Republic of the Philippines
Supreme Court
Manila

EN BANC

FORT BONIFACIO DEVELOPMENT CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE and REVENUE DISTRICT OFFICER, REVENUE DISTRICT NO. 44, TAGUIG and PATEROS, BUREAU OF INTERNAL REVENUE,
Respondents.

G.R. No. 173425

Present:

SERENO, *C.J.*,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,
PERALTA,
BERSAMIN,
DEL CASTILLO,
ABAD,
VILLARAMA, JR.,
PEREZ,
MENDOZA,
REYES, *and*
PERLAS-BERNABE, *JJ.*

Promulgated:
SEPTEMBER 04, 2012

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DECISION

DEL CASTILLO, *J.*:

Courts cannot limit the application or coverage of a law, nor can it impose conditions not provided therein. To do so constitutes judicial legislation.

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assails the July 7, 2006 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 61436, the dispositive portion of which reads:

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[1] *Rollo*, pp. 317-333; penned by Associate Justice Monina Arevalo-Zenarosa and concurred in by Associate Justices Renato C. Dacudao and Rosmari D. Carandang.

> **WHEREFORE**, the instant petition is hereby **DISMISSED. ACCORDINGLY,** the Decision dated October 12, 2000 of the Court of Tax Appeals in CTA Case No. 5735, denying petitioner's claim for refund in the amount of Three Hundred Fifty-Nine Million Six Hundred Fifty-Two Thousand Nine Pesos and Forty-Seven Centavos (₱359,652,009.47), is hereby **AFFIRMED.**
>
> **SO ORDERED**.[2]

Factual Antecedents

Petitioner Fort Bonifacio Development Corporation (FBDC) is a duly registered domestic corporation engaged in the development and sale of real property.[3] The Bases Conversion Development Authority (BCDA), a wholly owned government corporation created under Republic Act (RA) No. 7227,[4] owns 45% of petitioner's issued and outstanding capital stock; while the Bonifacio Land Corporation, a consortium of private domestic corporations, owns the remaining 55%.[5]

On February 8, 1995, by virtue of RA 7227 and Executive Order No. 40,[6] dated December 8, 1992, petitioner purchased from the national government a portion of the Fort Bonifacio reservation, now known as the Fort Bonifacio Global City (Global City).[7]

On January 1, 1996, RA 7716[8] restructured the Value-Added Tax (VAT) system by amending certain provisions of the old National Internal Revenue Code (NIRC). RA 7716 extended the coverage of VAT to real properties held primarily

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2 Id. at 332.
3 Id. at 318.
4 BASES CONVERSION AND DEVELOPMENT ACT OF 1992.
5 *Rollo*, p. 318.
6 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.
7 *Rollo*, p. 319.
8 AN ACT RESTRUCTURING THE VALUE ADDED TAX (VAT) SYSTEM, WIDENING ITS TAX BASE AND ENHANCING ITS ADMINISTRATION AND FOR THESE PURPOSES AMENDING AND REPEALING THE RELEVANT PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES.

for sale to customers or held for lease in the ordinary course of trade or business.[9]

On September 19, 1996, petitioner submitted to the Bureau of Internal Revenue (BIR) Revenue District No. 44, Taguig and Pateros, an inventory of all its real properties, the book value of which aggregated ₱71,227,503,200.[10] Based on this value, petitioner claimed that it is entitled to a transitional input tax credit of ₱5,698,200,256,[11] pursuant to Section 105[12] of the old NIRC.

In October 1996, petitioner started selling Global City lots to interested buyers.[13]

For the first quarter of 1997, petitioner generated a total amount of ₱3,685,356,539.50 from its sales and lease of lots, on which the output VAT payable was ₱368,535,653.95.[14] Petitioner paid the output VAT by making cash payments to the BIR totalling ₱359,652,009.47 and crediting its unutilized input tax credit on purchases of goods and services of ₱8,883,644.48.[15]

Realizing that its transitional input tax credit was not applied in computing its output VAT for the first quarter of 1997, petitioner on November 17, 1998 filed

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9 Section 2 of Republic Act No. 7716 provides:

> Sec. 2. Section 100 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:
>
> "Section 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.
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> "(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."
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> x x x x

10 *Rollo*, p. 320.

11 CTA *rollo*, p. 4.

12 Now Section 111(A) of the NATIONAL INTERNAL REVENUE CODE OF 1997 which provides:

> SEC 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 to two percent (2%) 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. [As amended by Republic Act No. 9337- An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 and 288 of the National Internal Revenue Code of 1997, as amended, and for other purposes.]

13 *Rollo*, p. 319.

14 Id. at 320.

15 Id. at 320-321.

with the BIR a claim for refund of the amount of ₱359,652,009.47 erroneously paid as output VAT for the said period.[16]

Ruling of the Court of Tax Appeals

On February 24, 1999, due to the inaction of the respondent Commissioner of Internal Revenue (CIR), petitioner elevated the matter to the Court of Tax Appeals (CTA) *via* a Petition for Review.[17]

In opposing the claim for refund, respondents interposed the following special and affirmative defenses:

> x x x x
>
> 8. Under Revenue Regulations No. 7-95, implementing Section 105 of the Tax Code as amended by E.O. 273, the basis of the presumptive input tax, in the case of real estate dealers, is the improvements, such as buildings, roads, drainage systems, and other similar structures, constructed on or after January 1, 1988.
>
> 9. Petitioner, by submitting its inventory listing of real properties only on September 19, 1996, failed to comply with the aforesaid revenue regulations mandating that for purposes of availing the presumptive input tax credits under its Transitory Provisions, "an inventory as of December 31, 1995, of such goods or properties and improvements showing the quantity, description, and amount should be filed with the RDO no later than January 31, 1996. x x x"[18]

On October 12, 2000, the CTA denied petitioner's claim for refund. According to the CTA, "the benefit of transitional input tax credit comes with the condition that business taxes should have been paid first."[19] In this case, since petitioner acquired the Global City property under a VAT-free sale transaction, it cannot avail of the transitional input tax credit.[20] The CTA likewise pointed out that under Revenue Regulations No. (RR) 7-95, implementing Section 105 of the old NIRC, the 8% transitional input tax credit should be based on the value of the

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16 CTA *rollo*, p. 5.
17 Id. at 1-12.
18 Id. at 44.
19 *Rollo*, p. 148.
20 Id. at 149.

improvements on land such as buildings, roads, drainage system and other similar structures, constructed on or after January 1, 1998, and not on the book value of the real property.[21] Thus, the CTA disposed of the case in this manner:

> **WHEREFORE,** in view of all the foregoing, the claim for refund representing alleged overpaid value-added tax covering the first quarter of 1997 is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**[22]

Ruling of the Court of Appeals

Aggrieved, petitioner filed a Petition for Review[23] under Rule 43 of the Rules of Court before the CA.

On July 7, 2006, the CA affirmed the decision of the CTA. The CA agreed that petitioner is not entitled to the 8% transitional input tax credit since it did not pay any VAT when it purchased the Global City property.[24] The CA opined that transitional input tax credit is allowed only when business taxes have been paid and passed-on as part of the purchase price.[25] In arriving at this conclusion, the CA relied heavily on the historical background of transitional input tax credit.[26] As to the validity of RR 7-95, which limited the 8% transitional input tax to the value of the improvements on the land, the CA said that it is entitled to great weight as it was issued pursuant to Section 245[27] of the old NIRC.[28]

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21 Id. at 149-150.
22 Id. at 150.
23 CA *rollo*, pp. 7-66.
24 *Rollo*, p. 330.
25 Id. at 329.
26 Id. at 325-328.
27 SEC. 245. *Authority of Secretary of Finance to promulgate rules and regulations.* — The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code. x x x (Now Section 244 of the National Internal Revenue Code of 1997.)
28 *Rollo*, pp. 331-332.

Issues

Hence, the instant petition with the principal issue of whether petitioner is entitled to a refund of ₱359,652,009.47 erroneously paid as output VAT for the first quarter of 1997, the resolution of which depends on:

> 3.05.a. Whether Revenue Regulations No. 6-97 effectively repealed or repudiated Revenue Regulations No. 7-95 insofar as the latter limited the transitional/presumptive input tax credit which may be claimed under Section 105 of the National Internal Revenue Code to the "improvements" on real properties.
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> 3.05.b. Whether Revenue Regulations No. 7-95 is a valid implementation of Section 105 of the National Internal Revenue Code.
>
> 3.05.c. Whether the issuance of Revenue Regulations No. 7-95 by the Bureau of Internal Revenue, and declaration of validity of said Regulations by the Court of Tax Appeals and Court of Appeals, [were] in violation of the fundamental principle of separation of powers.
>
> 3.05.d. Whether there is basis and necessity to interpret and construe the provisions of Section 105 of the National Internal Revenue Code.
>
> 3.05.e. Whether there must have been previous payment of business tax by petitioner on its land before it may claim the input tax credit granted by Section 105 of the National Internal Revenue Code.
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> 3.05.f. Whether the Court of Appeals and Court of Tax Appeals merely speculated on the purpose of the transitional/presumptive input tax provided for in Section 105 of the National Internal Revenue Code.
>
> 3.05.g. Whether the economic and social objectives in the acquisition of the subject property by petitioner from the Government should be taken into consideration.[29]

Petitioner's Arguments

Petitioner claims that it is entitled to recover the amount of ₱359,652,009.47 erroneously paid as output VAT for the first quarter of 1997 since its transitional input tax credit of ₱5,698,200,256 is more than sufficient to cover its output VAT liability for the said period.[30]

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[29] Id. at 23-24.
[30] Id. at 82.

Petitioner assails the pronouncement of the CA that prior payment of taxes is required to avail of the 8% transitional input tax credit.[31] Petitioner contends that there is nothing in Section 105 of the old NIRC to support such conclusion.[32] Petitioner further argues that RR 7-95, which limited the 8% transitional input tax credit to the value of the improvements on the land, is invalid because it goes against the express provision of Section 105 of the old NIRC, in relation to Section 100[33] of the same Code, as amended by RA 7716.[34]

Respondents' Arguments

Respondents, on the other hand, maintain that petitioner is not entitled to a transitional input tax credit because no taxes were paid in the acquisition of the Global City property.[35] Respondents assert that prior payment of taxes is inherent in the nature of a transitional input tax.[36] Regarding RR 7-95, respondents insist that it is valid because it was issued by the Secretary of Finance, who is mandated by law to promulgate all needful rules and regulations for the implementation of Section 105 of the old NIRC.[37]

Our Ruling

The petition is meritorious.

The issues before us are no longer new or novel as these have been resolved in the related case of *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*.[38]

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31 Id. at 84.
32 Id. at 87.
33 Now Section 106 of the National Internal Revenue Code of 1997.
34 *Rollo*, pp. 47-61.
35 Id. at 367.
36 Id. at 357.
37 Id. at 378.
38 G.R. Nos. 158885 & 170680, April 2, 2009, 583 SCRA 168.

Prior payment of taxes is not required for a taxpayer to avail of the 8% transitional input tax credit

Section 105 of the old NIRC reads:

> SEC. 105. *Transitional input tax credits.* – **A person who becomes liable to value-added tax** or **any person who elects to be a VAT-registered person** shall, subject to the filing of an inventory as prescribed by regulations, **be allowed input tax on his beginning inventory of goods, materials and supplies equivalent to 8% of the value of such inventory** or **the actual value-added tax paid on such goods, materials and supplies**, whichever is higher, which shall be creditable against the output tax. (Emphasis supplied.)

Contrary to the view of the CTA and the CA, there is nothing in the above-quoted provision to indicate that prior payment of taxes is necessary for the availment of the 8% transitional input tax credit. Obviously, all that is required is for the taxpayer to file a beginning inventory with the BIR.

To require prior payment of taxes, as proposed in the Dissent is not only tantamount to judicial legislation but would also render nugatory the provision in Section 105 of the old NIRC that the transitional input tax credit shall be "8% of the value of [the beginning] inventory or the actual [VAT] paid on such goods, materials and supplies, whichever is higher" because the actual VAT (now 12%) paid on the goods, materials, and supplies would always be higher than the 8% (now 2%) of the beginning inventory which, following the view of Justice Carpio, would have to exclude all goods, materials, and supplies where no taxes were paid. Clearly, limiting the value of the beginning inventory only to goods, materials, and supplies, where prior taxes were paid, was not the intention of the law. Otherwise, it would have specifically stated that the beginning inventory excludes goods, materials, and supplies where no taxes were paid. As retired Justice Consuelo Ynares-Santiago has pointed out in her Concurring Opinion in the earlier case of *Fort Bonifacio*:

> 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.[39]

Moreover, prior payment of taxes is not required to avail of the transitional input tax credit because it is not a tax refund *per se* but a tax credit. Tax credit is not synonymous to tax refund. Tax refund is defined as the money that a taxpayer overpaid and is thus returned by the taxing authority.[40] Tax credit, on the other hand, is an amount subtracted directly from one's total tax liability.[41] It is any amount given to a taxpayer as a subsidy, a refund, or an incentive to encourage investment. Thus, unlike a tax refund, prior payment of taxes is not a prerequisite to avail of a tax credit. In fact, in *Commissioner of Internal Revenue v. Central Luzon Drug Corp.*,[42] we declared that prior payment of taxes is not required in order to avail of a tax credit.[43] Pertinent portions of the Decision read:

> While a tax liability is essential to the *availment or use* of any *tax credit*, prior tax payments are not. On the contrary, for the *existence or grant* solely of such credit, neither a tax liability nor a prior tax payment is needed. The Tax Code is in fact replete with provisions granting or allowing *tax credits*, even though no taxes have been previously paid.
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> For example, in computing the *estate tax due*, Section 86(E) allows a *tax credit* -- subject to certain limitations -- for estate taxes paid to a foreign country. Also found in Section 101(C) is a similar provision for donor's taxes -- again when paid to a foreign country -- in computing for the *donor's tax due*. The *tax credits* in both instances allude to the prior payment of taxes, even if not made to our government.
>
> Under Section 110, a VAT (Value-Added Tax) - registered person engaging in transactions -- whether or not subject to the VAT -- is also allowed a *tax credit* that includes a ratable portion of any input tax not directly attributable to either activity. This input tax may *either* be the VAT on the purchase or importation of goods or services that is merely due from -- not necessarily paid by -- such VAT-registered person in the course of trade or business; *or* the transitional input tax determined in accordance with Section 111(A). The latter type may in fact be an amount equivalent to only eight percent of the value of a

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39 Id. at 201.
40 Garner, Black's Law Dictionary, 7th Edition, p. 1475.
41 Id. at 1473.
42 496 Phil. 307 (2005).
43 Id. at 322.

VAT-registered person's beginning inventory of goods, materials and supplies, when such amount -- as computed -- is higher than the actual VAT paid on the said items. Clearly from this provision, the *tax credit* refers to an input tax that is either due only or given a value by mere comparison with the VAT actually paid -- then later prorated. No tax is actually paid prior to the availment of such credit.

In Section 111(B), a one and a half percent input *tax credit* that is merely presumptive is allowed. For the purchase of primary agricultural products used as inputs -- either in the processing of sardines, mackerel and milk, or in the manufacture of refined sugar and cooking oil -- and for the contract price of public work[s] contracts entered into with the government, again, no prior tax payments are needed for the use of the *tax credit*.

More important, a VAT-registered person whose sales are zero-rated or effectively zero-rated may, under Section 112(A), apply for the issuance of a *tax credit* certificate for the amount of creditable input taxes merely due -- again not necessarily paid to -- the government and attributable to such sales, to the extent that the input taxes have not been applied against output taxes. Where a taxpayer is engaged in zero-rated or effectively zero-rated sales and also in taxable or exempt sales, the amount of creditable input taxes due that are not directly and entirely attributable to any one of these transactions shall be proportionately allocated on the basis of the volume of sales. Indeed, in availing of such *tax credit* for VAT purposes, this provision -- as well as the one earlier mentioned -- shows that the prior payment of taxes is not a requisite.

It may be argued that Section 28(B)(5)(b) of the Tax Code is another illustration of a *tax credit* allowed, even though no prior tax payments are not required. Specifically, in this provision, the imposition of a final withholding tax rate on cash and/or property dividends received by a nonresident foreign corporation from a domestic corporation is subjected to the condition that a foreign *tax credit* will be given by the domiciliary country in an amount equivalent to taxes that are merely deemed paid. Although true, this provision actually refers to the *tax credit* as a *condition* only for the imposition of a lower tax rate, not as a *deduction* from the corresponding tax liability. Besides, it is not our government but the domiciliary country that credits against the income tax payable to the latter by the foreign corporation, the tax to be foregone or spared.

In contrast, Section 34(C)(3), in relation to Section 34(C)(7)(b), categorically allows as credits, against the income tax imposable under Title II, the amount of income taxes merely incurred -- not necessarily paid -- by a domestic corporation during a taxable year in any foreign country. Moreover, Section 34(C)(5) provides that for such taxes incurred but not paid, a *tax credit* may be allowed, subject to the condition precedent that the taxpayer shall simply give a bond with sureties satisfactory to and approved by petitioner, in such sum as may be required; and further conditioned upon payment by the taxpayer of any tax found due, upon petitioner's redetermination of it.

In addition to the above-cited provisions in the Tax Code, there are also tax treaties and special laws that grant or allow *tax credits*, even though no prior tax payments have been made.

Under the treaties in which the *tax credit* method is used as a relief to avoid double taxation, income that is taxed in the *state of source* is also taxable in the *state of residence*, but the tax paid in the former is merely allowed as a credit

> against the tax levied in the latter. Apparently, payment is made to the *state of source*, not the *state of residence*. No tax, therefore, has been *previously* paid to the latter.
>
> Under special laws that particularly affect businesses, there can also be *tax credit* incentives. To illustrate, the incentives provided for in Article 48 of Presidential Decree No. (PD) 1789, as amended by Batas Pambansa Blg. (BP) 391, include *tax credits* equivalent to either five percent of the net value earned, or five or ten percent of the net local content of export. In order to avail of such credits under the said law and still achieve its objectives, no prior tax payments are necessary.
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> From all the foregoing instances, it is evident that prior tax payments are not indispensable to the availment of a *tax credit*. Thus, the CA correctly held that the availment under RA 7432 did not require prior tax payments by private establishments concerned. However, we do not agree with its finding that the carry-over of *tax credits* under the said special law to succeeding taxable periods, and even their application against internal revenue taxes, did not necessitate the existence of a tax liability.
>
> The examples above show that a tax liability is certainly important in the *availment or use*, not the *existence or grant*, of a *tax credit*. Regarding this matter, a private establishment reporting a *net loss* in its financial statements is no different from another that presents a *net income*. Both are entitled to the *tax credit* provided for under RA 7432, since the law itself accords that unconditional benefit. However, for the losing establishment to immediately apply such credit, where no tax is due, will be an improvident usance.[44]

In this case, when petitioner realized that its transitional input tax credit was not applied in computing its output VAT for the 1st quarter of 1997, it filed a claim for refund to recover the output VAT it erroneously or excessively paid for the 1st quarter of 1997. In filing a claim for tax refund, petitioner is simply applying its transitional input tax credit against the output VAT it has paid. Hence, it is merely availing of the tax credit incentive given by law to first time VAT taxpayers. As we have said in the earlier case of *Fort Bonifacio*, the provision on transitional input tax credit was enacted to benefit first time VAT taxpayers by mitigating the impact of VAT on the taxpayer.[45] Thus, contrary to the view of Justice Carpio, the granting of a transitional input tax credit in favor of petitioner, which would be paid out of the general fund of the government, would be an appropriation authorized by law, specifically Section 105 of the old NIRC.

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44 Id. at 322-325.

45 Supra note 38 at 192-193.

The history of the transitional input tax credit likewise does not support the ruling of the CTA and CA. In our Decision dated April 2, 2009, in the related case of *Fort Bonifacio*, we explained that:

> 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.
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> 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. The sale would be subject to capital gains taxes under Section 24 (D), 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. It is the donor who would be liable to pay the donor's tax, and the donation would be exempt if the donor's total net gifts during the calendar year does not exceed ₱100,000.00.

> 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. If the net estate does not exceed ₱200,000.00, no estate tax would be assessed.
>
> 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." 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.[46]

In view of the foregoing, we find petitioner entitled to the 8% transitional input tax credit provided in Section 105 of the old NIRC. The fact that it acquired the Global City property under a tax-free transaction makes no difference as prior payment of taxes is not a pre-requisite.

Section 4.105-1 of RR 7-95 is inconsistent with Section 105 of the old NIRC

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[46] Id. at 190-193.

As regards Section 4.105-1[47] of RR 7-95 which limited the 8% transitional input tax credit to the value of the improvements on the land, the same contravenes the provision of Section 105 of the old NIRC, in relation to Section 100 of the same Code, as amended by RA 7716, which defines "goods or properties," to wit:

> 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 fact, in our Resolution dated October 2, 2009, in the related case of *Fort Bonifacio*, we ruled that Section 4.105-1 of RR 7-95, insofar as it limits the transitional input tax credit to the value of the improvement of the real properties, is a nullity.[48] Pertinent portions of the Resolution read:

> As mandated by Article 7 of the Civil Code, an administrative rule or regulation cannot contravene the law on which it is based. RR 7-95 is inconsistent with Section 105 insofar as the definition of the term "*goods*" is concerned. This is a legislative act beyond the authority of the CIR and the Secretary of Finance. The rules and regulations that administrative agencies promulgate, which are the product of a delegated legislative power to create new and additional legal provisions that have the effect of law, should be within the

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[47] Sec. 4.105-1. Transitional input tax on beginning inventories. – Taxpayers who became VAT-registered persons upon effectivity of RA No. 7716 who have exceeded the minimum turnover of ₱500,000.00 or who voluntarily register even if their turnover does not exceed ₱500,000.00 shall be entitled to a presumptive input tax on the inventory on hand as of December 31, 1995 on the following: (a) goods purchased for resale in their present condition; (b) materials purchased for further processing, but which have not yet undergone processing; (c) goods which have been manufactured by the taxpayer; (d) goods in process and supplies, all of which are for sale or for use in the course of the taxpayer's trade or business as a VAT-registered person.

However, in the case of real estate dealers, the basis of the presumptive input tax shall be the improvements, such as buildings, roads, drainage systems, and other similar structures, constructed on or after the effectivity of EO 273 (January 1, 1988).

The transitional input tax shall be 8% of the value of the inventory or actual VAT paid, whichever is higher, which amount may be allowed as tax credit against the output tax of the VAT-registered person. x x x (Emphasis supplied.)

[48] *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*, G.R. Nos. 158885 & 170680, October 2, 2009, 602 SCRA 159.

> scope of the statutory authority granted by the legislature to the objects and purposes of the law, and should not be in contradiction to, but in conformity with, the standards prescribed by law.
>
> To be valid, an administrative rule or regulation must conform, not contradict, the provisions of the enabling law. An implementing rule or regulation cannot modify, expand, or subtract from the law it is intended to implement. Any rule that is not consistent with the statute itself is null and void.
>
> While administrative agencies, such as the Bureau of Internal Revenue, may issue regulations to implement statutes, they are without authority to limit the scope of the statute to less than what it provides, or extend or expand the statute beyond its terms, or in any way modify explicit provisions of the law. Indeed, a quasi-judicial body or an administrative agency for that matter cannot amend an act of Congress. Hence, in case of a discrepancy between the basic law and an interpretative or administrative ruling, the basic law prevails.
>
> To recapitulate, RR 7-95, insofar as it restricts the definition of "*goods*" as basis of transitional input tax credit under Section 105 is a nullity.[49]

As we see it then, the 8% transitional input tax credit should not be limited to the value of the improvements on the real properties but should include the value of the real properties as well.

In this case, since petitioner is entitled to a transitional input tax credit of ₱5,698,200,256, which is more than sufficient to cover its output VAT liability for the first quarter of 1997, a refund of the amount of ₱359,652,009.47 erroneously paid as output VAT for the said quarter is in order.

WHEREFORE, the petition is hereby **GRANTED**. The assailed Decision dated July 7, 2006 of the Court of Appeals in CA-G.R. SP No. 61436 is **REVERSED** and **SET ASIDE.** Respondent Commissioner of Internal Revenue is ordered to refund to petitioner Fort Bonifacio Development Corporation the amount of ₱359,652,009.47 paid as output VAT for the first quarter of 1997 in light of the transitional input tax credit available to petitioner for the said quarter, or in the alternative, to issue a tax credit certificate corresponding to such amount.

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[49] Id. at 166-167.

SO ORDERED.

MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:

I join the dissent of J. Carpio.

MARIA LOURDES P. A. SERENO
Chief Justice

See Dissenting Opinion

ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

I join Dissent of J. Carpio

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ARTURO D. BRION
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

With concurring Opinion.

ROBERTO A. ABAD
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

I join the dissent of J. Carpio

BIENVENIDO L. REYES
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

I join the dissent of J. Carpio

ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

MARIA LOURDES P. A. SERENO
Chief Justice