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[G.R. No. 158885, April 02, 2009]

**FORT BONIFACIO DEVELOPMENT CORPORATION,
PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE,
REGIONAL DIRECTOR, REVENUE REGION NO. 8, AND CHIEF,
ASSESSMENT DIVISION, REVENUE REGION NO. 8, BIR,
RESPONDENTS.**

[G.R. NO. 170680]

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

D E C I S I O N

TINGA, J.:

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

SEC. 105. *Transitional input tax credits.* - A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall, subject to the filing of an inventory as prescribed by regulations, be allowed input tax on his beginning inventory of goods, materials and supplies equivalent to 8% of the value of such inventory or the actual value-added tax paid on such goods, materials and supplies, whichever is higher, which shall be creditable against the output tax.^[2]

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

Sec. 25. *Transitory provisions.* (a) All VAT-registered persons shall be allowed transitional input taxes which can be credited against output tax in the same manner as provided in Sections 104 of the National Internal

Revenue Code as follows:

- 1) The balance of the deferred sales tax credit account as of December 31, 1987 which are accounted for in accordance with regulations prescribed therefor;
- 2) A presumptive input tax equivalent to 8% of the value of the inventory as of December 31, 1987 of materials and supplies which are not for sale, the tax on which was not taken up or claimed as deferred sales tax credit; and
- 3) A presumptive input tax equivalent to 8% of the value of the inventory as of December 31, 1987 as goods for sale, the tax on which was not taken up or claimed as deferred sales tax credit.

Tax credit prescribed in paragraphs (2) and (3) above shall be allowed only to a VAT-registered person who files an inventory of the goods referred to in said paragraphs as provided in regulations.

(b) Any unused tax credit certificate issued prior to January 1, 1988 for excess tax credits which are applicable against advance sales tax shall be surrendered to, and replaced by the Commissioner with new tax credit certificates which can be used in payment for value-added tax liabilities.

(c) Any person already engaged in business whose gross sales or receipts for a 12-month period from September 1, 1986 to August 1, 1987, exceed the amount of P200,000.00, or any person who has been in business for less than 12 months as of August 1, 1987 but expects his gross sales or receipts to exceed P200,000 on or before December 31, 1987, shall apply for registration on or before October 29, 1987.^[4]

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

Sec. 100. Value-added-tax on sale of goods or properties. --

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

(1) The term 'goods or properties' shall mean all tangible and intangible objects which are capable of pecuniary estimation and shall include:

(A) Real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business; xxx^[6]

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

Section 111. Transitional/Presumptive Input Tax Credits.-

(A) *Transitional Input Tax Credits.-* A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall, subject to the filing of an inventory **according to rules and regulations prescribed by the Secretary of finance, upon recommendation of the Commissioner**, be allowed input tax on his beginning inventory of goods, materials and supplies equivalent for eight percent (8%) of the value of such inventory or the actual value-added tax paid on such goods, materials and supplies, whichever is higher, which shall be creditable against the output tax.^[7] (Emphasis supplied).

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

(B) *Presumptive Input Tax Credits.-*

(1) Persons or firms engaged in the processing of sardines, mackerel and milk, and in manufacturing refined sugar and cooking oil, shall be allowed a presumptive input tax, creditable against the output tax, equivalent to one and one-half percent (1 1/2%) of the gross value in money of their purchases of primary agricultural products which are used as inputs to their production.

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

(2) Public works contractors shall be allowed a presumptive input tax equivalent to one and one-half percent (1 1/2%) of the contract price with respect to government contracts only in lieu of actual input taxes therefrom.^[8]

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

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

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

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

Between July and October 1997, FBDC sent two (2) letters to the BIR requesting appropriate action on whether its use of its presumptive input VAT on its land inventory, to the extent of P28,413,783.00 in partial payment of its output VAT for the fourth quarter of 1996, was in order. After investigating the matter, the BIR recommended that the claimed presumptive input tax credit be disallowed.^[14] Consequently, the BIR issued to FBDC a Pre-Assessment Notice (PAN) dated 23 December 1997 for deficiency VAT for the 4th quarter of 1996. This was followed by a letter of respondent Commissioner of Internal Revenue (CIR),^[15] addressed to and received by FBDC on 5 March 1998, disallowing the presumptive input tax credit arising from the land inventory on the basis of Revenue Regulation 7-95 (RR 7-95) and Revenue Memorandum Circular 3-96 (RMC 3-96). Section 4.105-1 of RR 7-95 provided the basis in main for the CIR's opinion, the section reading, thus:

Sec. 4.105-1. *Transitional input tax on beginning inventories.* - Taxpayers who became VAT-registered persons upon effectivity of RA No. 7716 who have exceeded the minimum turnover of P500,000.00 or who voluntarily register even if their turnover does not exceed P500,000.00 shall be entitled to a presumptive input tax on the inventory on hand as of December 31, 1995 on the following: (a) goods purchased for resale in their present condition; (b) materials purchased for further processing,

but which have not yet undergone processing; (c) goods which have been manufactured by the taxpayer; (d) goods in process and supplies, all of which are for sale or for use in the course of the taxpayer's trade or business as a VAT-registered person.

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

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

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

(a) Presumptive Input Tax Credits -

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(iii) For real estate dealers, the presumptive input tax of 8% of the book value of improvements on or after January 1, 1988 (the effectivity of E.O. 273) shall be allowed.

For purposes of sub-paragraphs (i), (ii) and (iii) above, an inventory as of December 31, 1995 of such goods or properties and improvements showing the quantity, description and amount filed with the RDO not later than January 31, 1996.

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

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