limited in perspective.

It is correct, as pointed out by the CTA, that upon the shift from sales taxes to VAT in 1987 newly-VAT registered people would have been prejudiced by the inability to credit against the output VAT their payments by way of sales tax on their existing stocks in trade. Yet that inequity was precisely addressed by a transitory provision in E.O. No. 273 found in Section 25 thereof. The provisionauthorized VAT-registered persons to invoke a "presumptive input tax equivalent to 8% of the value of the inventory as of December 31, 1987 of materials and supplies which are not for sale, the tax on which was not taken up or claimed as deferred sales tax credit", and a similar presumptive input tax equivalent to 8% of the value of the inventory as of December 31, 1987 of goods for sale, the tax on which was not taken up or claimed as deferred sales tax credit.[30]

Section 25 of E.O. No. 273 perfectly remedies the problem assumed by the CTA as the basis for the introduction of transitional input tax credit in 1987. If the core purpose of the tax credit is only, as hinted by the CTA, to allow for some mode of accreditation of previously-paid sales taxes, then Section 25 alone would have sufficed. Yet E.O. No. 273 amended the Old NIRC itself by providing for the transitional input tax credit under Section 105, thereby assuring that the tax credit would endure long after the last goods made subject to sales tax have been consumed.

If indeed the transitional input tax credit is integrally related to previously paid sales taxes, the purported causal link between those two would have been nonetheless extinguished long ago. Yet Congress has reenacted the transitional input tax credit several times; that fact simply belies the absence of any relationship between such tax credit and the long-abolished sales taxes.Obviously then, the purpose behind the transitional input tax credit is not confined to the transition from sales tax to VAT.

There is hardly any constricted definition of "transitional" that will limit its possible meaning to the shift from the sales tax regime to the VAT regime. Indeed, it could also allude to the transition one undergoes from not being a VAT-registered person to becoming a VAT-registered person. Such transition does not take place merely by operation of law, E.O. No. 273 or Rep. Act No. 7716 in particular. It could also occur when one decides to start a business. Section 105 states that the transitional input tax credits become available either to (1) a person who becomes liable to VAT; or (2) any person **who elects to be VAT-registered**. The clear language of the law entitles new trades or businesses to avail of the tax credit once they become VAT-registered. The transitional input tax credit, whether under the Old NIRC or the New NIRC, may be claimed by a newly-VAT registered person such as when a business as it commences operations. If we view the matter from the perspective of a starting entrepreneur, greater clarity emerges on the continued utility of the transitional input tax credit.

Following the theory of the CTA, the new enterprise should be able to claim the transitional input tax credit because it has presumably paid taxes, VAT in particular, in the purchase of the goods, materials and supplies in its beginning inventory. Consequently, as the CTA held below, if the new enterprise has not paid VAT in its purchases of such goods, materials and supplies, then it should not be able to claim the tax credit. However, it is not always true that the acquisition of such goods, materials and supplies entail the payment of taxes on the part of the new business. In fact, this could occur as a matter of course by virtue of the operation of various provisions of the NIRC, and not only on account of a specially legislated exemption.

Let us cite a few examples drawn from the New NIRC. If the goods or properties are not acquired from a person in the course of trade or business, the transaction would not be subject to VAT under Section 105.[31] The sale would be subject to capital gains taxes under Section 24(D),[32] but since capital gains is a tax on passive income it is the seller, not the buyer, who generally would shoulder the tax.

If the goods or properties are acquired through donation, the acquisition would not be subject to VAT but to donor's tax under Section 98 instead.[33] It is the donor who would be liable to pay the donor's tax,[34] and the donation would be exempt if the donor's total net gifts during the calendar year does not exceed P100,000.00.[35]

If the goods or properties are acquired through testate or intestate succession, the transfer would not be subject to VAT but liable instead for estate tax under Title III of the New NIRC.[36] If the net estate does not exceed P200,000.00, no estate tax would be assessed.[37]

The interpretation proffered by the CTA would exclude goods and properties which are acquired through sale not in the ordinary course of trade or business, donation or through succession, from the beginning inventory on which the transitional input tax credit is based. This prospect all but highlights the ultimate absurdity of the respondents' position. Again, nothing in the Old NIRC (or even the New NIRC) speaks of such a possibility or qualifies the previous payment of VAT or any other taxes on the goods, materials and supplies as a pre-requisite for inclusion in the beginning inventory.

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.

There is another point that weighs against the CTA's interpretation. Under Section 105 of the Old NIRC, the rate of the transitional input tax credit is "8% of the value of such inventory **or** the actual value-added tax paid on such goods, materials and supplies, whichever is higher."[38] If indeed the transitional input tax credit is premised on the previous payment of VAT, then it does not make sense to afford the taxpayer the benefit of such credit based on "8% of the value of such inventory" should the same prove higher than the actual VAT paid. This intent that the CTA alluded to could have been implemented with ease had the legislature shared such intent by providing the actual VAT paid as the sole basis for the rate of the transitional input tax credit.

The CTA harped on the circumstance that FBDC was excused from paying any tax on the purchase of its properties from the national government, even claiming that to allow the transitional input tax credit is "tantamount to giving an undeserved bonus to real estate dealers similarly situated as [FBDC] which the Government cannot afford to provide." Yet the tax laws in question, and all tax laws in general, are designed to enforce uniform tax treatment to persons or classes of persons who share minimum legislated standards. The common standard for the application of the transitional input tax credit, as enacted by E.O. No. 273 and all subsequent tax laws which reinforced or reintegrated the tax credit, is simply that the taxpayer in question has become liable to VAT or has elected to be a VAT-registered person. E.O. No. 273 and the subsequent tax laws are all decidedly neutral and accommodating in ascertaining who should be entitled to the tax credit, and it behooves the CIR and the CTA to adopt a similarly judicious perspective.

IV.

Given the fatal flaws in the theory offered by the CTA as supposedly underlying the transitional input tax credit, is there any other basis to justify the limitations imposed by the CIR through RR 7-95? We discern nothing more. As seen in our discussion, there is no logic that coheres with either E.O. No. 273 or Rep. Act No. 7716 which supports the restriction imposed on real estate brokers and their ability to claim the transitional input tax credit based on the value of their real properties. In addition, the very idea of excluding the real properties itself from the beginning inventory simply runs counter to what the transitional input tax credit seeks to accomplish for persons engaged in the sale of goods, whether or not such "goods" take the form of real properties or more mundane commodities.

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.

The Court of Tax Appeals claimed that under Section 105 of the Old NIRC the basis for the inventory of goods, materials and supplies upon which the transitional input VAT would be based "shall be left to regulation by the appropriate administrative authority". This is based on the phrase "filing of an inventory as prescribed by regulations" found in Section 105. Nonetheless, Section 105 does include the particular properties to be included in the inventory, namely goods, materials and supplies. It is questionable whether the CIR has the power to actually redefine the concept of "goods," as she did when she excluded real properties from the class of goods which real estate companies in the business of selling real properties may include in their inventory. The authority to prescribe regulations can pertain to more technical matters, such as how to appraise the value of the inventory or what papers need to be filed to properly itemize the contents of such inventory. But such authority cannot go as far as to amend Section 105 itself, which the Commissioner had unfortunately accomplished in this case.

It is of course axiomatic that a rule or regulation must bear upon, and be consistent with, the provisions of the enabling statute if such rule or regulation is to be valid.[39] In case of conflict between a statute and an administrative order, the former must prevail.[40] Indeed, the CIR has no power to limit the meaning and coverage of the term "goods" in Section 105 of the Old NIRC absent statutory authority or basis to make and justify such limitation. A contrary conclusion would mean the CIR could very well moot the law or arrogate legislative authority unto himself by retaining sole discretion to provide the definition and scope of the term "goods."

V.

At this juncture, we turn to some of the points raised in the dissent of the esteemed Justice

Antonio T. Carpio.

The dissent adopts the CTA's thesis that the transitional input tax credit applies only when taxes were previously paid on the properties in the beginning inventory. Had the dissenting view won, it would have introduced a new requisite to the application of the transitional input tax credit and required the taxpayer to supply proof that it had previously paid taxes on the acquisition of goods, materials and supplies comprising its beginning inventory. We have sufficiently rebutted this thesis, but the dissent adds a twist to the argument by using the term "presumptive input tax credit" to imply that the transitional input tax credit involves a **presumption** that there was a previous payment of taxes.

Let us clarify the distinction between the presumptive input tax credit and the transitional input tax credit. As with the transitional input tax credit, the presumptive input tax credit is creditable against the output VAT. It necessarily has come into existence in our tax structure only after the introduction of the VAT. As quoted earlier,[41] E.O. No. 273 provided for a "presumptive input tax credit" as one of the transitory measures in the shift from sales taxes to VAT, but such presumptive input tax credit was never integrated in the NIRC itself. It was only in 1997, or eleven years after the VAT was first introduced, that the presumptive input tax credit was first incorporated in the NIRC, more particularly in Section 111(B) of the New NIRC. As borne out by the text of the provision,[42] it is plain that the presumptive input tax credit is highly limited in application as it may be claimed only by "persons or firms engaged in the processing of sardines, mackerel and milk, and in manufacturing refined sugar and cooking oil;"[43] and "public works contractors."[44]

Clearly, for more than a decade now, the term "presumptive input tax credit" has contemplated a particularly idiosyncratic tax credit far divorced from its original usage in the transitory provisions of E.O. No. 273. There is utterly no sense then in latching on to the term as having any significant meaning for the purpose of the cases at bar.

The dissent, in arguing for the effectivity of Section 4.105-1 of RR 7-95, ratiocinates in this manner: (1) Section 4.105-1 finds basis in Section 105 of the Old NIRC, which provides that the input tax is allowed on the "beginning inventory of goods, materials and supplies;" (2) input taxes must have been paid on such goods, materials and supplies; (3) unlike real property itself, the improvements thereon were already subject to VAT even prior to the passage of Rep. Act No. 7716; (4) since no VAT was paid on the real property prior to the passage of Rep. Act No. 7716, it could not form part of the "beginning inventory of goods, materials and supplies."

This chain of premises have already been debunked. It is apparent that the dissent believes that only those "goods, materials and supplies" on which input VAT was paid could form the basis of valuation of the input tax credit. Thus, if the VAT-registered person acquired all the goods, materials and supplies of the beginning inventory through a sale not in the ordinary course of trade or business, or through succession or donation, said person would be unable to receive a transitional input tax credit. Yet even RR 7-95, which imposes the restriction only on real estate dealers permits such other persons who obtained their beginning inventory through tax-free means to claim the transitional input tax credit. The dissent thus betrays a view that is even more radical and more misaligned with the language of the law than that expressed by the CIR.

VI.

A final observation. Section 4.105.1 of RR No. 7-95, insofar as it disallows real estate dealers from including the value of their real properties in the beginning inventory of goods, materials and supplies, has in fact already been repealed. The offending provisions were deleted with the enactment of Revenue Regulation No. 6-97 (RR 6-97) dated 2 January 1997, which amended RR 7-95.[45] The repeal of the basis for the present assessments by RR 6-97 only highlights the continuing absurdity of the position of the BIR towards FBDC.

FBDC points out that while the transactions involved in G.R. No. 158885 took place during the effectivity of RR 7-95, the transactions involved in G.R. No. 170680 in fact took place after RR No. 6-97 had taken effect. Indeed, the assessments subject of G.R. No. 170680 were for the third quarter of 1997, or several months after the effectivity of RR 6-97. That fact provides additional reason to sustain FBDC's claim for refund of its 1997 Third Quarter VAT payments. Nevertheless, since the assailed restrictions implemented by RR 7-95 were not sanctioned by law in the first place there is no longer need to dwell on such fact.

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 P28,413,783.00 representing the transitional input tax credit due it for the fourth quarter of 1996; and (2) directed to refund to petitioner the amount of P347,741,695.74 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.

SO ORDERED.

Corona, Chico-Nazario, Velasco, Jr., Leonardo-De Castro, and *Peralta, JJ.,* concur.
Puno, C.J., no part due to relationship.
Quisumbing, J., concur in the dissent of J. A.T. Carpio.
Ynares-Santiago, J., Pls. see concurring opinion.
Capio, J., see dissenting opinion.
Austria-Martinez, J., certify that J.Martinez voted for the opinion of JJ. Tinga & Santiago.
Carpio Morales, J., join the dissent of J. .Carpio

[1] See Sec. 1, E.O. No. 273 (1987).

[2] Sec. 105, National Internal Revenue Code of 1986, as amended by E.O. No. 273.

[3] See Sec. 25(a), E.O. No. 273 (1987).

[4] Sec. 25, E.O. No. 273 (1987).

[5] See G.R. No. 158885 rollo, p. 215. The law itself was approved on 5 May 1994, but its implementation was delayed following the legal challenges to its constitutionality, which were finally resolved in *Tolentino v. Secretary of Finance*, G.R. 115455, 30 October 1995.

[6] Sec. 100, National Internal Revenue Code of 1986, as amended by Rep. Act No. 7716.

[7] Sec. 111(a), National Internal Revenue Code of 1997; since amended by Rep. Act No. 9337.

[8] Sec. 111(b), National Internal Revenue Code of 1997. Since amended by Rep. Act No. 9337.

[9] *Rollo* (G..R. No. 158885), p. 215.

[10] Id. at 216.

[11] Id. at 216.

[12] Id.

[13] Id. at 216.

[14] Id. at 217.

[15] *Rollo*, p. 187, the letter being signed by then Commissioner of Internal Revenue (now Representative Liwayway Vinzons-Chato).

[16] The Regional Director had denied the motion for reconsideration/protest on the ground that FBDC was barred by the statute of limitations from raising the same. The issue of when did the statute of limitations begin to run against FBDC was among the issues raised before the Court of Tax Appeals, which resolved the same in favor of FBDC. Such issue is not before this Court.

[17] Decision penned by Presiding Judge Ernesto D. Acosta, and concurred in by Associate Judge Ramon O. De Veyra. Associate Judge Amancio Q. Saga filed a Dissenting Opinion.

[18] *Rollo*, pp. 402-411. Decision penned by Associate Justice Rodrigo Cosico, concurred in by Associate Justices Rebecca de Guia-Salvador and Regalado Maambong. The Court of Appeals however removed from petitioner's liability, the assessment of surcharge, interests and penalty by the BIR. See id. at 411.

[19] *Rollo* (G.R. No. 170680), p. 130.

[20] Id.

[21] Id.

[22] See note 11.

[23] *Rollo* (G.R. No. 170680), p. 131.

[24] Decision penned by Associate Judge Ramon O. De Veyra, and concurred in by Presiding Judge Ernesto D. Acosta. Associate Judge Amancio Q. Saga filed a Dissenting Opinion.

[25] Penned by Associate Justice Noel Tijam, and concurred in by Associate Justices Ruben T. Reyes and Edgardo P. Cruz.

[26] Through a Resolution dated 4 April 2006.

[27] See Sec. 100, National Internal Revenue Code of 1986, as amended by Rep. Act No. 7716.

[28] See Sec. 100(1), National Internal Revenue Code of 1986, as amended by Rep. Act No. 7716.

[29] See Sec. 100(1)(a), National Internal Revenue Code of 1986, as amended by Rep. Act No. 7716, supra at 4-5.

[30] See Sec. 25, E.O. No. 273 (1988).

[31] See Sec. 105, New NIRC, as amended.

[32] See Sec. 24(D), New NIRC, as amended.

[33] See Sec. 98, New NIRC, as amended.

[34] See Sec. 99, New NIRC, as amended.

[35]Id.

[36] See Secs. 84-97, New NIRC, as amended.

[37] See Sec. 84, New NIRC, as amended.

[38] See note 2.

[39] *Lina, Jr. v. Carino*, G.R. No. 100127, 23 April 1993, 221 SCRA 515, 531; *United BF Homeowners Association v. Home Insurance and Guaranty Corp.,* G.R. No. 124783, 14 July 1999, 310 SCRA 304, 316.

[40] *Kilusang Mayo Uno Labor Center vs. Garcia, Jr.,* G.R. No. 115381, 239 SCRA 386, 411, 23 December 1994*; Conte v. Commission on Audit,* G.R. No. 116422, 4 November 1996, 126 SCRA 19, 50.

[41] See note 30.

[42] See note 8.

[43] Id.

[44]Id.

[45] Such fact was commonly agreed to by the parties in their joint stipulation of facts in CTA Case No. 5665. See *Rollo* (G.R. No. 158885), p. 119.

CONCURRING OPINION

YNARES-SANTIAGO, *J.*:

After a careful review of the actual effects of the tax measures involved herein, and with due regard to the intent of the framers of the law and the real benefits thereof on the taxpayer, I vote to grant the herein consolidated petitions.

It is an undisputed fact that when petitioner acquired the lands within the Fort Bonifacio military reservation from the national government, the latter did not have to pay any tax, be it sales or value-added. This notwithstanding, my reading of the applicable tax laws is that petitioner may still claim transitional input tax credit.

Prior to January 1, 1996, sales of real properties were not subject to VAT. On the said date, Republic Act No. 7716 took effect amending portions of the National Internal Revenue Code. It was only then that the value-added tax was imposed on the sale of real properties. Section 100 of the NIRC was amended to read:

> "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; x x x."

As can be seen, any sale that petitioner entered into before the effectivity of RA 7716 was not subject to VAT. Beginning January 1, 1996, petitioner's transactions became subject to VAT in the full amount of 10% of the gross selling price. This imposed an unexpected burden on petitioner, and other real property developers for that matter. Petitioner would not be able to claim creditable input tax since its purchase of the lands from the national government was not subject to VAT. This is not in accord with the spirit and intent of the law as will be demonstrated hereunder.

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."

To reiterate, the rate of the input tax shall be "8% of the value of such inventory or the actual value-added tax paid on such goods, materials and supplies, whichever is higher."[1] If the intent of the law were to limit the input tax to cases where actual VAT was paid, it could have simply said that the tax base shall be the actual value-added tax paid. Instead, the law as framed contemplates a situation where a transitional input tax credit is claimed even if there was no actual payment of VAT in the underlying transaction. In such cases, the tax base used shall be the value of the beginning inventory of goods, materials and supplies.

More importantly, the benefits of Section 105 are made available to "a person who becomes liable to value-added tax or any person who elects to be a VAT-registered person." In other words, the provision is made to apply to persons not theretofore subject to VAT. In this manner, the law seeks to alleviate the situation where a taxpayer who becomes liable to value-added tax may not claim the input tax credit available to other taxpayers who are subject to the value-added tax. In other words, Section 105 was not meant to give credit for taxes previously paid, if any, on a taxpayer's inventory, but to mitigate the burden of paying value-added tax when he sells the goods in his inventory in the future without the benefit of an input tax.

The transitional input tax credit provided for by the above Section 105, as the name implies, was intended to apply to a situation where a taxpayer, in the course of trade or business, transits from a non-VAT status to a VAT status. The provision of a transitional input tax credit, even to those whose transactions were not previously subject to VAT, was meant to soften the blow, so to speak, of having to pay the new tax to the full extent of 10% of the gross selling price.

Pertinently, Section 104 of the NIRC, as amended by RA 7716, defines input tax in this wise:

> "The term `input tax' means the value-added tax due from or paid by a VAT-registered persons in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. <u>It shall also include the transitional input tax</u> determined in accordance with Section 135 of this Code."[2]

On the basis of the foregoing considerations, I submit that petitioner may avail of the transitional input tax credit provided by law notwithstanding that its purchase of the lands within Fort Bonifacio from the government was not subject to value-added tax.

I come now to the issue of whether the inventory on which to base the transitional input tax credit includes lands or only the improvements on lands.

Here, a plain reading of the law, specifically the statutory definition of the term "goods", is all that is necessary to see the merit in petitioner's position.

> "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; x x x."

In this connection, petitioner cites the case of *Victorias Milling Company, Inc. vs. Social Security Commission*,[3] where it was held:

"While it is true that terms or words are to be interpreted in accordance with their wellâ€‘accepted meaning in law, nevertheless, when such term or word is specifically defined in a particular law, such interpretation must be adopted in enforcing that particular law, for it can not be gainsaid that a particular phrase or term may have one meaning for one purpose and another meaning for some other purpose."[4]

Hence, petitioner maintains that the term "goods" as used in the above-quoted Section 105 must include "[R]eal properties (not "improvements") held primarily for sale to customers," as defined in Section 100.

On December 9, 1995, the Commissioner of Internal Revenue issued Revenue Regulations No. 7-95. Section 4.105-1 thereof states, in pertinent part:

"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 P500,000.00 or who voluntarily register even if their turnover does not exceed P500,000.00 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, <u>in the case of real estate dealers, the basis of the presumptive input tax shall be the improvements</u>, 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. x x x."

Petitioner assails the validity of the Revenue Regulations insofar as it runs counter to the statutory definition of "goods" discussed above.

Article 7 of the Civil Code provides that "[a]dministrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution." Simply put, an administrative rule or regulation cannot contravene the law on which it is based. Thus, Rev. Regs. 7-95 cannot distinguish between land and improvements in regard to the computation of the transitional input tax credit which a taxpayer may claim under Section 105. Where the law does not distinguish, courts should not distinguish.[5]

Rules and regulations issued by administrative agencies in the implementation of laws they administer shall not in any way modify, or be inconsistent with, explicit provisions of the law. 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.[6] Where there is a discrepancy between the basic law and a rule or regulation issued to implement said law, what prevails is the basic law.[7]

Rev. Regs. 7â€‘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 Commissioner of Internal Revenue 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 administrative agency. It is required that the regulation be germane to the objects and purposes of the law, and be not in contradiction to, but in conformity with, the standards prescribed by law. They must conform to and be consistent with the provisions of the enabling statute in order for such rule or regulation to be valid. Constitutional and statutory provisions control with respect to what rules and regulations may be promulgated by an administrative body, as well as with respect to what fields are subject to regulation by it. It may not make rules and regulations which are inconsistent with the provisions of the Constitution or a statute, particularly the statute it is administering or which created it, or which are in derogation of, or defeat, the purpose of a statute. In case of conflict between a statute and an administrative order, the former must prevail.[8]

Furthermore, it is significant to note that, on January 1, 1997, Revenue Regulations No. 6â€‘97 was issued by the Commissioner of Internal Revenue. Pertinently, Section 4.105â€‘1 of Rev. Regs. 6-97 is a basic reiteration of the same Section 4.105-1 of Rev. Regs. 7-95, except that the later issuance 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 effectivity of E.O. 273 (January 1, 1988)."

It is clear, therefore, that under Rev. Regs. 6-97, the allowable transitional input tax credit is no longer limited to improvements on real properties. The particular provision of Rev. Regs. 7â€‘95, on which respondent Commissioner as well as the CTA and the CA relied in denying petitioner's claim for transitional input tax credit, has effectively been repealed by Rev. Regs. 6â€‘97. In a sense, the new regulation is now in consonance with Section 100 of the NIRC, insofar as the definition of real properties as goods is concerned.

While the events subject of G.R. No. 158885 took place before the issuance of Rev. Regs. 6â€‘97, this regulation must be given retroactive application, it being beneficial to the taxpayer. This is more in keeping with fairness and equity, which this Court is bound to observe in its decision. Conversely, it is important to note that rulings or circulars promulgated by the Commissioner of Internal Revenue which are prejudicial to taxpayers are not given retroactive effect.[9]

On the other hand, the transactions involved in G.R. No. 170680, occurred within the third quarter of 1997, when Rev. Reg. 6â€‘97 was already in effect.

In sum, petitioner should be allowed to base the computation of its transitional input tax credit on the value of its lands and improvements; and not only on the improvements.

To grant petitioner the full benefits of the transitional input tax credit would not only inure to its own benefit. As petitioner points out in its Memorandum, it will also benefit the general buying public, who will then enjoy lower prices for properties sold within the Global City.

Likewise, it must be borne in mind that petitioner is a partner of government in the implementation of the national policy of converting idle or nonâ€‘productive government lands into effective instruments of economic development.[10] Moreover, investments in the construction and real estate industry have catalyzed the Philippine economy and put it in high gear. They have created thousands of job opportunities. Petitioner plays an important role in this area.

ACCORDINGLY, I vote to **GRANT** both petitions in these consolidated cases.

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[1] Underscoring added.

[2] Republic Act No. 7716, Sec. 5; emphasis added.

[3] No. L-16704, March 17, 1962, 4 SCRA 627.

[4] *Id*. at 632â€‘633.

[5] Agpalo, Statutory Construction, 1998 Edition, at 194.

[6] *Republic v. Court of Appeals*, G.R. No. 109193, February 1, 2000, 324 SCRA 237, 241; *Philippine Bank of Communications v. Commissioner of Internal Revenue*, G.R. No. 112024, January 28, 1999, 302 SCRA 241, 252-253.

[7] *People v. Lim*, 108 Phil. 1091 (1960).

[8] *Smart Communications, Inc. (SMART) v. National Telecommunications Commission (NTC)*, G.R. No. 151908, August 12, 2003, 408 SCRA 678, 686-687.

[9] See National Internal Revenue Code, Sec. 246.

[10] Republic Act No. 7227, Preamble.

DISSENTING OPINION

CARPIO, *J.*:

I dissent. The majority inexplicably grants to petitioner a credit for an input value-added tax (VAT) that petitioner never paid and could never have paid. At the time of the sale by the government of the land, there was still no VAT on the sale of land, and the government as seller was, and still is today, not subject to VAT. There is no dispute that if the sale were to take place today, when there is already VAT on the sale of land, the sale transaction would still be VAT-free because the government is not subject to VAT, and hence petitioner as buyer cannot avail of any input VAT since petitioner can never present a VAT receipt. Ironically, the majority allows petitioner an input VAT in a transaction that took place when there was still no VAT on the sale of land, and the government as seller was, as it is still, not subject to VAT.

The Cases

Before the Court are two petitions for review[1] filed by Fort Bonifacio Development Corporation (FBDC).

In G.R. No. 158885, FBDC assails the Decision promulgated on 15 November 2002[2] by the Court of Appeals in CA-G.R. SP No. 60477 which affirmed with modification the 11 August 2000[3] Decision of the Court of Tax Appeals (CTA). The CTA ordered FBDC to pay to the Bureau of Internal Revenue (BIR), for the fourth quarter of 1997, the assessed amount of P45,188,708.08 representing disallowed transitional input tax claim, plus 20% delinquency interest per annum from 1 June 1998 until fully paid.

In G.R. No. 170680, FBDC assails the Decision promulgated on 30 October 2003[4] by the Court of Appeals in CA-G.R. SP No. 61517 which affirmed the 17 October 2000 Decision[5] of the CTA. The CTA denied FBDC's claim for refund of overpaid value-added tax (VAT) amounting to P347,741,695.74 covering the third quarter of 1997.

The Antecedent Facts

FBDC is owned to the extent of 45% by the Bases Conversion Development Authority (BCDA)[6] and to the extent of 55% by private domestic corporations. FBDC is engaged in the development and sale of real properties. On 8 February 1995, FBDC acquired from the national government, under a VAT-free sale transaction, the Fort Bonifacio Global City (Global City) located within Fort Bonifacio, Taguig, Metro Manila. The acquisition was done by virtue of Republic Act No. 7227[7] and Executive Order No. 40[8] dated 8 December 1992. FBDC started developing and selling lots in Global City in October 1996.

Meanwhile, on 1 January 1996, Republic Act No. 7716 (RA 7716) took effect. RA 7716 restructured the VAT system by further amending pertinent provisions of the National Internal Revenue Code (NIRC). RA 7716 imposed a VAT, among others, on the sale of real properties, a transaction not previously subject to VAT. Section 2 of RA 7716 further amended Section 100 of the NIRC, as amended, thus:

> SEC. 2. Section 100 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:
>
> 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 "good 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;
>
> x x x x
>
> The term "gross selling price" means the total amount of money or its equivalent which the purchaser pays or is obligated to pay to the seller in consideration of the sale, barter or exchange of the goods or properties, excluding the value-added tax. The excise tax, if any, on such goods or properties shall form part of the gross selling price.

Pursuant to RA 7716, the sale of parcels of land to FBDC's customers became subject to 10% VAT.

However, Section 105 of the NIRC grants to a person who becomes liable to VAT or who elects to be a VAT-registered person a transitional input tax, as follows:

> 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 paid on such goods, materials and supplies, whichever is higher, which shall be creditable against the output tax.

On 19 September 1996, in order to avail itself of the transitional input tax credit, FBDC submitted to the BIR, Revenue District No. 44, Taguig and Pateros, an inventory of its real properties with a total book value of P71,227,503,200 on which it claims a transitional input tax credit of P5,698,200,256. FBDC also registered itself as a VAT taxpayer.

G.R. No. 158885

On 14 October 1996, FBDC executed two contracts to sell in favor of Metro Pacific Corporation (Metro Pacific) covering two lots located in Global City. The lots were both payable in installments. For the fourth quarter of 1996, FBDC received P3,498,888,713.60 from the sale of the two lots, on which the output VAT payable to the BIR amounted to P318,080,792.14.[9] FBDC paid cash to the BIR amounting to P269,340,469.45 and utilized (1) P28,413,783 out of its total transitional input tax credit of P5,698,200,256 (the amount of P28,413,783 represents the portion of the total transitional input tax credit allocated by FBDC to the two lots sold to Metro Pacific); and (2) its regular input tax credit of P20,326,539.69 on purchases of goods and services.[10]

On 28 July 1997 and 29 October 1997, FBDC submitted to the BIR two letters dated 18 July 1997[11] and 28 October 1997,[12] respectively, informing it of the transaction and computation of its VAT payments and requesting for a ruling on whether its transitional input VAT on the land inventory, amounting to P28,413,783, was in order. After investigation of FBDC's VAT return for the fourth quarter of 1996, the BIR recommended the disallowance of the claimed transitional input VAT on land inventory, and the issuance of a notice of assessment for deficiency VAT equivalent to the disallowed amount. The BIR issued a Pre-Assessment Notice dated 23 December 1997 for deficiency VAT for the fourth quarter of 1996.

On 5 March 1998, FBDC received an undated letter[13] from then BIR Commissioner Liwayway Vinzons-Chato disallowing the presumptive input tax arising from land inventory on the ground that "the basis of the 8% presumptive input tax of real estate dealers shall be limited to the book value of the improvements [made upon the land], in addition to its inventory of supplies and materials for use in its business,"[14] and not on the book value of the actual land in FBDC's inventory. The BIR Commissioner cited Revenue Regulation No. 7-95 (RR 7-95) dated 9 December 1995 and Revenue Memorandum Circular No. 3-96 dated 15 January 1996.[15] Specifically, the BIR Commissioner referred to Section 4.105-1 and the Transitory Provisions of RR 7-95 issued in implementation of the amendments made by RA 7716, as follows:

> 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 P500,000.00 or who voluntarily register even if their turnover does not exceed P500,000.00 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.
>
> x x x x
>
> TRANSITORY PROVISIONS
>
> (a) Presumptive Input Tax Credits -
>
> x x x x
>
> (iii) For real estate dealers, the presumptive input tax of 8% of the book value of improvements constructed on or after January 1, 1988 (the effectivity of E.O. 273) shall be allowed.
>
> For purposes of sub-paragraphs (i), (ii) and (iii) above, an inventory as of December 31, 1995 of such goods or properties and improvements showing the quantity, description and amount filed with the RDO not later than January 31, 1996.

The BIR Commissioner directed FBDC to pay VAT equivalent to the disallowed presumptive input tax on land inventory in the amount of P28,413,783, including any surcharges, interest and penalties by the Chief, Assessment Division, Revenue Region No. 8, Makati City, subject to audit verification. In a letter dated 11 March 1998,[16] FBDC requested the BIR Commissioner for the computation of the surcharges, interest and penalties and for the issuance of assessment notice to enable it to pursue its remedy under the NIRC.

In a letter dated 4 May 1998,[17] Acting Assistant Chief Pascual M. De Leon of the Assessment Division, Revenue Region 8, Makati City sent FBDC a letter informing it that the total amount due was P45,188,708.08. An assessment notice[18] was attached to the letter. In a letter dated 1 July 1998[19] filed on 2 July 1998, FBDC requested for "reconsideration/protest" of the 4 May 1998 letter and the assessment notice. In a letter dated 15 July 1998[20] which FBDC received on 10 August 1998, Regional Director Antonio I. Ortega of Revenue Region 8 ruled that FBDC's request for "reconsideration/protest" was barred by the statute of limitations because it was filed more than 30 days from 5 March 1998 when FBDC received the undated letter from the BIR Commissioner disallowing the claim for transitional input tax.

On 11 August 1998, FBDC filed an appeal by certiorari before the CTA, docketed as CTA Case No. 5665.

G.R. No. 170680

For the third quarter of 1997, FBDC received from its sale and lease of lots P3,591,726,328.11 on which output VAT payable to the BIR amounted to P359,172,623.81. FBDC made cash payments amounting to P347,741,695.74 and utilized its regular input tax credit of P19,743,565.73 on its purchases of goods and services.

On 11 May 1999, FBDC filed with the BIR a claim for tax refund of its output VAT cash payments for the third quarter of 1997, amounting to P347,741,695.74. FBDC alleged that the amount was illegally collected because the BIR did not take into account its transitional input tax credit. Earlier, on 8 October 1998, 17 November 1998, and 11 February 1999, FBDC filed claims for refunds amounting to P269,340,469.45, P359,652,009.47, and P486,355,846.78, respectively, representing VAT paid on proceeds received from its sale and lease of lots for the quarters ending on 31 December 1996, 31 March 1997, and 30 June 1997. After deducting P269,340,469.45, P359,652,009.47, and P486,355,846.78 from P5,698,200,256 which FBDC claimed as its total transitional input tax credit, the remaining input tax credit still sufficiently covered the amount of P347,741,695.74.[21]

The BIR did not act upon FBDC's claim. The two-year prescriptive period for actions to recover illegally collected tax provided under Section 230 of the NIRC was to expire on 25 August 1999. Thus, on 24 August 1999, FBDC filed a petition for review before the CTA, docketed as CTA Case No. 5926. FBDC alleged that its input credit tax was more than enough to offset the VAT paid for the third quarter of 1997 and as such, it was entitled to a refund or tax credit of P347,741,695.74.

The Ruling of the Court of Tax Appeals

G.R. No. 158885

In its 11 August 2000 Decision, the CTA denied the petition for review and ordered FBDC to pay to the BIR the assessed amount of P45,188,708.08 plus 20% delinquency interest per annum from 1 June 1998 until fully paid pursuant to Section 249[22] of the NIRC.

The CTA ruled that FBDC's protest was filed on time. The CTA ruled that the undated letter from the BIR Commissioner which FBDC received on 5 March 1998 showed that FBDC's liability was not yet definite and final because it was still subject to audit verification. The CTA ruled that it was the 4 May 1998 letter, with the assessment notice, which constituted the assessment contemplated under Section 228[23] of the NIRC. FBDC received the 4 May 1998 letter on 4 June 1998. Hence, FBDC's request for "reconsideration/protest" filed on 2 July 1998 was timely filed.

The CTA sustained the BIR's application of Section 4.105-1 of RR 7-95 that the basis of the transitional input tax for real estate dealers shall be the improvements constructed on or after the effectivity of Executive Order No. 273 (EO 273). The CTA rejected FBDC's argument that Section 4.105-1 of RR 7-95 is contrary to Sections 100 and 105 of the NIRC. The CTA traced the origin of the transitional input tax credit from the original VAT law, EO 273, until Republic Act No. 8424 or the Tax Reform Act of 1997, which took effect on 1 January 1998. The CTA ruled that the purpose of granting transitional input tax credit was to give recognition to the sales tax component of inventories which would qualify as input tax credit had the goods been acquired during the effectivity of the EO 273. The CTA ruled that RA 7716 amended EO 273 to widen its tax base to include other sale of goods and services not previously subject to VAT. However, RA 7716 did not touch Section 105 of the NIRC on transitional input tax credit, and it remained with the same purpose as when it was introduced by EO 273.

The CTA also ruled that FBDC purchased the lots in Global City from the national government under a VAT-free sale transaction. The CTA noted that in 1995, sale of real properties was still exempt from VAT. Hence, FBDC is precluded from availing of transitional input tax credit.

The dispositive portion of the CTA Decision reads:

> WHEREFORE, in view of all the foregoing, the instant Petition for Review is hereby DENIED. Petitioner is ordered to pay the assessed amount of P45,188,708.08 to the Respondent Commissioner of Internal Revenue plus 20% delinquency interest per annum from June 1, 1998 until fully paid pursuant to Section 249 of the 1996 Tax Code.
>
> SO ORDERED.[24]

FBDC filed a petition for review before the Court of Appeals, docketed as CA-G.R. SP No. 60477.

G.R. No. 170680

In a Decision promulgated on 17 October 2000, the CTA denied FBDC's claim for tax refund. Thus:

> WHEREFORE, premises considered, the instant Petition for Review on the refund of the overpaid value-added tax in the amount of P347,741,695.74 covering the third quarter of 1997 is hereby DENIED for lack of merit.
>
> SO ORDERED.[25]

The CTA ruled that FBDC is not automatically entitled to the 8% transitional input tax allowed under Section 105 of the NIRC. The CTA stated that FBDC purchased the land at the Global City from the government under a VAT-free sale transaction. The government, which is a tax-exempt entity, did not pass on any VAT or business tax upon FBDC. Thus, the CTA ruled that to allow FBDC 8% transitional input tax to offset its output VAT liability without having paid any previous taxes has the net effect of granting FBDC an outright bonus equivalent to the 10% VAT it may tack on to the goods it would sell to its subsequent purchasers. The CTA also ruled that the inventory under Section 105 of the NIRC is limited to improvements, such as buildings, roads, drainage system and other similar structures constructed on the land because in their construction, the contractors and suppliers have presumably passed on to the owner of the land or the real estate dealer the business tax due thereon. The CTA also ruled that Section 4.105-1 of RR 7-95 is not contrary to Sections 100 and 105 of the NIRC. The CTA also cited its 11 August 2000 Decision in CTA Case No. 5665.

FBDC filed a petition for certiorari before the Court of Appeals assailing the 17 October 2000 Decision of the CTA, docketed as CA-G.R. SP No. 61517.

The Ruling of the Court of Appeals

G.R. No. 158885

In a Decision promulgated on 15 November 2002, the Court of Appeals affirmed with modification the CTA's 11 August 2000 Decision.

The Court of Appeals ruled that the regulations embodied in RR 7-95 were a valid exercise of the BIR's delegated rule-making power and were consistent with the letter and spirit of substantive laws establishing the VAT system. The Court of Appeals ruled that RA 7716 amended the government's VAT system instituted under EO 273 and imposed, for the first time, VAT on sale of real properties. A first-time taxpayer who becomes liable for VAT is entitled to a transitional input tax under Section 105 of the NIRC. Section 105 provides that the basis for the inventory of goods, materials and supplies upon which the 8% input VAT will be based shall be left to the regulation by the appropriate administrative authority. The Court of Appeals ruled that the decision of the BIR to use the improvements introduced by the taxpayer upon real properties as the basis for the transitional input tax credit satisfied established constitutional and legal precepts.

However, the Court of Appeals modified the CTA's 11 August 2000 Decision by deleting the imposition of surcharge, interest and penalty upon the assessed amount of additional VAT. Thus:

> WHEREFORE, premises considered, the Decision of the Court of Tax Appeals, is hereby AFFIRMED with the MODIFICATION that the assessment of surcharge, interests and penalty by the BIR upon the principal deficiency amount of value added taxes payable by the petitioner, to be determined by the BIR, is hereby REMOVED from petitioner's liability.
>
> SO ORDERED.[26]

FBDC filed a motion for reconsideration of the Court of Appeals' 15 November 2002 Decision. In its 1 July 2003 Resolution,[27] the Court of Appeals denied the motion.

Hence, the petition before this Court.

G.R. No. 170680

In its 30 October 2003 Decision, the Court of Appeals denied FBDC's petition and affirmed the 17 October 2000 CTA Decision. The Court of Appeals again traced the origin of transitional input tax from EO 273 to RA 7716. The Court of Appeals ruled that the grant of transitional input tax presupposes that the VAT taxpayer had previously paid some form of business tax on his inventory of goods. Here, FBDC purchased the land from the national government under a VAT-free transaction. The Court of Appeals sustained the CTA that to allow FBDC to avail of the 8% transitional input tax to offset its output tax liability will have the effect of granting FBDC an outright bonus equivalent to the 10% VAT which it may tack on the purchase price of the lands it would sell to its buyers. The Court of Appeals further ruled that RR 7-95 limiting the transitional input tax to the value of the improvements is a valid implementation of the NIRC.

The dispositive portion of the Court of Appeals' Decision reads:

> WHEREFORE, the instant Petition is DENIED. The assailed Decision of the Court of Tax Appeals dated October 17, 2000 denying petitioner's claim for refund of the value-added tax it paid for the third quarter of 1997 in the amount of P347,741,695.74 is hereby AFFIRMED.
>
> SO ORDERED.[28]

FBDC filed a motion for reconsideration. In its 12 December 2005 Resolution,[29] the Court of Appeals denied FBDC's motion.

Hence, the petition before this Court.

The Issue

The main issue is whether petitioner is entitled to transitional input tax credit under Section 105 of the NIRC, on its Global City land inventory, which petitioner purchased from the government under a VAT-free transaction in 1995.

Overview of the VAT Law

The VAT is essentially a tax on transactions. It is imposed at every stage of the distribution process on the sale, barter, exchange of goods or property and in the performance of services until it finally reaches the consumer.[30] Since it is a value-added tax, it is levied on the value added to goods and services at every link of the chain of transactions in order to prevent doubly taxing a prior transaction in the subsequent use or sale of the same product.

In computing the tax liability, the taxpayer subtracts from the tax due on sales the taxes on his purchases of raw materials. He pays only the difference between the tax on sales (output tax) and the tax on outlays for materials, supplies, services and capital goods (input tax). **As a result, previously paid taxes are allowed as input tax credits deductible from the output VAT liability in subsequent transactions involving the same product.** This is substantially how transitional input tax credit works. The term "transitional" had been placed to distinguish this from an ordinary input tax since essentially this innovative tax credit's function is to pave the smooth transition from the non-VAT to the VAT system.

The VAT traces its roots from the sales tax and under forms of percentage tax under the old Tax Code. Since 1939, when the turnover tax was replaced by the manufacturer's sales tax, the Tax Code had provided for a single stage value-added tax on original sales by manufacturers, producers and importers computed on the "cost deduction method" and later on the basis of the "tax credit method." Up until 1987, the system of taxing goods consisted of (1) an *excise tax* on selected articles, (2) *fixed and percentage taxes* on original and subsequent sales, on importations and on milled articles, and (3) *mining taxes* on mineral products. *Services* were subjected to percentage taxes based mainly on gross receipts.[31]

Beginning 1 January 1988, the multi-staged value-added tax had been adopted under EO 273. Among the new provisions included were the persons liable,[32] the VAT on sale of goods,[33] and the transitional input tax credit. The BIR released Revenue Regulation No. 5-87, the implementing rules of EO 273, which took effect on the same date.

On 5 May 1994, Congress approved RA 7716 or the Expanded Value-Added Tax Law, commonly known as the E-VAT. The new law was enacted in order to extend the scope of the VAT not only to goods but also to properties. In this law, the VAT was expanded to include real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business.[34] The provision pertaining to transitional input tax credit, Section 105, was not touched and remained in effect.

However, the constitutionality of the E-VAT law was questioned before this Court. In the consolidated cases of *Tolentino v. Secretary of Finance*,[35] we issued a temporary restraining order (TRO) on the implementation of RA 7716. On 25 August 1994, this Court ruled in favor of the tax law's validity. After the denial with finality of the motions for reconsideration assailing the constitutionality of the E-VAT, the TRO was lifted on 30 October 1995.[36]

Following the release of the decision and the lifting of the TRO, the BIR released RR 7-95 dated 9 December 1995 pertaining to the consolidated VAT regulations of RA 7716. Thus, both RA 7716 and RR 7-95 were made effective and implemented only on 1 January 1996. Another BIR-issued directive, Revenue Memorandum Circular No. 3-96 dated 15 January 1996, followed suit. The contents of this memorandum were the same as RR 7-95 although in question and answer form.

On 20 December 1996, Congress approved Republic Act No. 8241 which took effect on 1 January 1997. This tax law amended several provisions of RA 7716 including Section 105, which segregated the definition of input tax credit to transitional and presumptive.[37] To implement this law, the BIR released a new ruling, Revenue Regulation No. 6-97 dated 2 January 1997.

The most recent full revision of the NIRC is Republic Act No. 8424 or the Tax Reform Act of 1997, which took effect on 1 January 1998. From the years 2000 to 2004, several other amendments[38] to the VAT law followed and the latest one is Republic Act No. 9337, popularly called the Reformed Value-Added Tax Law or R-VAT for short, which was approved by Congress on 24 May 2005 and which took effect on 1 July 2005. This new law increased the tax base of the VAT from 10% to 12%.

Acquisition of the Fort Bonifacio property from the national government under a tax-free transaction

As mentioned earlier, the Global City land was previously part of Fort Bonifacio, a military reservation. Being part of a military reservation, the lands comprising Fort Bonifacio formed part of the public domain. It was only in 1992 when a portion of Fort Bonifacio ceased to be part of the public domain when Congress passed Republic Act No. 9227, classifying the lands as alienable and disposable, and authorizing the President to sell and dispose of a portion of the military reservation, now consisting of the Global City land.[39]

Petitioner contends that the CA erred in holding that there must have been previous payment of sales tax or VAT by petitioner on its land before it may claim the input tax credit granted by Section 105 of the NIRC.

Petitioner's contention has no merit.

Sections 104 (now Section 110) and 105 (now Section 111) of EO 273, as amended by RA 7716, provide:

> SEC. 104. *Tax Credits*. -- (a) Creditable input tax. --
>
> x x x
>
> The term `input tax' means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchases of goods or services, including lease or use of property, from a VAT-registered person. It shall also include the transitional input tax determined in accordance with Section 105 of this Code.
>
> 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.

Petitioner is not entitled to a refund or credit of any transitional input tax since the entire Global City land was bought by petitioner from the national government in 1995 under a tax-free sale transaction and without any VAT component. This means that no previous business tax, whether in the form of sales tax or VAT, was paid by petitioner on its purchase of land from the national government. Simply put, since the national government is outside the operation of the VAT and is tax-exempt, the national government did not pass on any VAT to petitioner as part of the purchase price.

However, petitioner asserts that the 8% input tax credit provided for in Section 105 is one that is statutorily presumed to have been paid and as a consequence, it need not show that taxes were previously paid on its inventory of land.

Petitioner's assertion also has no merit.

True, there exists a presumption in Section 105 that tax was paid, whether or not it was actually paid. This can be inferred from the provision that a taxpayer is "allowed input tax on his beginning inventory x x x equivalent to 8% x x x, or the actual value-added tax paid x x x, whichever is higher." **However, such presumption assumes the existence of a law imposing the tax presumed to have been paid. Otherwise, the presumption will have**

no basis because if no tax has been imposed by law, then there can be no presumption that such a tax has been paid.

If no tax has been imposed by law, whether it be VAT or sales, percentage, excise or privilege taxes, no such tax is legally due and payable, and thus there can be no presumption that any such tax has been paid. **When the law says "transitional input tax" or "presumptive input tax," the presumption is that there exists a law imposing the input tax and such tax is presumed to have been paid.**

In the present case, when the national government sold the Global City land to petitioner in 1995, VAT on real properties was not yet in existence. RA 7716 had not yet been enacted and the sale of real properties was still exempt from VAT. Transitional or presumptive input tax necessarily requires a transaction where a tax had been imposed by law. Without any VAT on land imposed by law at the time, the 8% input tax credit cannot be presumed to have been paid. Thus, petitioner is not entitled to claim input VAT on the purchase of the land against its output VAT liability.

Even if the sale transaction by the national government to petitioner 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. **The simple reason is that the sale by the national government of government-owned land is not subject to VAT.**[40] Thus, petitioner cannot now claim any input tax credit if it buys the same land today, and resells the same.

To illustrate, supposing petitioner buys land from the national government today, constructs a condominium and thereafter sells the units to third parties, will petitioner be subject to VAT? The simple answer is YES. Indisputably, petitioner is now subject to output tax as a real estate dealer liable to VAT. Can petitioner charge any input tax against its output tax liability for the sale? The simple answer is NO. This is because under the present Tax Code, specifically Section 110,[41] the rule is that any input tax shall be creditable against the output tax only if it is evidenced by a VAT invoice or official receipt. A VAT invoice can be used only for the sale of goods and services that are subject to VAT. Petitioner will not be able to present a VAT invoice since the national government is exempt from VAT. Without the invoice to prove that the transaction had been subjected to VAT, petitioner cannot claim any input tax which may be offset against its output tax. **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.**

Petitioner further asserts that there is nothing in Section 105 which states that the 8% transitional input tax credit may be based only on the improvements on the land. Petitioner insists that in the sale of real properties, VAT is imposed not only on the "improvements" but also on the land and improvements. Thus, in issuing RR 7-95, particularly Section 4.105-1, the BIR limited the application of Section 105 to the "improvements" on real properties, resulting in unwarranted legislation.

Again, petitioner's assertion has no merit.

Section 4.105-1 of RR 7-95 and its Transitory Provisions relating to transitional input tax on beginning inventories provide:

> 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 P500,000 or who voluntarily register even if their turnover does not exceed P500,000.00 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 E.O. 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.
>
> The value allowed for income tax purposes on inventories shall be the basis for the computation of the 8% excluding goods that are exempt from VAT under Sec. 103. Only VAT-registered persons shall be entitled to presumptive input tax credits.
>
> x x x
>
> TRANSITORY PROVISIONS
>
> (b) Presumptive Input Tax Credits -
> x x x
>
> (iii) **For real estate dealers, the presumptive input tax of 8% of the book value of improvements constructed on or after January 1, 1988 (the effectivity of E.O. 273) shall be allowed.**
>
> For purposes of sub-paragraphs (i), (ii) and (iii) above, an inventory as of

> December 31, 1995 of such goods or properties and improvements showing the quantity, description and amount filed with the RDO not later than January 31, 1996. (Emphasis supplied)

According to RR 7-95, the basis of the 8% input tax is simply the value of the improvements on the land and not the value of the taxpayer's entire inventory of real properties. This provision finds its basis in Section 105 which provides that input tax is allowed on the taxpayer's "beginning inventory of goods, materials and supplies." Here, the presumptive input tax contemplated by law pertains to the input tax paid for the goods, materials or supplies passed on to the taxpayer by his suppliers, and used to build improvements on the land. Even before real estate dealers like petitioner became subject to VAT under RA 7716, improvements on land were already subject to VAT. However, since the land itself was not subject to VAT or 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 applies only to improvements on land, but not on the land itself.**

In sum, petitioner's cause must fail because petitioner acquired the Global City land from the national government under a tax-free transaction. Consequently, petitioner is not entitled to a refund or credit of any transitional input tax.

Accordingly, I vote to deny the petitions and affirm the 15 November 2002 Decision and 1 July 2003 Resolution of the Court of Appeals in CA-G.R. SP No. 60477 and the 30 October 2003 Decision and 12 December 2005 Resolution of the Court of Appeals in CA-G.R. SP No. 61517.

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo* (G.R. No. 158885), pp. 402-411. Penned by Associate Justice Rodrigo V. Cosico with Associate Justices Rebecca De Guia-Salvador and Regalado E. Maambong, concurring.

[3] Id. at 214-234. Penned by Presiding Judge Ernesto D. Acosta with Associate Judge Ramon O. De Veyra, concurring and Associate Judge Amancio Q. Saga, dissenting.

[4] *Rollo* (G.R. No. 170680), pp. 316-328. Penned by Associate Justice Noel G. Tijam with Associate Justices Ruben T. Reyes (retired) and Edgardo P. Cruz, concurring.

[5] Id. at 127-143. Penned by Associate Judge Ramon O. De Veyra with Presiding Judge Ernesto D. Acosta, concurring and Associate Judge Amancio Q. Saga, dissenting.

[6] BCDA is a wholly-owned government corporation created by Republic Act No. 7227 for the purpose of accelerating the conversion of military reservations into alternative

productive uses and raising funds through the sale of portions of said military reservations in order to promote the economic and social development of the country in general.

[7] An Act Accelerating the Conversion of Military Reservations into Other Productive Uses, Creating the Bases Conversion and Development Authority for the Purpose, Providing Funds Therefor and For Other Purposes.

[8] Implementing the provisions of Republic Act No. 7227 Authorizing the Bases Conversion and Development Authority (BCDA) to Raise Funds Through the Sale of Metro Manila Military Camps Transferred to BCDA to Form Part of Its Capitalization and to be used for the Purposes Stated in said Act.

[9] *Rollo* (G.R. No. 158885), p. 31.

[10] Id.

[11] Id. at 184.

[12] Id. at 185-186.

[13] Id. at 187.

[14] Id. Underscoring in the original.

[15] The contents of RR 7-95 were reiterated in BIR's Revenue Memorandum Circular No. 3-96 dated 15 January 1996 in a question and answer format.

[16] *Rollo* (G.R. No. 158885), p. 188.

[17] Id. at 189.

[18] Id. at 190.

[19] Id. at 191-204.

[20] Id. at 205-207.

[21] *Rollo* (G.R. No. 170680), p. 29.

[22] SEC. 249. Interest. --

(A) *In General.* - There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.

(B) *Deficiency Interest.* - Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.

(C) *Delinquency Interest.* - In case of failure to pay:

(1) The amount of the tax due on any return to be filed, or

(2) The amount of the tax due for which no return is required, or

(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.

(D) *Interest on Extended Payment.* - If any person required to pay the tax is qualified and elects to pay the tax on installment under the provisions of this Code, but fails to pay the tax or any installment hereof, or any part of such amount or installment on or before the date prescribed for its payment, or where the Commissioner has authorized an extension of time within which to pay a tax or a deficiency tax or any part thereof, there shall be assessed and collected interest at the rate hereinabove prescribed on the tax or deficiency tax or any part thereof unpaid from the date of notice and demand until it is paid.

[23] SEC. 228. Protesting of Assessment. --

When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:

(a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or

(b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or

(c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(d) When the excise tax due on exciseable articles has not been paid; or

(e) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

[24] *Rollo* (G.R. No. 158885), p. 233.

[25] *Rollo* (G.R. No. 170680), p. 142.

[26] *Rollo* (G.R. No. 158885), p. 411.

[27] Id. at 505-506.

[28] *Rollo* (G.R. No. 170680), p. 327.

[29] Id. at 382-390.

[30] *Commissioner of Internal Revenue v. Court of Appeals*, 385 Phil. 875 (2000).

[31] Vitug, Jose C. and Acosta, Ernesto D., Tax Law and Jurisprudence, 2006 edition, p. 230.

[32] SEC. 99. *Persons liable.* -- Any person who, in the course of trade or business, sells, barters or exchanges goods, renders services, or engages in similar transactions and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 100 to 102 of this Code.

[33] SEC. 100. *Value-added tax on sale of goods.* -- (a) Rate and base of tax. - There shall be levied, assessed and collected on every sale, barter or exchange of goods, a value-added tax equivalent to 10% of the gross selling price or gross value in money of the goods sold, bartered or exchanged, such tax to be paid by the seller or transferor x x x.

[34] Section 2 of RA 7716.

[35] G.R. Nos. 115455, 115525, 115543, 115544, 115754, 115781, 115852, 115873, 115931, 25 August 1994, 235 SCRA 630.

[36] 319 Phil. 755 (1995).

[37] SEC. 105. *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 as prescribed by regulations, be allowed input tax on his beginning inventory of goods, materials and supplies equivalent to eight percent (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.

(b) Presumptive input tax credits. -

(1) Persons or firms engaged in the processing of sardines, mackerel, and milk, and in manufacturing refined sugar and cooking oil, shall be allowed a presumptive input tax, creditable against the output tax, equivalent to one and one-half percent (1.5%) of the gross value in money of their purchases of primary agricultural products which are used as inputs to their production.

As used in this paragraph (b), the term `processing' shall mean pasteurization, canning and activities which through physical or chemical process alter the exterior texture or form or inner substance of a product in such manner as to prepare it for special use to which it could not have been put in its original form or condition.

(2) Public works contractors shall be allowed a presumptive input tax equivalent to one and one-half percent (1.5%) of the contract price with respect to government contracts only in lieu of actual input taxes therefrom.

[38] Republic Act No. 8761, which was approved by Congress on 15 February 2000 and took effect on 1 January 2001; Republic Act No. 9010, approved on 27 February 2001 and retroacted to 1 January 2001; and Republic Act No. 9238, which took effect on 1 January 2004.

[39] The National Government, as the seller of the Global City land, is a tax-exempt entity and such sale had been mandated by RA 9227 or The Bases Conversion and Development Act of 1992, which states:

Sec. 8. Funding Scheme. -- The capital of the Conversion Authority shall come from the sales proceeds and/or transfers of certain Metro Manila military camps, including all lands covered by Proclamation No. 423, series of 1957, commonly known as Fort Bonifacio and Villamor (Nichols) Air Base x x x

The President is hereby authorized to sell the above lands, in whole or in part, which are hereby declared alienable and disposable pursuant to the provisions of existing laws and regulations governing sales of government properties: Provided, That no sale or disposition of such lands will be undertaken until a development plan embodying projects for conversion shall be approved by the President in accordance with Paragraph (b), Section 4, of this Act. However, six (6) months after approval of this Act, the President shall authorize the Conversion Authority to dispose of certain areas in Fort Bonifacio and Villamor as the latter so determines. The Conversion Authority shall provide the President a report on any such disposition or plan for disposition within one (1) month from such disposition or preparation of such plan. x x x (Emphasis supplied)

[40] 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.

[41] SEC. 110. Tax Credits. --

(A) Creditable Input Tax. --

(1) Any input tax **evidenced by a VAT invoice or official receipt** issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax: xxx (Emphasis supplied)
