541 Phil. 119

SECOND DIVISION

[G.R. NO. 153205, January 22, 2007]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. BURMEISTER AND WAIN SCANDINAVIAN CONTRACTOR MINDANAO, INC., RESPONDENT.

D E C I S I O N

CARPIO, J.:

The Case

This petition for review[1] seeks to set aside the 16 April 2002 Decision[2] of the Court of Appeals in CA-G.R. SP No. 66341 affirming the 8 August 2001 Decision[3] of the Court of Tax Appeals (CTA). The CTA ordered the Commissioner of Internal Revenue (petitioner) to issue a tax credit certificate for P6,994,659.67 in favor of Burmeister and Wain Scandinavian Contractor Mindanao, Inc. (respondent).

The Antecedents

The CTA summarized the facts, which the Court of Appeals adopted, as follows:

> [Respondent] is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines with principal address located at Daruma Building, Jose P. Laurel Avenue, Lanang, Davao City.
>
> It is represented that a foreign consortium composed of Burmeister and Wain Scandinavian Contractor A/S (BWSC-Denmark), Mitsui Engineering and Shipbuilding, Ltd., and Mitsui and Co., Ltd. entered into a contract with the National Power Corporation (NAPOCOR) for the operation and maintenance of [NAPOCOR's] two power barges. The Consortium appointed BWSC-Denmark as its coordination manager.
>
> BWSC-Denmark established [respondent] which subcontracted the actual operation and maintenance of NAPOCOR's two power barges as well as the

performance of other duties and acts which necessarily have to be done in the Philippines.

NAPOCOR paid capacity and energy fees to the Consortium in a mixture of currencies (Mark, Yen, and Peso). The freely convertible non-Peso component is deposited directly to the Consortium's bank accounts in Denmark and Japan, while the Peso-denominated component is deposited in a separate and special designated bank account in the Philippines. On the other hand, the Consortium pays [respondent] in foreign currency inwardly remitted to the Philippines through the banking system.

In order to ascertain the tax implications of the above transactions, [respondent] sought a ruling from the BIR which responded with BIR Ruling No. 023-95 dated February 14, 1995, declaring therein that if [respondent] chooses to register as a VAT person and the consideration for its services is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas, the aforesaid services shall be subject to VAT at zero-rate.

[Respondent] chose to register as a VAT taxpayer. On May 26, 1995, the Certificate of Registration bearing RDO Control No. 95-113-007556 was issued in favor of [respondent] by the Revenue District Office No. 113 of Davao City.

For the year 1996, [respondent] seasonably filed its quarterly Value-Added Tax Returns reflecting, among others, a total zero-rated sales of P147,317,189.62 with VAT input taxes of P3,361,174.14, detailed as follows:

Qtr.	Exh.	Date Filed	Zero-Rated Sales	VAT Input Tax
1st	E	04-18-96	P 33,019,651.07	P608,953.48
2nd	F	07-16-96	37,108,863.33	756,802.66
3rd	G	10-14-96	34,196,372.35	930,279.14
4th	H	01-20-97	42,992,302.87	1,065,138.86
Totals			P147,317,189.62	P3,361,174.14

On December 29, 1997, [respondent] availed of the Voluntary Assessment

Program (VAP) of the BIR. It allegedly misinterpreted Revenue Regulations No. 5-96 dated February 20, 1996 to be applicable to its case. Revenue Regulations No. 5-96 provides in part thus:

> SECTIONS 4.102-2(b)(2) and 4.103-1(B)(c) of Revenue Regulations No. 7-95 are hereby amended to read as follows:
>
> Section 4.102-2(b)(2) – "Services other than processing, manufacturing or repacking for other persons doing business outside the Philippines for goods which are subsequently exported, as well as services by a resident to a non-resident foreign client such as project studies, information services, engineering and architectural designs and other similar services, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP."
>
> x x x x x x x x x x.

In [conformity] with the aforecited Revenue Regulations, [respondent] subjected its sale of services to the Consortium to the 10% VAT in the total amount of P103,558,338.11 representing April to December 1996 sales since said Revenue Regulations No. 5-96 became effective only on April 1996. The sum of P43,893,951.07, representing January to March 1996 sales was subjected to zero rate. Consequently, [respondent] filed its 1996 amended VAT return consolidating therein the VAT output and input taxes for the four calendar quarters of 1996. It paid the amount of P6,994,659.67 through BIR's collecting agent, PCIBank, as its output tax liability for the year 1996, computed as follows:

Amount subject to 10% VAT	P103,558,338.11
Multiply by	10%
VAT Output Tax	P 10,355,833.81
Less: 1996 Input VAT	P 3,361,174.14
VAT Output Tax Payable	P 6,994,659.67

On January 7,1999, [respondent] was able to secure VAT Ruling No. 003-99 from the VAT Review Committee which reconfirmed BIR Ruling No. 023-95 "insofar as it held that the services being rendered by BWSCMI is subject to VAT at zero percent (0%)."

On the strength of the aforementioned rulings, [respondent] on April 22,1999, filed a claim for the issuance of a tax credit certificate with Revenue District

> No. 113 of the BIR. [Respondent] believed that it erroneously paid the output VAT for 1996 due to its availment of the Voluntary Assessment Program (VAP) of the BIR.[4]

On 27 December 1999, respondent filed a petition for review with the CTA in order to toll the running of the two-year prescriptive period under the Tax Code.

The Ruling of the Court of Tax Appeals

In its 8 August 2001 Decision, the CTA ordered petitioner to issue a tax credit certificate for P6,994,659.67 in favor of respondent. The CTA's ruling stated:

> [Respondent's] sale of services to the Consortium [was] paid for in acceptable foreign currency inwardly remitted to the Philippines and accounted for in accordance with the rules and regulations of Bangko Sentral ng Pilipinas. These were established by various BPI Credit Memos showing remittances in Danish Kroner (DKK) and US dollars (US$) as payments for the specific invoices billed by [respondent] to the consortium. These remittances were further certified by the Branch Manager x x x of BPI-Davao Lanang Branch to represent payments for sub-contract fees that came from Den Danske Aktieselskab Bank-Denmark for the account of [respondent]. Clearly, [respondent's] sale of services to the Consortium is subject to VAT at 0% pursuant to Section 108(B)(2) of the Tax Code.
>
> x x x x
>
> The zero-rating of [respondent's] sale of services to the Consortium was even confirmed by the [petitioner] in BIR Ruling No. 023-95 dated February 15, 1995, and later by VAT Ruling No. 003-99 dated January 7,1999, x x x.
>
> Since it is apparent that the payments for the services rendered by [respondent] were indeed subject to VAT at zero percent, it follows that it mistakenly availed of the Voluntary Assessment Program by paying output tax for its sale of services. x x x
>
> x x x Considering the principle of solutio indebiti which requires the return of what has been delivered by mistake, the [petitioner] is obligated to issue the tax credit certificate prayed for by [respondent]. x x x[5]

Petitioner filed a petition for review with the Court of Appeals, which dismissed the petition for lack of merit and affirmed the CTA decision.[6]

Hence, this petition.

The Court of Appeals' Ruling

In affirming the CTA, the Court of Appeals rejected petitioner's view that since respondent's services are not destined for consumption abroad, they are not of the same nature as project studies, information services, engineering and architectural designs, and other similar services mentioned in Section 4.102-2(b)(2) of Revenue Regulations No. 5-96[7] as subject to 0% VAT. Thus, according to petitioner, respondent's services cannot legally qualify for 0% VAT but are subject to the regular 10% VAT.[8]

The Court of Appeals found untenable petitioner's contention that under VAT Ruling No. 040-98, respondent's services should be destined for consumption abroad to enjoy zero-rating. Contrary to petitioner's interpretation, there are two kinds of transactions or services subject to zero percent VAT under VAT Ruling No. 040-98. These are (a) services other than repacking goods for other persons doing business outside the Philippines which goods are subsequently exported; and (b) services by a resident to a non-resident foreign client, such as project studies, information services, engineering and architectural designs and other similar services, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP).[9]

The Court of Appeals stated that "only the first classification is required by the provision to be consumed abroad in order to be taxed at zero rate. In x x x the absence of such express or implied stipulation in the statute, the second classification need not be consumed abroad."[10]

The Court of Appeals further held that assuming petitioner's interpretation of Section 4.102-2(b)(2) of Revenue Regulations No. 5-96 is correct, such administrative provision is void being an amendment to the Tax Code. Petitioner went beyond merely providing the implementing details by adding another requirement to zero-rating. "This is indicated by the additional phrase 'as well as services by a resident to a non-resident foreign client, such as project studies, information services and engineering and architectural designs and other similar services.' In effect, this phrase adds not just one but two requisites: (a) services must be rendered by a resident to a non-resident; and (b) these must be in the nature of project studies, information services, etc."[11]

The Court of Appeals explained that under Section 108(b)(2) of the Tax Code,[12] for services which were performed in the Philippines to enjoy zero-rating, these must comply only with two requisites, to wit: (1) payment in acceptable foreign currency and (2) accounted for in accordance with the rules of the BSP. Section 108(b)(2) of the Tax Code

does not provide that services must be "destined for consumption abroad" in order to be VAT zero-rated.[13]

The Court of Appeals disagreed with petitioner's argument that our VAT law generally follows the destination principle (i.e., exports exempt, imports taxable).[14] The Court of Appeals stated that "if indeed the 'destination principle' underlies and is the basis of the VAT laws, then petitioner's proper remedy would be to recommend an amendment of Section 108(b)(2) to Congress. Without such amendment, however, petitioner should apply the terms of the basic law. Petitioner could not resort to administrative legislation, as what [he] had done in this case."[15]

The Issue

The lone issue for resolution is whether respondent is entitled to the refund of P6,994,659.67 as erroneously paid output VAT for the year 1996.[16]

The Ruling of the Court

We deny the petition.

At the outset, the Court declares that the denial of the instant petition is not on the ground that respondent's services are subject to 0% VAT. Rather, it is based on the non-retroactivity of the prejudicial revocation of BIR Ruling No. 023-95[17] and VAT Ruling No. 003-99,[18] which held that respondent's services are subject to 0% VAT and which respondent invoked in applying for refund of the output VAT.

Section 102(b) of the Tax Code,[19] the applicable provision in 1996 when respondent rendered the services and paid the VAT in question, enumerates which services are zero-rated, thus:

> (b) Transactions subject to zero-rate. ? The following services performed in the Philippines by VAT-registered persons shall be subject to 0%:
>
> (1) Processing, manufacturing or repacking goods **for other persons doing business outside the Philippines** which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);
>
> (2) **Services other than those mentioned in the preceding sub-paragraph,**

> the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);
>
> (3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero rate;
>
> (4) Services rendered to vessels engaged exclusively in international shipping; and
>
> (5) Services performed by subcontractors and/or contractors in processing, converting, or manufacturing goods for an enterprise whose export sales exceed seventy percent (70%) of total annual production. (Emphasis supplied)

In insisting that its services should be zero-rated, respondent claims that it complied with the requirements of the Tax Code for zero rating under the second paragraph of Section 102(b). Respondent asserts that (1) the payment of its service fees was in acceptable foreign currency, (2) there was inward remittance of the foreign currency into the Philippines, and (3) accounting of such remittance was in accordance with BSP rules. Moreover, respondent contends that its services which "constitute the actual operation and management of two (2) power barges in Mindanao" are not "even remotely similar to project studies, information services and engineering and architectural designs under Section 4.102-2(b)(2) of Revenue Regulations No. 5-96." As such, respondent's services need not be "destined to be consumed abroad in order to be VAT zero-rated."

Respondent is mistaken.

The Tax Code not only requires that the services be other than "processing, manufacturing or repacking of goods" and that payment for such services be in acceptable foreign currency accounted for in accordance with BSP rules. Another essential condition for qualification to zero-rating under Section 102(b)(2) is that the **recipient of such services is doing business *outside* the Philippines**. While this requirement is not expressly stated in the second paragraph of Section 102(b), this is clearly provided in the first paragraph of Section 102(b) where the listed services must be "for other persons doing business outside the Philippines." The phrase **"for other persons doing business outside the Philippines"** not only refers to the services enumerated in the first paragraph of Section 102(b), but also pertains to the general term "services" appearing in the second paragraph of Section 102(b). In short, services other than processing, manufacturing, or repacking of goods must likewise be performed for persons doing business outside the Philippines.

This can only be the logical interpretation of Section 102(b)(2). If the provider and

recipient of the "other services" are both doing business in the Philippines, the payment of foreign currency is irrelevant. Otherwise, those subject to the regular VAT under Section 102(a) can avoid paying the VAT by simply stipulating payment in foreign currency inwardly remitted by the recipient of services. To interpret Section 102(b)(2) to apply to a payer-recipient of services doing business in the Philippines is to make the payment of the regular VAT under Section 102(a) dependent on the generosity of the taxpayer. The provider of services can choose to pay the regular VAT or avoid it by stipulating payment in foreign currency inwardly remitted by the payer-recipient. Such interpretation removes Section 102(a) as a tax measure in the Tax Code, an interpretation this Court cannot sanction. A tax is a mandatory exaction, not a voluntary contribution.

When Section 102(b)(2) stipulates payment in "acceptable foreign currency" under BSP rules, the law clearly envisions the payer-recipient of services to be doing business outside the Philippines. Only those not doing business in the Philippines can be required under BSP rules[20] to pay in acceptable foreign currency for their purchase of goods or services from the Philippines. In a domestic transaction, where the provider and recipient of services are both doing business in the Philippines, the BSP cannot require any party to make payment in foreign currency.

Services covered by Section 102(b) (1) and (2) are in the nature of export sales since the payer-recipient of services is doing business outside the Philippines. Under BSP rules,[21] the proceeds of export sales must be reported to the *Bangko Sentral ng Pilipinas*. Thus, there is reason to require the provider of services under Section 102(b) (1) and (2) to account for the foreign currency proceeds to the BSP. The same rationale does not apply if the provider and recipient of the services are both doing business in the Philippines since their transaction is not in the nature of an export sale even if payment is denominated in foreign currency.

Further, when the provider and recipient of services are **both** doing business in the Philippines, their transaction falls squarely under Section 102(a) governing **domestic** sale or exchange of services. Indeed, this is a purely local sale or exchange of services subject to the regular VAT, unless of course the transaction falls under the other provisions of Section 102(b).

Thus, when Section 102(b)(2) speaks of **"[s]ervices other than those mentioned in the preceding subparagraph,"** the legislative intent is that only the services are different between subparagraphs 1 and 2. The requirements for zero-rating, including the essential condition that the recipient of services is doing business outside the Philippines, remain the same under both subparagraphs.

Significantly, the amended Section 108(b)[22] [previously Section 102(b)] of the present

Tax Code clarifies this legislative intent. Expressly included among the transactions subject to 0% VAT are "[s]ervices other than those mentioned in the [first] paragraph [of Section 108(b)] rendered to **a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines** when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP."

In this case, the payer-recipient of respondent's services is the Consortium which is a joint-venture doing business in the Philippines. While the Consortium's principal members are non-resident foreign corporations, **the Consortium itself is doing business in the Philippines.** This is shown clearly in BIR Ruling No. 023-95 which states that the contract between the Consortium and NAPOCOR is for a 15-year term, thus:

> This refers to your letter dated January 14, 1994 requesting for a clarification of the tax implications of a contract between a consortium composed of Burmeister & Wain Scandinavian Contractor A/S ("BWSC"), Mitsui Engineering & Shipbuilding, Ltd. (MES), and Mitsui & Co., Ltd. ("MITSUI"), all referred to hereinafter as the "Consortium", and the National Power Corporation ("NAPOCOR") **for the operation and maintenance of two 100-Megawatt power barges ("Power Barges") acquired by NAPOCOR for a 15-year term.**[23] (Emphasis supplied)

Considering this length of time, the Consortium's operation and maintenance of NAPOCOR's power barges cannot be classified as a single or isolated transaction. The Consortium does not fall under Section 102(b)(2) which requires that the recipient of the services must be a person doing business outside the Philippines. Therefore, respondent's services to the Consortium, not being supplied to a person doing business outside the Philippines, cannot legally qualify for 0% VAT.

Respondent, as subcontractor of the Consortium, operates and maintains NAPOCOR's power barges in the Philippines. NAPOCOR pays the Consortium, through its non-resident partners, partly in foreign currency outwardly remitted. In turn, the Consortium pays respondent also in foreign currency inwardly remitted and accounted for in accordance with BSP rules. This payment scheme does not entitle respondent to 0% VAT. As the Court held in *Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch)*,[24] the place of payment is immaterial, much less is the place where the output of the service is ultimately used. An essential condition for entitlement to 0% VAT under Section 102(b)(1) and (2) is that the recipient of the services is a person doing business outside the Philippines. **In this case, the recipient of the services is the Consortium, which is doing business not outside, but within the Philippines because it has a 15-year contract to operate and maintain NAPOCOR's two 100-megawatt**

power barges in Mindanao.

The Court recognizes the rule that the VAT system generally follows the "destination principle" (exports are zero-rated whereas imports are taxed). However, as the Court stated in *American Express*, there is an exception to this rule.[25] This exception refers to the 0% VAT on services enumerated in Section 102 and performed in the Philippines. For services covered by Section 102(b)(1) and (2), the recipient of the services must be a person doing business outside the Philippines. Thus, to be exempt from the destination principle under Section 102(b)(1) and (2), the services must be (a) performed in the Philippines; (b) for a person doing business outside the Philippines; and (c) paid in acceptable foreign currency accounted for in accordance with BSP rules.

Respondent's reliance on the ruling in *American Express*[26] is misplaced. That case involved a recipient of services, specifically American Express International, Inc. (Hongkong Branch), doing business outside the Philippines. There, the Court stated:

> Respondent [American Express International, Inc. (Philippine Branch)] is a VAT-registered person that facilitates the collection and payment of receivables belonging to its **non-resident foreign client** [American Express International, Inc. (Hongkong Branch)], for which it gets paid in acceptable foreign currency inwardly remitted and accounted for in accordance with BSP rules and regulations. x x x x[27] (Emphasis supplied)

In contrast, this case involves a recipient of services – the Consortium – which is doing business in the Philippines. Hence, American Express' services were subject to 0% VAT, while respondent's services should be subject to 10% VAT.

Nevertheless, in seeking a refund of its excess output tax, respondent relied on VAT Ruling No. 003-99,[28] which reconfirmed BIR Ruling No. 023-95[29] "insofar as it held that the services being rendered by BWSCMI is subject to VAT at zero percent (0%)." Respondent's reliance on these BIR rulings binds petitioner.

Petitioner's filing of his Answer before the CTA challenging respondent's claim for refund effectively serves as a revocation of VAT Ruling No. 003-99 and BIR Ruling No. 023-95. However, such revocation cannot be given retroactive effect since it will prejudice respondent. Changing respondent's status will deprive respondent of a refund of a substantial amount representing excess output tax.[30] Section 246 of the Tax Code provides that any revocation of a ruling by the Commissioner of Internal Revenue shall not be given retroactive application if the revocation will prejudice the taxpayer. Further, there is no showing of the existence of any of the exceptions enumerated in Section 246 of the Tax Code for the retroactive application of such revocation.

However, upon the filing of petitioner's Answer dated 2 March 2000 before the CTA contesting respondent's claim for refund, respondent's services shall be subject to the regular 10% VAT.[31] Such filing is deemed a revocation of VAT Ruling No. 003-99 and BIR Ruling No. 023-95.

WHEREFORE, the Court **DENIES** the petition.

SO ORDERED.

Puno, CJ., *Quisumbing*, *Carpio-Morales*, *Tinga*, and *Velasco, Jr.*, concur.

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[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Bernardo P. Abesamis, with the concurrence of Associate Justices Eubulo G. Verzola and Perlita J. Tria Tirona. *Rollo*, pp. 22-37.

[3] Penned by Presiding Judge Ernesto D. Acosta, with the concurrence of Associate Judge Amancio Q. Saga. Id. at 38-47.

[4] Id. at 38-41.

[5] Id. at 43-46.

[6] Id. at 37.

[7] This provision reads:

(2) Services other than processing, manufacturing or repacking for other persons doing business outside the Philippines for goods which are subsequently exported, as well as services by a resident to a non-resident foreign client such as project studies, information services, engineering and architectural designs and other similar services, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP.

[8] Rollo, p. 28.

[9] Id. at 29-30.

[10] Id. at 30.

[11] Id. at 33, 35.

[12] Refers to Republic Act No. 8424 otherwise known as the Tax Reform Act of 1997 which took effect on 1 January 1998.

[13] *Rollo*, p. 34.

[14] Id. at 35.

[15] Id. at 36.

[16] Id. at 12.

[17] Issued by then Commissioner Liwayway Vinzons-Chato.

[18] Issued by then Commissioner of Internal Revenue Beethoven L. Rualo.

[19] In this case, the applicable Tax Code refers to the National Internal Revenue Code (NIRC) of 1986 as amended by Executive Order No. 273 and Republic Act No. 7716 dated 25 July 1987 and 5 May 1994, respectively. At the time respondent secured BIR Ruling No. 023-95 dated 14 February 1995, Section 108 of the Tax Code was numbered Section 102. The renumbering took effect on 1 January 1998 pursuant to Republic Act No. 8424, otherwise known as the Tax Reform Act of 1997.

[20] See Chapter II (B) on Export Trade Transactions, BSP Circular No. 1389 dated 13 April 1993, otherwise known as the Consolidated Foreign Exchange Rules and Regulations.

[21] Id.

[22] 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) which took effect on 1 July 2005.

[23] *Rollo*, p. 92.

[24] G.R. No. 152609, 29 June 2005, 462 SCRA 197.

[25] Id.

[26] Id. Respondent relied on the ruling of the Court of Appeals in the American Express case since at the time there was yet no Supreme Court ruling on the case.

[27] Id. at 208.

[28] Rollo, pp. 95-96.

[29] Id. at 92-94.

[30] *See Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch),* supra note 24.

[31] The Tax Code, as amended by Republic Act No. 9337 which took effect on 1 July 2005, increased the rate of the VAT from 10% to 12%. The relevant provisions of 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) state:

SEC. 6. Section 108 of the same Code, as amended, is hereby further amended to read as follows:

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

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

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

"(ii) National government deficit as a percentage of GDP of the previous year exceeds one and one-half percent (1 ½%).

x x x x (Emphasis supplied)
