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Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **June 23, 2021** which reads as follows:*

“G.R. No. 197611 (Commissioner of Internal Revenue, Petitioner, v. Secretary of Justice and Camarines Norte Water District [CNWD], Respondents). – This Petition for Review on *Certiorari*¹ seeks to reverse and set aside the Decision² dated 15 September 2010 and Resolution³ dated 13 June 2011 of the Court of Appeals(CA) in CA-GR SP No. 96004. The assailed Decision and Resolution affirmed the decision of respondent Secretary of Justice (SOJ) ordering the cancellation of the tax assessments issued by petitioner Commissioner of Internal Revenue (CIR) against private respondent Camarines Norte Water District (CNWD).

Antecedents

CNWD was organized by virtue of the provisions of Presidential Decree No. (PD) 198, as amended by PD Nos. 768 and 1479, otherwise known as the Provincial Water Utilities Act of 1973. It is engaged in providing and supplying potable and safe drinking water to its consumers in the Municipalities of Daet, Labo, Mercedes, San Vicente, Talisay and Vinzons, Camarines Norte.⁴

¹ *Rollo*, pp. 11-46.

² *Id.* at 47-64; penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Normandie B. Pizarro and Ruben C. Ayson of the Seventh Division, Court of Appeals, Manila.

³ *Id.* at 65-67; penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Normandie B. Pizarro and Jane Aurora C. Lantion of the Special Former Seventh Division, Court of Appeals, Manila.

⁴ *Id.* at 47-48.

On 13 November 2001, Letter of Authority No. (LOA) 0061324 was issued authorizing and directing Revenue Officer Romulo C. Baguid of Revenue Office 64, Daet, Camarines Norte to examine the books of accounts and other accounting records of CNWD for all internal revenue tax purposes covering the taxable year (TY) 2000. Pursuant to said examination, CNWD was assessed for deficiency income and value-added taxes (VAT). As such, a Preliminary Assessment Notice was issued against CNWD on 03 February 2003, and a Formal Letter of Demand, and the corresponding Final Assessment Notice Nos. 64-00-000 534-748 demanding the payment of a total amount of Php9,736,486.17 were sent on 03 July 2003.⁵

For its part, CNWD disputed the assessments arguing that local water districts which were created under P.D. 198, as amended, are wholly owned government entities duly organized for public purpose and which are performing an essential government function of providing and supplying potable and safe drinking water to its consumers within the designated franchise area.⁶

In a Decision dated 26 August 2003, Regional Director Leonardo Q. Sacamos (RD Sacamos) of Revenue Region No. 10, Legaspi City denied CNWD's protest.⁷ On 11 November 2003, CNWD moved for reconsideration of said decision. However, the CIR in his decision dated 19 April 2005 affirmed the findings of RD Sacamos.⁸

Accordingly, on 19 May 2005, CNWD filed a Petition for Arbitration with the Office of the SOJ anchored on Sections 66 to 71, Chapter 14, Book IV of Executive Order No. (EO) 292, otherwise known as the Administrative Code of 1997. On 22 June 2005, CNWD filed an Amended Petition, questioning the 11 November 2003 Decision of the CIR, hinged on the proper interpretation of Section 32 (B) (7) (b) of the Tax Code.⁹

On 20 March 2006, the SOJ rendered a decision declaring CNWD exempt from payment of income tax as an exclusion from gross income. It further ruled that while CNWD is liable for franchise tax, it is exempt from VAT and all other increments thereto. The SOJ also granted CNWD's prayer for a Cease and Desist Order against the

⁵ *Id.* at 48.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 48-49.

⁹ *Id.* at 49.

CIR to defer it from collecting the assessed deficiency tax.¹⁰

The CIR's Motion for Reconsideration was denied by the SOJ in its Resolution dated 19 June 2006. Hence, the CIR filed a Petition for *Certiorari* with the CA.¹¹

Ruling of the CA

On 15 September 2010, the CA dismissed the petition for lack of merit, *viz*:

WHEREFORE, premises considered, the petition is **DISMISSED** for lack of merit. The assailed *decision* and *resolution* dated March 20, 2006 and June 19, 2006, respectively, are **AFFIRMED**.

SO ORDERED.¹²

The CA held that the SOJ correctly assumed jurisdiction of the case pursuant to its authority laid down in Sections 66 and 68, Chapter 14, Book IV of E.O. 292. Moreover, the CIR has actively participated in the proceedings before the SOJ and has voluntarily submitted to its jurisdiction.¹³

More importantly, the CA underlined that the income of CNWD, which is derived from its operation as a public water utility, is excluded from gross income under Section 32 (b) (7) (b) of the Tax Code, and hence, is exempt from taxation. It also agreed with the SOJ that CNWD is exempt from the payment of VAT on its services, which are already subject to franchise tax, pursuant to Section 109 (j) of the Tax Code.¹⁴

In any case, the CA pronounced that the issuance of Republic Act No. (RA) 10026,¹⁵ which grants tax exemption to local water districts and condones all unpaid taxes starting 13 August 1996,

¹⁰ *Id.* at 50.

¹¹ *Id.*

¹² *Id.* at 63-64.

¹³ *Id.* at 53-56.

¹⁴ *Id.* at 58-60.

¹⁵ Also known as *An Act Granting Income Tax Exemption To Local Water Districts By Amending Section 27 (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, And Adding Section 289-A to the Code, for the purpose.*

effectively exempts CNWD from paying income tax and condones the tax assessed by the Bureau of Internal Revenue (BIR) for TY 2000.¹⁶

The CA denied the CIR's Motion for Reconsideration in its Resolution dated 13 June 2011.¹⁷ Hence, this Petition for Review on *Certiorari*.¹⁸

Issues

Aggrieved, the CIR is now before the Court raising the following issues: (1) whether or not the SOJ correctly assumed jurisdiction of CNWD's Petition, and (2) whether or not the CA erred in sustaining the cancellation of CNWD's deficiency tax assessment.¹⁹

Ruling of the Court

The petition is partly meritorious.

In assailing the CA's Decision, the CIR argues that CNWD's Petition for Arbitration essentially questioned the deficiency assessments, which is beyond the SOJ's jurisdiction.²⁰ The CIR likewise maintains that the CA should not have pronounced that all of CNWD's deficiency tax assessments are automatically condoned by RA 10026 since it has yet to check if CNWD qualified for such condonation.²¹ Finally, the CIR insists that CNWD cannot anchor its exception from paying income tax on Section 32 (B) (7) (b) of the Tax Code.²²

On the other hand, the SOJ and CNWD adamantly contend that the present issue is moot and academic in the advent of RA 10026's enactment, which condoned CNWD's income tax liability.²³ CNWD also underlines that the SOJ correctly took cognizance of its petition²⁴ and that the CA did not err in upholding the cancellation of the

¹⁶ *Rollo*, p. 60-63.

¹⁷ *Id.* at 65-67.

¹⁸ *Id.* at 11-46.

¹⁹ *Id.* at 19-20.

²⁰ *Id.* at 21-33.

²¹ *Id.* at 39-40.

²² *Id.* at 35-38.

²³ *Id.* at 190-192 and 262-264.

²⁴ *Id.* at 171-178.

deficiency tax assessments issued against CNWD.²⁵

We ultimately rule for petitioner CIR. The findings of this Court shall be discussed *in seriatim*.

The issuance of RA 10026 did not render the instant case moot and academic

A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon will be of no practical use or value.²⁶

In this regard, Section 2 of RA 10026 provides that:

SECTION 2. A new section, designated as Section 289-A under Chapter II, Title XI, of the same Code is inserted to read as follows:

"SEC. 289-A. *Support for Local Water Districts.* — The amount that would have been paid as income tax and saved by the local water district by virtue of its exemption to the income taxes shall be used by the local water district concerned for capital equipment expenditure in order to expand water services coverage and improve water quality in order to provide safe and clean water in the provinces, cities, and municipalities: *Provided*, That, the water district shall adopt internal control reforms that would bring about their economic and financial viability: *Provided, further*, That the water district shall not increase by more than twenty percent (20%) a year its appropriation for personal services, as well as for travel, transportation or representation expenses and purchase of motor vehicles. HEAcDC

"All unpaid taxes or any portion thereof due from a local water district for the period starting August 13, 1996 until the effectivity date of this Act are hereby condoned by the Government **subject to the following conditions: (1) that the Bureau of Internal Revenue, after careful review of the financial statements of a water district applying for**

²⁵*Id.* at 183-190.

²⁶*Dangerous Drugs Board v. Matibag*, G.R. No. 210013, 22 January 2020 [Per J. Caguioa].

condonation of taxes due, establishes its financial incapacity, after providing for its maintenance and operating expenses, debt servicing and reserve fund, to meet such obligations for the period stated herein; and (2) that the water district availing of such condonation shall submit to Congress of the Philippines a program of internal reforms, duly certified by the local water utilities administration, that would bring about its economic and financial viability.

Xxx (Emphasis supplied.)

Perusing the above pertinent provision, it is clear that the issues arising from the deficiency tax assessment are not moot and academic.²⁷ Verily, the issuance of RA 10026 did not negate herein assailed deficiency tax assessment for the reason that Section 2 of RA 10026 itself provides for conditions that must be complied with before the deficiency income tax is condoned. Reading the statute in its entirety, it is clear that the condonation of past income tax liabilities is subject to conditions that must be fulfilled. As such, the condonation of past income tax liabilities is not automatic. This, especially since the condonation of a tax liability is equivalent and is in the nature of a tax exemption. Being so, it should be sustained only when expressed in explicit terms, and it cannot be extended beyond the plain meaning of those terms.²⁸

Moreover, there is actual substantial relief that the CIR is entitled to should it be found that CNWD did not comply with the requirements for condonation. Additionally, there is a practical use or value to decide on the issues raised by the parties despite the effectivity of RA 10026. These issues include CNWD's liability for income tax and VAT. That RA 10026 is enforced did not erase the question of whether or not CNWD is liable for: (1) income tax, should it be established that CNWD fail to comply with the condonation conditions provided in RA 10026, and (2) VAT.

Given the foregoing, it is obvious that there remains an unresolved justiciable controversy in the instant case. In particular, did CNWD comply with the conditions for income tax condonation? If CNWD failed to fulfill said conditions, is it liable to pay the deficiency income tax assessment? Is CNWD liable for the deficiency

²⁷ See *Department of Public Works and Highways v. CMC/Monark/Pacific/Hi-Tri Joint Venture*, G.R. No. 179732, 13 September 2017 [Per J. Leonen] citing *Carpio v. Court of Appeals*, 705 Phil. 153 (2013), G.R. No. 183102, 27 February 2013 [Per J. Sereno].

²⁸ See *Surigao Consolidated Mining Co., Inc. v. Collector of Internal Revenue*, G.R. No. L-14878, 26 December 1963, 119 Phil. 33 (1963) [Per J. Regala].

VAT assessment? In view of all these considerations, it cannot be said that the main case has become moot and academic.²⁹

The SOJ has jurisdiction to decide the case

The SOJ's jurisdiction over tax disputes between the government and government-owned and controlled corporations (GOCC) has been settled by this Court in the case of *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue*,³⁰ to wit:

The primary issue in this case is whether the DOJ Secretary has jurisdiction over OSJ Case No. 2007-3 which involves the resolution of whether the sale of the Pantabangan-Masiway Plant and Magat Plant is subject to VAT.

We agree with the Court of Appeals that jurisdiction over the subject matter is vested by the Constitution or by law, and not by the parties to an action. Jurisdiction cannot be conferred by consent or acquiescence of the parties or by erroneous belief of the court, quasi-judicial office or government agency that it exists.

However, contrary to the ruling of the Court of Appeals, we find that the DOJ is vested by law with jurisdiction over this case. This case involves a dispute between PSALM and NPC, which are both wholly government owned corporations, and the BIR, a government office, over the imposition of VAT on the sale of the two power plants. There is no question that **original** jurisdiction is with the CIR, who issues the preliminary and the final tax assessments. However, if the government entity disputes the tax assessment, the dispute is already between the BIR (represented by the CIR) and another government entity, in this case, the petitioner PSALM. **Under Presidential Decree No. 242 (PD 242), all disputes and claims solely between government agencies and offices, including government-owned or controlled corporations, shall be administratively settled or adjudicated by the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel, depending on the issues and government agencies involved.** As regards cases involving only questions of law, it is the Secretary of

²⁹ See *Carpio v. Court of Appeals*, *supra* at note 27.

³⁰ See *Commissioner of Internal Revenue v. Secretary of Justice*, G.R. No. 209289, 09 July 2018 [Per J. Tijam] citing *Power Sector Assets and Liabilities Management Corp. v. Commissioner of Internal Revenue*, 815 Phil. 966 (2017), G.R. No. 198146, 08 August 2017 [Per J. Carpio].

Justice who has jurisdiction. Sections 1, 2, and 3 of PD 242 read:

Section 1. Provisions of law to the contrary notwithstanding, all disputes, claims and controversies solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including constitutional offices or agencies, arising from the interpretation and application of statutes, contracts or agreements, shall henceforth be administratively settled or adjudicated as provided hereinafter: Provided, That, this shall not apply to cases already pending in court at the time of the effectivity of this decree.

Section 2. In all cases involving only questions of law, the same shall be submitted to and settled or adjudicated by the Secretary of Justice, as Attorney General and ex officio adviser of all government owned or controlled corporations and entities, in consonance with Section 83 of the Revised Administrative Code. His ruling or determination of the question in each case shall be conclusive and binding upon all the parties concerned.

Section 3. Cases involving mixed questions of law and of fact or only factual issues shall be submitted to and settled or adjudicated by:

(a) The Solicitor General, with respect to disputes or claims [or] controversies between or among the departments, bureaus, offices and other agencies of the National Government;

(b) The Government Corporate Counsel, with respect to disputes or claims or controversies between or among the government-owned or controlled corporations or entities being served by the Office of the Government Corporate Counsel; and

(c) **The Secretary of Justice, with respect to all other disputes or claims or controversies which do not fall**

under the categories mentioned in paragraphs (a) and (b). x x x

The use of the word "shall" in a statute connotes a mandatory order or an imperative obligation. Its use rendered the provisions mandatory and not merely permissive, and unless PD 242 is declared unconstitutional, its provisions must be followed. The use of the word "shall" means that administrative settlement or adjudication of disputes and claims between government agencies and offices, including government-owned or controlled corporations, is not merely permissive but mandatory and imperative. Thus, under PD 242, it is mandatory that disputes and claims "**solely**" between government agencies and offices, including government-owned or controlled corporations, involving only questions of law, be submitted to and settled or adjudicated by the Secretary of Justice.

The law is clear and covers "***all disputes, claims and controversies solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including constitutional offices or agencies arising from the interpretation and application of statutes, contracts or agreements.***" When the law says "all disputes, claims and controversies solely" among government agencies, the law means all, without exception. Only those cases already pending in court at the time of the effectivity of PD 242 are not covered by the law.

The purpose of PD 242 is to provide for a **speedy and efficient administrative settlement or adjudication of disputes between government offices or agencies under the Executive branch, as well as to filter cases to lessen the clogged dockets of the courts.** As explained by the Court in *Philippine Veterans Investment Development Corp. (PHIVIDEC) v. Judge Velez*:

Contrary to the opinion of the lower court, P.D. No. 242 is not unconstitutional. It does not diminish the jurisdiction of [the] courts but only prescribes an administrative procedure for the settlement of certain types of disputes between or among departments, bureaus, offices, agencies, and instrumentalities of the National Government, including government-owned or controlled corporations, so that they need not always repair to the courts for the settlement of controversies arising from the interpretation and application of statutes, contracts or agreements. The procedure is not much different, and no less desirable, than the

arbitration procedures provided in Republic Act No. 876 (Arbitration Law) and in Section 26, R.A. 6715 (The Labor Code). It is an alternative to, or a substitute for, traditional litigation in court with the added advantage of avoiding the delays, vexations and expense of court proceedings. Or, as P.D. No. 242 itself explains, its purpose is "the elimination of needless clogging of court dockets to prevent the waste of time and energies not only of the government lawyers but also of the courts, and eliminates expenses incurred in the filing and prosecution of judicial actions."

PD 242 is only applicable to disputes, claims, and controversies **solely** between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned or controlled corporations, and where no private party is involved. **In other words, PD 242 will only apply when all the parties involved are purely government offices and government-owned or controlled corporations.**

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P.D. No. 242 is now embodied in Chapter 14, Book IV of E.O. 292. The pertinent provisions of which provides:

SEC. 66. *How Settled.* — All disputes, claims and controversies, solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned or controlled corporations, such as those arising from the interpretation and application of statutes, contracts or agreements, shall be administratively settled or adjudicated in the manner provided in this Chapter. This Chapter shall, however, not apply to disputes involving the Congress, the Supreme Court, the Constitutional Commissions, and local governments.

SEC. 67. *Disputes Involving Questions of Law.* — All cases involving only questions of law shall be submitted to and settled or adjudicated by the Secretary of Justice as Attorney-General of the National Government and as *ex officio* legal adviser of all government-owned or controlled corporations. His ruling or decision thereon shall be conclusive and binding on all the parties concerned. (Emphasis ours)

SEC. 68. *Disputes Involving Questions of Fact and Law.* — Cases involving mixed questions of law and of fact or only factual issues shall be submitted to and settled or adjudicated by:

(1) The Solicitor General, if the dispute, claim or controversy involves only departments, bureaus, offices and other agencies of the National Government as well as government-owned or controlled corporations or entities of whom he is the principal law officer or general counsel; and

(2) The Secretary of Justice, in all other cases not falling under paragraph (1).

Since this case is a dispute between the CIR and CNWD, a local water district which is a GOCC pursuant to P.D. 198, clearly, the SOJ has jurisdiction to decide over the case.³¹

CNWD's liability for income tax and VAT

As a final note, We clarify CNWD's tax liabilities prior to the enactment of RA 10026.

Pursuant to Section 32 (B) (7) (b) of the Tax Code,³² income derived by the government or its political subdivisions is exempt from gross income if the source of the income is from any public utility or from the exercise of any essential governmental functions.

CNWD, as acknowledged by both parties,³³ is a public utility, since it is engaged in the operation and management of the water supply and distribution system for domestic, commercial, and

³¹ *Id.*

³² **SEC. 32. *Gross Income.*** -

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(B) *Exclusions from Gross Income.* - The following items shall not be included in gross income and shall be exempt from taxation under this Title:

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(7) *Miscellaneous Items.* -

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(b) *Income Derived by the Government or its Political Subdivisions.* - Income derived from any public utility or from the exercise of any essential governmental function accruing to the Government of the Philippines or to any political subdivision thereof.

³³ *Rollo*, p. 35, 184-185, 223.

industrial uses for residents within the boundaries of the municipalities of Basud, Daet, Labo, Mercedes, San Vicente, Talisay and Vinzons, Camarines Norte.³⁴

In the case of *JG Summit Holdings v. Court of Appeals*,³⁵ We defined public utility in the following manner:

A '**public utility**' is 'a business or service engaged in regularly supplying the public with some commodity or service of public consequence such as electricity, gas, water, transportation, telephone or telegraph service.' To constitute a public utility, the facility must be necessary for the maintenance of life and occupation of the residents. However, the fact that a business offers services or goods that promote public good and serve the interest of the public does not automatically make it a public utility. Public use is not synonymous with public interest. As its name indicates, the term 'public utility' implies **public use** and **service to the public**. The principal **determinative characteristic** of a public utility is that of service to, or readiness to serve, an indefinite public or portion of the public as such which has a legal right to demand and receive its services or commodities. Stated otherwise, the owner or person in control of a public utility must have devoted it to such use that the public generally or that part of the public which has been served and has accepted the service, has the right to demand that use or service so long as it is continued, with reasonable efficiency and under proper charges. Unlike a private enterprise which independently determines whom it will serve, a 'public utility' holds out generally and may not refuse legitimate demand for service.

To be sure, in order to be excluded from gross income under Section 32(B)(7)(b), CNWD's income must accrue to the Government of the Philippines or any political subdivision thereof. While CNWD is indisputably a public utility, the income it derives does not accrue to the government or to any political subdivision thereof, such as the local government of Camarines Norte.

Verily, the income derived by CNWD from its sale of water is utilized for its operation and maintenance alone under Section 37 of PD 198, as amended.³⁶ Moreover, the priority of disposing its income

³⁴ *Id.* at 185.

³⁵ *JG Summit Holdings v. Court of Appeals*, 458 Phil. 581 (2003), G.R. No. 124293, 24 September 2003 [Resolution, Per J. Puno].

³⁶ As amended by PD 768 and renumbered by Section 7 of PD 1479.

SECTION 37. *Rates and Charges — Water.* — A district may sell water under its control, without preference, under uniform schedules of rates and charges to any all water users within

does not include that of the local government of Camarines Norte under Section 41 of PD 198.³⁷ Finally, the non-accrual of CNWD's income to Camarines Norte and the pertinent Municipalities therein is reinforced by the latter's loss of ownership and control over the former under Section 7 of PD 198.³⁸ Besides, the passage of the 1997 Tax Code accordingly removed the tax exemption privileges contained in the charters of GOCC, except for some.³⁹

Based on the foregoing, CNWD is liable for income tax as a GOCC under Section 27(A) of the 1997 Tax Code for the taxable years before the effectivity of RA 10026 in 2010, subject to condonation.⁴⁰

the district. Said schedule may provide for differential rates for different categories of use and different quantity blocks. The district, so far as practicable, shall fix such rates and charges for water as will result in revenues which will:

- (a) Provide for reimbursement from all new water customers for the cost of installing new services and meters;
- (b) Provide for revenue from all water deliveries and services performed by the district;
- (c) Pay the operating expenses of the district;
- (d) Provide for the maintenance and repairs of the works;
- (e) Provide a reasonable surplus for replacement extension and improvements; and
- (f) Pay the interest and provide a sinking or other fund for the payment of debts of the district as they become due.

³⁷ "Sec. 41. *Disposition of Income.* — The income of the district shall be disposed of according to the following priorities:

"First to pay its contractual and statutory obligations and to meet its essential current operating expenses.

"Second, to allocate at least fifty percent (50%) of the balance exclusively as a reserve for debt service and operating and maintenance, to be used for such purposes only during periods of calamities force majeure or unforeseen events. cd

"Third, to allocate the residue as a reserve exclusively for expansion and improvement of its physical facilities."

³⁸ "SEC. 7. *Filing of Resolution.* — A certified copy of the resolution or resolutions forming a district shall be forwarded to the office of the Secretary of the Administration. If found by the Administration to conform to the requirements of Section 6 and the policy objectives in Section 22, the resolution shall be duly filed. The district shall be deemed duly formed and existing upon the date of such filing. A certified copy of said resolution showing the filing stamp of the Administration shall be maintained in the office of the district. **Upon such filing, the local government or governments concerned shall lose ownership, supervision and control or any right whatsoever over the district except as provided herein.**"

³⁹ SEC. 27. *Rates of Income tax on Domestic Corporations.* —

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(C) Government-owned or Controlled-Corporations, Agencies or Instrumentalities. - The provisions of existing special or general laws to the contrary notwithstanding, all corporations, agencies, or instrumentalities owned or controlled by the Government, except the Government Service Insurance System (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), the Philippine Charity Sweepstakes Office (PCSO) and the Philippine Amusement and Gaming Corporation (PAGCOR), shall pay such rate of tax upon their taxable income as are imposed by this Section upon corporations or associations engaged in a similar business, industry, or activity.

⁴⁰ See *Paper Industries Corp. v. Court of Appeals*, 321 Phil. 1 (1995), G.R. Nos. 106949-50 & 106984-85, 01 December 1995 [Per J. Feliciano]; *Aras-asan Timber Co., Inc. v. Commissioner of Internal Revenue*, 415 Phil. 563 (2001), G.R. No. 132155, 16 August 2001 [Per J. Quisumbing]; *Chavez v. Public Estates Authority*, G.R. No. 133250, 06 May 2003 [Per J. Carpio], citing *Co v. Court of Appeals*, 298 Phil. 221 (1993); *British American Tobacco v.*

We agree, however, with the SOJ and the CA that since CNWD is already subject to franchise tax under Section 119⁴¹ of the Tax Code, it is no longer liable for VAT. Indeed, Section 109 (j)⁴² of the 1997 Tax Code (now Section 109 (E) of the current Tax Code) exempts services subject to percentage tax, such as franchise tax, from VAT.

In sum, before CNWD may enjoy the income tax condonation provided in RA 10026, it must prove compliance with the conditions set forth in Section 2 of said law. Should CNWD be unqualified for the condonation, it cannot escape its deficiency income tax liability for TY 2000.

Not being a trier of facts, the Court cannot receive new evidence from the parties as regards the compliance with said conditions provided in RA 10026 for the condonation of income tax liabilities that would aid in the prompt resolution of this case. We are thus constrained to remand the case to the SOJ for the reception of evidence and determination of such matter in accordance with the guidelines afore-discussed.

WHEREFORE, premises considered, the petition is **GRANTED** and the Decision dated 15 September 2010 and Resolution dated 13 June 2011 of the Court of Appeals in CA-GR SP No. 96004 are **REVERSED** and **SET ASIDE**. This case is **REMANDED** to the SOJ for the reception of evidence on the issue of qualification for income tax condonation of CNWD in accordance with this Resolution.

Camacho, 584 Phil. 489 (2008), G.R. No. 163583, 20 August 2008 [Per Ynares-Santiago]; *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, 738 Phil. 335 (2014), G.R. No. 197515, 02 July 2014 [Per J. Peralta]; *Carolino v. Senga*, G.R. No. 189649, 20 April 2015 [Per J. Peralta]; and *Commissioner of Internal Revenue v. Fitness by Design, Inc.*, 799 Phil. 391 (2016), G.R. No. 215957, 09 November 2016 [Per J. Leonen].

⁴¹ **SEC. 119. Tax on Franchises.** - Any provision of general or special law to the contrary notwithstanding, there shall be levied, assessed and collected in respect to all franchises on radio and/or television broadcasting companies whose annual gross receipts of the preceding year do not exceed Ten million pesos (P10,000.00), subject to Section 236 of this Code, a tax of three percent (3%) and on gas and water utilities, a tax of two percent (2%) on the gross receipts derived from the business covered by the law granting the franchise: Provided, however, That radio and television broadcasting companies referred to in this Section shall have an option to be registered as a value-added taxpayer and pay the tax due thereon: Provided, further, That once the option is exercised, said option shall not be irrevocable.

⁴² **SEC. 109. Exempt Transactions.** - The following shall be exempt from the value-added tax:

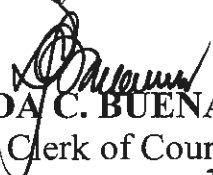
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(i) Services subject to percentage tax under Title V;

The manifestation of Atty. Rosario Elena A. Laborte-Cuevas of the Department of Justice, counsel for respondent Secretary of Justice, stating that as early as August 3, 2020, said respondent already filed its compliance to the Court's resolution to move in the premises and reiterating the prayer that the instant petition be dismissed for lack of merit and for being moot and academic, is **NOTED**; Atty. Rosario Elena A. Laborte-Cuevas is hereby required to **SUBMIT**, within five (5) days from notice hereof, a verified declaration of the manifestation pursuant to A.M. Nos. 10-3-7-SC and 11-9-4-SC; and the petitioner's compliance with the Move in the Premises Resolution dated October 2, 2019, is **DISPENSED WITH**.

SO ORDERED."

By authority of the Court:


LIBRADA C. BUENA
 Division Clerk of Court ^{7/17/20}

by:

MARIA TERESA B. SIBULO
 Deputy Division Clerk of Court
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