Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

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.

x - x

G.R. No. 175707

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.

x - x

G.R. No. 180035

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. 181092

Present:

SERENO, *CJ.*,
Chairperson,
VELASCO, JR.,*
LEONARDO-DE CASTRO
PEREZ, and
PERLAS-BERNABE, *JJ.*

Promulgated:

NOV 19 2014

x- -x

DECISION

LEONARDO-DE CASTRO, *J.*:

The Court has consolidated these three petitions as they involve the same parties, similar facts and common questions of law. This is not the first time that Fort Bonifacio Development Corporation (FBDC) has come to this Court about these issues against the very same respondents, and the Court *En Banc* has resolved them in two separate, recent cases[1] that are applicable here for reasons to be discussed below.

G.R. No. 175707 is an appeal by *certiorari* pursuant to Rule 45 of the 1997 Rules of Civil Procedure from (a) the **Decision**[2] dated April 22, 2003 of the Court of Appeals in **CA-G.R. SP No. 61516 dismissing** FBDC's Petition for Review with regard to the Decision of the Court of Tax Appeals (CTA) dated October 13, 2000 in **CTA Case No. 5885**, and from (b) the Court of Appeals **Resolution**[3] dated November 30, 2006 **denying** its Motion for Reconsideration.

---

* Per Special Order No. 1870 dated November 4, 2014.

1 *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue,* G.R. No. 158885 and G.R. No. 170680 (Decision - 602 Phil. 100 [2009]; Resolution - October 2, 2009, 602 SCRA 159); G.R. No. 173425 (Decision - September 4, 2012, 679 SCRA 566; Resolution - January 22, 2013, 689 SCRA 76).

2 *Rollo* (G.R. No. 175707), pp. 391-402, penned by Associate Justice Bienvenido L. Reyes (now a member of this Court) with Associate Justices Salvador J. Valdez, Jr. and Danilo B. Pine, concurring.

3 Id. at 437-448, penned by Associate Justice Bienvenido L. Reyes (now a member of this Court) with Associate Justices Fernanda Lampas-Peralta and Myrna Dimaranan-Vidal, concurring.

G.R. No. 180035 is likewise an appeal by *certiorari* pursuant to Rule 45 from (a) the Court of Appeals **Decision**[4] dated April 30, 2007 in **CA-G.R. SP No. 76540 denying** FBDC's Petition for Review with respect to the CTA **Resolution**[5] dated March 28, 2003 in **CTA Case No. 6021**, and from (b) the Court of Appeals **Resolution**[6] dated October 8, 2007 **denying** its Motion for Reconsideration.

The CTA Resolution reconsidered and reversed its earlier **Decision**[7] dated January 30, 2002 ordering respondents in CTA Case No. 6021 to refund or issue a tax credit certificate in favor of petitioner in the amount of ₱77,151,020.46, representing "VAT erroneously paid by or illegally collected from petitioner for the first quarter of 1998, and instead denied petitioner's Claim for Refund therefor."[8]

G.R. No. 181092 is also an appeal by *certiorari* pursuant to Rule 45 from the Court of Appeals **Decision**[9] dated December 28, 2007 in **CA-G.R. SP No. 61158 dismissing** FBDC's petition for review with respect to the CTA Decision[10] dated September 29, 2000 in **CTA Case No. 5694**. The aforesaid CTA Decision, which the Court of Appeals affirmed, **denied** petitioner's Claim for Refund in the amount of ₱269,340,469.45, representing "VAT erroneously paid by or illegally collected from petitioner for the fourth quarter of 1996."[11]

The facts are not in dispute.

Petitioner FBDC (petitioner) is a domestic corporation duly registered and existing under Philippine laws. Its issued and outstanding capital stock is owned in part by the Bases Conversion Development Authority, a wholly-owned government corporation created by Republic Act No. 7227 for the purpose of "accelerating the conversion of military reservations into alternative productive uses and raising funds through the sale of portions of said military reservations in order to promote the economic and social development of the country in general."[12] The remaining fifty-five per cent (55%) is owned by Bonifacio Land Corporation, a consortium of private domestic corporations.[13]

---

4 *Rollo* (G.R. No. 180035), pp. 472-488, penned by Associate Justice Japar B. Dimaampao with Associate Justices Ruben T. Reyes and Mario L. Guariña III, concurring.

5 Id. at 149-160, penned by Presiding Judge Ernesto D. Acosta with Associate Judges Lovell R. Bautista and Juanito C. Castañeda, Jr., concurring.

6 Id. at 518-522; penned by Associate Justice Japar B. Dimaampao with Associate Justices Josefina Guevarra-Salonga and Mario L. Guariña III, concurring.

7 Records (G.R. No. 180035 [CTA Case No. 6021]), pp. 248-275; penned by Associate Judge Amancio Q. Saga with Presiding Judge Ernesto D. Acosta and Associate Judge Juanito C. Castañeda, Jr., concurring.

8 *Rollo* (G.R. No. 180035), p. 13.

9 CA *rollo* **(**G.R. No. 181092 [CA-G.R. SP No. 61158]), pp. 301-312, penned by Associate Justice Edgardo P. Cruz with Associate Justices Fernanda Lampas-Peralta and Normandie B. Pizarro, concurring.

10 Records (G.R. No. 181092), pp. 212-235.

11 Id. at 11-12.

12 *Rollo* (G.R. No. 175707), p. 279.

13 Id.

Respondent Commissioner of Internal Revenue is the head of the Bureau of Internal Revenue (BIR). Respondent Revenue District Officer, Revenue District No. 44, Taguig and Pateros, BIR, is the chief of the aforesaid District Office.

The parties entered into a **Stipulation of Facts, Documents, and Issue**[14] before the CTA for each case. It was established before the CTA that petitioner is engaged in the development and sale of real property. It is the owner of, and is developing and selling, parcels of land within a "newtown" development area known as the Fort Bonifacio Global City (the Global City), located within the former military camp known as Fort Bonifacio, Taguig, Metro Manila.[15] The National Government, by virtue of Republic Act No. 7227[16] and Executive Order No. 40,[17] was the one that conveyed to petitioner these parcels of land on February 8, 1995.

In May 1996, petitioner commenced developing the Global City, and since October 1996, had been selling lots to interested buyers.[18] At the time of acquisition, value-added tax (VAT) was not yet imposed on the sale of real properties. **Republic Act No. 7716** (the Expanded Value-Added Tax [E-VAT] Law),[19] which took effect on January 1, 1996, restructured the VAT system by further amending pertinent provisions of the National Internal Revenue Code (NIRC). **Section 100 of the old NIRC** was so amended by including "real properties" in the definition of the term "goods or properties," thereby subjecting the sale of "real properties" to VAT. The provision, as amended, reads:

> 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:

---

14 Records (G.R. No. 175707 [CTA Case No. 5885]), pp. 63-71.

15 Id. at 64.

16 Republic Act No. 7227, An Act Accelerating the Conversion of Military Reservations Into Other Productive Uses, Creating The Bases Conversion And Development Authority For The Purpose, Providing Funds Therefor And For Other Purposes. (Bases Conversion and Development Act of 1992, Republic Act No. 7227 [1992]).

17 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 [1992].

18 *Rollo* (G.R. No. 175707), p. 280.

19 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, Republic Act No. 7716 [1994].

> (A) Real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business[.]

While prior to Republic Act No. 7716, real estate transactions were not subject to VAT, they became subject to VAT upon the effectivity of said law. Thus, the **sale** of the parcels of land by petitioner became subject to a 10% VAT, and this was later increased to 12%, pursuant to Republic Act No. 9337.[20] Petitioner afterwards became a VAT-registered taxpayer.

On September 19, 1996, in accordance with Revenue Regulations No. 7-95 (Consolidated VAT Regulations), petitioner submitted to respondent BIR, Revenue District No. 44, Taguig and Pateros, an inventory list of its properties as of February 29, 1996. The total book value of petitioner's land inventory amounted to ₱71,227,503,200.00.[21]

On the basis of Section 105 of the NIRC,[22] petitioner claims a **transitional or presumptive input tax credit** of 8% of **₱71,227,503,200.00**, the total value of the real properties listed in its inventory, or a total input tax credit of ₱5,698,200,256.00.[23] After the value of the real properties was reduced due to a reconveyance by petitioner to BCDA of a parcel of land, petitioner claims that it is entitled to **input tax credit** in the *reduced amount* of **₱4,250,475,000.48**.[24]

What petitioner seeks to be refunded are the actual VAT payments made by it in cash, which it claims were either erroneously paid by or illegally collected from it.[25] Each Claim for Refund is based on petitioner's position that it is entitled to a transitional input tax credit under Section 105 of the old NIRC, which more than offsets the aforesaid VAT payments.

---

20 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 (Value-Added Tax [VAT] Reform Act, Republic Act No. 9337 [2005]). Date of effectivity: July 1, 2005.

21 *Rollo* (G.R. No. 175707), pp. 296-297.

22 Sec. 105. *Transitional/Presumptive Input Tax Credits.* — (a) *Transitional Input Tax Credits.* — A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall, subject to the filing of an inventory as prescribed by regulations, be allowed input tax on his beginning inventory of goods, materials and supplies equivalent to eight percent (8%) of the value of such inventory or the actual value-added tax paid on such goods, materials and supplies, whichever is higher, which shall be creditable against the output tax. (NIRC as amended by Executive Order No. 273, July 25, 1987.)

23 According to petitioner, "[t]he value of the real properties was subsequently reduced to ₱53,130,937,506.00 in view of the reconveyance to the BCDA by FBDC of one of the parcels of land conveyed to it by the National Government as agreed upon by and among the BCDA; Bonifacio Land Corporation, who owns 55% of FBDC and with whom BCDA has a Joint Venture Contract over the Fort Bonifacio property; and FBDC. This correspondingly reduces the input tax credit to which FBDC is entitled from ₱5,698,200,256.00 to ₱4,250,475,000.48." (*Rollo* [G.R. No. 175707], p. 42.)

24 Id.

25 Id. at 43.

G.R. No. 175707

Petitioner's VAT returns filed with the BIR show that for the second quarter of 1997, petitioner received the total amount of ₱5,014,755,287.40 from its sales and lease of lots, on which the output VAT payable was ₱501,475,528.74.[26] The VAT returns likewise show that petitioner made cash payments totaling ₱486,355,846.78 and utilized its input tax credit of ₱15,119,681.96 on purchases of goods and services.[27]

On February 11, 1999, petitioner filed with the BIR a **claim for refund** of the amount of ₱486,355,846.78 which it paid in cash as VAT for the second quarter of 1997.[28]

On May 21, 1999, petitioner filed with the CTA a petition for review[29] by way of appeal, docketed as CTA Case No. 5885, from the alleged inaction by respondents of petitioner's claim for refund with the BIR. On October 1, 1999, the parties submitted to the CTA a Stipulation of Facts, Documents and Issue.[30] On October 13, 2000, the CTA issued its Decision[31] in CTA Case No. 5885 denying petitioner's claim for refund for lack of merit.

On November 23, 2000, petitioner filed with the Court of Appeals a Petition for Review of the aforesaid CTA Decision, which was docketed as CA-G.R SP No. 61516. On April 22, 2003, the CA issued its Decision[32] dismissing the Petition for Review. On November 30, 2006, the Court of Appeals issued its Resolution[33] denying petitioner's Motion for Reconsideration.

On December 21, 2006, this Petition for Review was filed.

Petitioner submitted its Memorandum[34] on November 7, 2008 while respondents filed their "Comment"[35] on May 4, 2009.[36]

On December 2, 2009, petitioner submitted a Supplement[37] to its Memorandum dated November 6, 2008, stating that the said case is intimately related to the cases of *Fort Bonifacio Development Corporation v.*

---

26 Id. at 305.
27 Id. at 310.
28 Earlier, on October 8, 1998 and November 17, 1998, petitioner filed with the BIR claims for refund of the amounts of ₱269,340,469.45 and ₱359,652,009.47, which it paid as value-added taxes for the first quarter of 1996 and fourth quarter of 1997, respectively; records (G.R. No. 175707 [CTA Case No. 5885]), p. 66.
29 Records (G.R. No. 175707 [CTA Case No. 5885]), pp. 1-12.
30 *Rollo* (G.R. No. 175707), pp. 278-286.
31 Id. at 155-178.
32 Id. at 390-402.
33 Id. at 436-448.
34 Id. at 544-589.
35 Id. at 694-714. Should be a Memorandum, *see* p. 716.
36 Id.
37 Id. at 721-743.

Commissioner of Internal Revenue, G.R. No. 158885, and *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*," G.R. No. 170680, which were already decided by this Court, and which involve the same parties and similar facts and issues.[38]

Except for the amounts of tax refund being claimed and the periods covered for each claim, the facts in this case and in the other two consolidated cases below are the same. The parties entered into similar Stipulations in the other two cases consolidated here.[39]

G.R. No. 180035

We quote relevant portions of the parties' Stipulation of Facts, Documents and Issue in CTA Case No. 6021[40] below:

> **1.11. Per VAT returns filed by petitioner with the BIR, for the second quarter of 1998, petitioner derived the total amount of ₱903,427,264.20 from its sales and lease of lots, on which the output VAT payable to the Bureau of Internal Revenue was ₱90,342,726.42.**
>
> **1.12. The VAT returns filed by petitioner likewise show that to pay said amount of ₱90,342,726.42 due to the BIR, petitioner made cash payments totalling ₱77,151,020.46 and utilized its regular input tax credit of ₱39,878,959.37 on purchases of goods and services.**
>
> **1.13. On November 22, 1999, petitioner filed with the BIR a claim for refund of the amount of ₱77,151,020.46 which it paid as value-added tax for the first quarter of 1998.**
>
> 1.14. Earlier, on October 8, 1998 and November 17, 1998, February 11, 1999, May 11, 1999, and September 10, 1999, based on similar grounds, petitioner filed with the BIR claims for refund of the amounts of ₱269,340,469.45, ₱359,652,009.47, ₱486,355,846.78, ₱347,741,695.74, and ₱15,036,891.26, representing value-added taxes paid by it on proceeds derived from its sales and lease of lots for the quarters ended December 31, 1996, March 31, 1997, June 30, 1997, September 30, 1997, and December 31, 1997, respectively. After deducting these amounts of ₱269,340,469.45, ₱359,652,009.47, ₱486,355,846.78, ₱347,741,695.74, and ₱15,036,891.26 from the total amount of ₱5,698,200,256.00 claimed by petitioner as input tax credit, the remaining input tax credit more than sufficiently covers the amount of ₱77,151,020.46 subject of petitioner's claim for refund of November 22, 1999.
>
> 1.15. As of the date of the Petition, no action had been taken by respondents on petitioner's claim for refund of November 22, 1999.[41] (Emphases ours.)

---

38 Id. at 721-722.

39 Records (G.R. No. 175707 [CTA Case No. 5885], pp. 63-71; records (G.R. No. 180035 [CTA Case No. 6021]), pp. 76-86; records (G.R. No. 181092 [CTA Case No. 5694]), pp. 68-75.

40 Records (G.R. No. 180035 [CTA Case No. 6021]), pp. 120-130.

41 Id. at 123-124.

The petition in G.R. No. 180035 "seeks to correct the unauthorized limitation of the term 'real properties' to 'improvements thereon' by Revenue Regulations 7-95 and the error of the Court of Tax Appeals and Court of Appeals in sustaining the aforesaid Regulations."[42] This theory of petitioner is the same for all three cases now before us.

On March 14, 2013, petitioner filed a Motion for Consolidation[43] of G.R. No. 180035 with G.R. No. 175707.

Petitioner submitted its Memorandum[44] on September 15, 2009 while respondents filed theirs on September 22, 2009.[45]

G.R. No. 181092

The facts summarized below are found in the parties' Stipulation of Facts, Documents and Issue in CTA Case No. 5694[46]:

> **1.09.** Per VAT returns filed by petitioner with the BIR, for the **fourth quarter of 1996,** petitioner derived the total amount of **₱3,498,888,713.60** from its sales and lease of lots, on which the **output VAT payable** to the Bureau of Internal Revenue was **₱318,080,792.14.**
>
> 1.10. The VAT returns filed by petitioner likewise show that to pay said amount of ₱318,080,792.14 due to the BIR, petitioner made cash payments totalling ₱269,340,469.45 and utilized (a) part of the total transitional/presumptive input tax credit of ₱5,698,200,256.00 being claimed by it to the extent of ₱28,413,783.00; and (b) its regular input tax credit of ₱20,326,539.69 on purchases of goods and services.
>
> **1.11. On October 8, 1998 petitioner filed with the BIR a claim for refund of the amounts of ₱269,340,469.45, which it paid as value-added tax.**
>
> 1.12. As of the date of the Petition, no action had been taken by respondents on petitioner's claim for refund.[47] (Emphases ours.)

Petitioner submitted its Memorandum[48] on January 18, 2010 while respondents filed theirs on October 14, 2010.[49]

On March 14, 2013, petitioner filed a Motion for Consolidation[50] of G.R. No. 181092 with G.R. No. 175707.

---

42 *Rollo* (G.R. No. 180035), p. 18.
43 Id. at 887-892.
44 Id. at 691-829.
45 Id. at 830-879.
46 Records (G.R. No. 181092 [CTA Case No. 5694]), pp. 70-71.
47 Id.
48 *Rollo* (G.R. No. 181092), pp. 517-664.
49 Id. at 752-768.
50 Id. at 781-786.

On January 23, 2014, petitioner filed a **Motion to Resolve**[51] these consolidated cases, alleging that the parties had already filed their respective memoranda; and, more importantly, that the principal issue in these cases, whether petitioner is entitled to the 8% transitional input tax granted in Section 105 (now Section 111[A]) of the NIRC based on the value of its inventory of land, and as a consequence, to a refund of the amounts it paid as VAT for the periods in question, had already been resolved by the Supreme Court *En Banc* in its Decision dated April 2, 2009 in G.R. Nos. 158885 and 170680, as well as its Decision dated September 4, 2012 in G.R. No. 173425. Petitioner further alleges that said decided cases involve the same parties, facts, and issues as the cases now before this Court.[52]

THEORY OF PETITIONER

Petitioner claims that "the 10% value-added tax is based on the gross selling price or gross value in money of the '**goods**' sold, bartered or exchanged."[53] Petitioner likewise claims that by definition, the term "goods" was limited to "movable, tangible objects which is appropriable or transferable" and that said term did not originally include "real property."[54] It was previously defined as follows under Revenue Regulations No. 5-87:

> (p) "*Goods*" means any movable, tangible objects which is appropriable or transferrable.

Republic Act No. 7716 (E-VAT Law, January 1, 1996) expanded the coverage of the original VAT Law (Executive Order No. 273), specifically Section 100 of the old NIRC. According to petitioner, while under Executive Order No. 273, the term "goods" did not include real properties, Republic Act No. 7716, in amending Section 100, explicitly included in the term "goods" "real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business." Consequently, the sale, barter, or exchange of real properties was made subject to a VAT equivalent to 10% (later increased to 12%, pursuant to Republic Act No. 9337) of the gross selling price of real properties.

Among the new provisions included by Executive Order No. 273 in the NIRC was the following:

> 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

---

51 *Rollo* (G.R. No. 175707), pp. 826-829.
52 Id. at 827.
53 Id. at 35.
54 Id. at 36.

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

According to petitioner, the E-VAT Law, Republic Act No. 7716, did not amend Section 105. Thus, Section 105, as quoted above, remained effective even after the enactment of Republic Act No. 7716.

Previously, or on December 9, 1995, the Secretary of Finance and the Commissioner of Internal Revenue issued **Revenue Regulations No. 7-95**, which included the following provisions:

> SECTION 4.100-1. *Value-added tax on sale of goods or properties*. — VAT is imposed and collected on every sale, barter or exchange or transactions "deemed sale" of taxable goods or properties at the rate of 10% of the gross selling price.
>
> *"Gross selling price" means the total amount of money or its equivalent which the purchaser pays or is obligated to pay to the seller in consideration of the sale, barter or exchange of the goods or properties, excluding the value-added tax. The excise tax, if any, on such goods or properties shall form part of the gross selling price. In the case of sale, barter or exchange of real property subject to VAT, gross selling price shall mean the consideration stated in the sales document or the zonal value whichever is higher. Provided however, in the absence of zonal value, gross selling price refers to the market value shown in the latest declaration or the consideration whichever is higher.*
>
> *"Taxable sale" refers to the sale, barter, exchange and/or lease of goods or properties, including transactions "deemed sale" and the performance of service for a consideration, all of which are subject to tax under Sections 100 and 102 of the Code*.
>
> Any person otherwise required to register for VAT purposes who fails to register shall also be liable to VAT on his sale of taxable goods or properties as defined in the preceding paragraph. The sale of goods subject to excise tax is also subject to VAT, except manufactured petroleum products (other than lubricating oil, processed gas, grease, wax and petrolatum).
>
> ***"Goods or properties" refer to all tangible and intangible objects which are capable of pecuniary estimation and shall include:***
>
> > ***1. Real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business.***
> >
> > x x x x
>
> SECTION 4.104-1. *Credits for input tax*. —
>
> "*Input tax*" *means the value-added tax due from or paid by a VAT-registered person on importation of goods or local purchases of goods or services, including lease or use of property, from another VAT-registered*

person in the course of his trade or business. It shall also include the transitional or presumptive input tax determined in accordance with Section 105 of the Code.

x x x x

SECTION 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 sale 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 effectivity of E.O. 273 (January 1, 1988).

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

The value allowed for income tax purposes on inventories shall be the basis for the computation of the 8% excluding goods that are exempt from VAT under SECTION 103. Only VAT-registered persons shall be entitled to presumptive input tax credits.

x x x x

TRANSITORY PROVISIONS

(a) *Presumptive Input Tax Credits —*

(i) For goods, materials or supplies not for sale but purchased for use in business in their present condition, which are not intended for further processing and are on hand as of December 31, 1995, a presumptive input tax equivalent to 8% of the value of the goods or properties shall be allowed.

(ii) For goods or properties purchased with the object of resale in their present condition, the same presumptive input tax equivalent to 8% of the value of the goods unused as of December 31, 1995 shall be allowed, which amount may also be credited against the output tax of a VAT-registered person.

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

> For purposes of sub-paragraph (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 should be filed with the RDO not later than January 31, 1996. (Emphases supplied.)

Petitioner argues that Section 4.100-1 of Revenue Regulations No. 7-95 explicitly limited the term "goods" as regards real properties to "improvements, such as buildings, roads, drainage systems, and other similar structures," thereby excluding the real property itself from the coverage of the term "goods" as it is used in Section 105 of the NIRC. This has brought about, as a consequence, the issues involved in the instant case.

Petitioner claims that the "Court of Appeals erred in not holding that Revenue Regulations No. 6-97 has 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 NIRC to the 'improvements' on real properties."[55] Petitioner argues that the provision in Section 4.105-1 of Revenue Regulations No. 7-95 stating that in the case of real estate dealers, the basis of the input tax credit shall be the improvements, has been deleted by Revenue Regulations No. 6-97, dated January 2, 1997, which amended Revenue Regulations No. 7-95. Revenue Regulations No. 6-97 was issued to implement Republic Act No. 8241 (the law amending Republic Act No. 7716, the E-VAT Law), which took effect on January 1, 1997.

Petitioner notes that Section 4.105-1 of Revenue Regulations No. 6-97 is but a reenactment of Section 4.105-1 of Revenue Regulations No. 7-95, with the only difference being that the following paragraph in Revenue Regulations No. 7-95 was **deleted**:

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

Petitioner calls this an express repeal, and with the deletion of the above paragraph, what stands and should be applied "is the statutory definition in Section 100 of the NIRC of the term 'goods' in Section 105 thereof."[56]

Petitioner contends that the relevant provision now states that "[t]he transitional input tax credit shall be eight percent (8%) of the value of the *beginning* inventory x x x on such goods, materials and supplies." It no longer limits the allowable transitional input tax credit to "improvements" on the real properties. The amendment recognizes that the basis of the 8%

---

55 Id. at 44.

56 Id. at 48.

input tax credit should not be confined to the value of the improvements. Petitioner further contends that the Commissioner of Internal Revenue has in fact corrected the mistake in Revenue Regulations No. 7-95.[57]

Petitioner argues that Revenue Regulations No. 6-97, being beneficial to the taxpayer, should be given a retroactive application.[58] Petitioner states that the transactions involved in these consolidated cases took place **after** Revenue Regulations No. 6-97 took effect, under the provisions of which the transitional input tax credit with regard to real properties would be based on the value of the land inventory and not limited to the value of the improvements.

Petitioner assigns another error: the Court of Appeals erred in holding that Revenue Regulations No. 7-95 is a valid implementation of the NIRC and in according it great respect, and should have held that the same is invalid for being contrary to the provisions of Section 105 of the NIRC.[59]

Petitioner contends that Revenue Regulations No. 7-95 is not valid for being contrary to the express provisions of Section 105 of the NIRC, and in fact amends the same, for it limited the scope of Section 105 "to less than what the law provides."[60] Petitioner elaborates:

> [Revenue Regulations No. 7-95] illegally constricted the provisions of the aforesaid section. It delimited the coverage of Section 105 and practically amended it in violation of the fundamental principle that administrative regulations are subordinate to the law. Based on the numerous authorities cited above, Section 4.105-1 and the Transitory Provisions of Revenue Regulations No. 7-95 are invalid and ineffective insofar as they limit the input tax credit to 8% of the value of the "improvements" on land, for being contrary to the express provisions of Section 105, in relation to Section 100, of the NIRC, and the Court of Appeals should have so held.[61]

Petitioner likewise raises the following arguments:

- The rule that the construction given by the administrative agency charged with the enforcement of the law should be accorded great weight by the courts, does not apply here.[62]

- x x x Section 4.105-1 of Revenue Regulations No. 7-95 neither exclude[s] nor prohibit[s] that the 8% input tax credit may also [be] based on the taxpayer's inventory of land.[63]

---

57 Id. at 47.
58 Id. at 49.
59 Id. at 22.
60 Id. at 64.
61 Id.
62 Id. at 65.
63 Id. at 71.

- The issuance of Revenue Regulations No. 7-95 by the [BIR], which changed the statutory definition of "goods" with regard to the application of Section 105 of the NIRC, and the declaration of validity of said regulations by the Court of Appeals and Court of Tax Appeals, was in violation of the fundamental principle of separation of powers.[64]

x x x x

Insofar, therefore, as Revenue Regulation[s] No. 7-95 limited the scope of the term "goods" under Section 105, to "improvements" on real properties, contrary to the definition of "goods" in Section 100, [RR] No. 7-95 decreed "what the law shall be", now "how the law may be enforced", and is, consequently, of no effect because it constitutes undue delegation of legislative power.

x x x x

[T]he transgression by the BIR and the CTA and CA of the basic principle of separation of powers, including the fundamental rule of non-delegation of legislative power, is clear.[65]

Furthermore, petitioner claims that:

SINCE THE PROVISIONS OF SECTION 105 OF THE [NIRC] IN RELATION TO SECTION 100 THEREOF, ARE CLEAR, THERE WAS NO BASIS AND NECESSITY FOR THE BUREAU OF INTERNAL REVENUE AND THE COURT OF APPEALS AND THE COURT OF TAX APPEALS TO INTERPRET AND CONSTRUE THE SAME.[66]

PETITIONER IS CLEARLY ENTITLED TO THE TRANSITIONAL/PRESUMPTIVE INPUT TAX CREDIT GRANTED IN SECTION 105 OF THE NIRC AND HENCE TO A REFUND OF THE VALUE-ADDED TAX PAID BY IT FOR THE SECOND QUARTER OF 1997.[67]

Petitioner insists that there was no basis and necessity for the BIR, the CTA, and the Court of Appeals to interpret and construe Sections 100 and 105 of the NIRC because "where the law speaks in clear and categorical language, or the terms of the statute are clear and unambiguous and free from doubt, there is no room for interpretation or construction and no interpretation or construction is called for; there is only room for application."[68] Petitioner asserts that legislative intent is determined primarily from the language of the statute; legislative intent has to be discovered from the four corners of the law; and thus, where no ambiguity

---

64 Id. at 72.
65 Id. at 76.
66 Id.
67 Id. at 77. In G.R. No. 180035, the claim for refund is based on the VAT paid for the first quarter of 1998, and in G.R. No. 181092, the claim for refund involves VAT paid for the fourth quarter of 1996.
68 Id. at 79.

appears, it may be presumed conclusively that the clear and explicit terms of a statute express the legislative intention.[69]

So looking at the cases now before us, petitioner avers that the Court of Appeals, the CTA, and the BIR did not merely interpret and construe Section 105, and that they virtually amended the said section, for it is allegedly clear from Section 105 of the old NIRC, in relation to Section 100, that "legislative intent is to the effect that the taxpayer is entitled to the input tax credit based on the value of the beginning inventory of land, not merely on the improvements thereon, and irrespective of any prior payment of sales tax or VAT."[70]

THEORY OF RESPONDENTS

Petitioner's claims for refund were consistently denied in the three cases now before us. Even if in one case, G.R. No. 180035, petitioner succeeded in getting a favorable decision from the CTA, the grant of refund or tax credit was subsequently reversed on respondents' Motion for Reconsideration, and such denial of petitioner's claim was affirmed by the Court of Appeals.

Respondents' reasons for denying petitioner's claims are summarized in their Comment in G.R. No. 175707, and we quote:

> **REASONS WHY PETITION SHOULD BE DENIED OR DISMISSED**
>
> 1. The 8% input tax credit provided for in Section 105 of the NIRC, in relation to Section 100 thereof, is based on the value of the improvements on the land.
>
> 2. The taxpayer is entitled to the input tax credit provided for in Section 105 of the NIRC only if it has previously paid VAT or sales taxes on its inventory of land.
>
> 3. Section 4.105-1 of Revenue Regulations No. 7-95 of the BIR is valid, effective and has the force and effect of law, which implemented Section 105 of the NIRC.[71]

In respondents' Comment[72] dated November 3, 2008 in G.R. No. 180035, they averred that petitioner's claim for the 8% transitional/presumptive input tax is "inconsistent with the purpose and intent of the law in granting such tax refund or tax credit."[73] Respondents raise the following arguments:

---

69 Id. at 80.
70 Id. at 84.
71 Id. at 465.
72 *Rollo* (G.R. No. 180035), pp. 548-602.
73 Id. at 561.

1. The transitional input tax provided under Section 105 in relation to Section 100 of the Tax Code, as amended by EO No. 273 effective January 1, 1988, is subject to certain conditions which petitioner failed to meet.[74]

2. The claim for petitioner for transitional input tax is in the nature of a tax exemption which should be strictly construed against it.[75]

3. Revenue Regulations No. 7-95 is valid and consistent with provisions of the NIRC.[76]

Moreover, respondents contend that:

"[P]etitioner is not legally entitled to any transitional input tax credit, whether it be the 8% presumptive input tax credit or any actual input tax credit in respect of its inventory of land brought into the VAT regime beginning January 1, 1996, in view of the following:

1. VAT free acquisition of the raw land. – petitioner purchased and acquired, from the Government, the aforesaid raw land under a VAT-free sale transaction. The Government, as a vendor, was tax-exempt and accordingly did not pass on any VAT or sales tax as part of the price paid therefor by the petitioner.

2. ***No transitory input tax on inventory of land is allowed.*** Section 105 of the Code, as amended by Republic Act No. 7716, and as implemented by Section 4.105-1 of Revenue Regulations No. 7-95, expressly provides that no transitional input tax credit shall be allowed to real estate dealers in respect of their beginning inventory of land brought into the VAT regime beginning January 1, 1996 (supra). Likewise, the Transitory Provisions [(a) (iii)] of Revenue Regulations No. 7-95 categorically states that "for real estate dealers, the presumptive input tax of 8% of the book value of improvements constructed on or after January 1, 1998 (effectivity of E.O. 273) shall be allowed." For purposes of subparagraphs (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 should be filed with the RDO not later than January 31, 1996. It is admitted that petitioner filed its inventory listing of real properties on September 19, 1996 or almost nine (9) months late in contravention [of] the requirements in Revenue Regulations No. 7-95."[77]

Respondents, quoting the Civil Code,[78] argue that Section 4.105-1 of Revenue Regulations No. 7-95 has the force and effect of a law since it is not contrary to any law or the Constitution. Respondents add that "[w]hen the administrative agency promulgates rules and regulations, it makes a new law with the force and effect of a valid law x x x."[79]

---

74 Id. at 576.
75 Id. at 586.
76 Id. at 589.
77 *Rollo* (G.R. No. 175707), pp. 468-469.
78 Civil Code, Art. 7. Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution.
79 *Rollo* (G.R. No. 175707), p. 469.

ISSUES

The main issue before us now is **whether or not petitioner is entitled to a refund of the amounts of: 1) ₱486,355,846.78 in G.R. No. 175707, 2) ₱77,151,020.46 for G.R. No. 180035, and 3) ₱269,340,469.45 in G.R. No. 181092, which it paid as value-added tax, or to a tax credit for said amounts.**

To resolve the issue stated above, it is also necessary to determine:

- Whether the transitional/presumptive input tax credit under Section 105 of the NIRC may be claimed only on the "improvements" on real properties;

- Whether there must have been previous payment of sales tax or value-added tax by petitioner on its land before it may claim the input tax credit granted by Section 105 of the NIRC;

- Whether Revenue Regulations No. 7-95 is a valid implementation of Section 105 of the NIRC; and

- Whether the issuance of Revenue Regulations No. 7-95 by the BIR, and declaration of validity of said Regulations by the Court of Tax Appeals and the Court of Appeals, was in violation of the fundamental principle of separation of powers.

THE RULINGS BELOW

A. G.R. No. 175707

1. CTA Case No. 5885 Decision (October 13, 2000)

The CTA traced the history of "transitional input tax credit" from the original VAT Law of 1988 (Executive Order No. 273) up to the Tax Reform Act of 1997 and looked into Section 105 of the Tax Code. According to the CTA, the BIR issued Revenue Regulations No. 5-87, specifically Section 26(b),[80] to implement the provisions of Section 105. The CTA concluded

[80] Revenue Regulations No. 5-87, September 1, 1987, SECTION 26. *Transitory Provisions*. — x x x (b) *Transitional input tax credits*. — (1) *Manufacturers, producers and importers*. — The unused deferred tax credit as of December 31, 1987 shall be allowed as input tax credits to all original sellers subject to the value-added tax for the first time, provided that they have registered in accordance with the provisions of Section 107. For this purpose the amount appearing in their books of accounts and corroborated by the amount reflected in the sales tax return as of December 31, 1987 shall be initially accepted as the transitional input tax credit which shall be carried over as allowable tax credits against output tax less any amount for which an application for the issuance of a tax credit certificate has been filed. In the case of corporations filing their sales tax returns on a fiscal quarter basis, they shall file a short period return for the period ending December 31, 1987 which in addition to their ledger account of deferred tax credit shall be the basis of the transitional input tax credits which will be provisionally allowed.

from these provisions that "the purpose of granting transitional input tax credit to be utilized as payment for output VAT is primarily to give recognition to the sales tax component of inventories which would qualify as input tax credit had such goods been acquired during the effectivity of the VAT Law of 1988."[81] The CTA stated that the purpose of transitional input tax credit remained the same even after the amendments introduced by the E-VAT Law.[82] The CTA held that "the rationale in granting the transitional input tax credit also serves as its condition for its availment as a benefit"[83] and that "[i]nherent in the law is the condition of prior payment of VAT or sales taxes."[84] The CTA excluded petitioner from availing of the transitional input tax credit provided by law, reasoning that "to base the 8% transitional input tax on the book value of the land is to negate the purpose of the law in granting such benefit. It would be tantamount to giving an undeserved bonus to real estate dealers similarly situated as petitioner which the Government cannot afford to provide."[85] Furthermore, the CTA held that respondent was correct in basing the 8% transitional input tax credit on the value of the improvements on the land, citing Section 4.105-1 of Revenue Regulations No. 7-95, which the CTA claims is consistent and in harmony with the law it seeks to implement. Thus, the CTA denied petitioner's claim for refund.[86]

2. CA-G.R. No. 61516 Decision (April 22, 2003)

The Court of Appeals affirmed the CTA and ruled that petitioner is not entitled to refund or tax credit in the amount of ₱486,355,846.78 and stated that "Revenue Regulations No. 7-95 is a valid implementation of the NIRC."[87] According to the Court of Appeals:

---

(2) *Inventory of goods, not for sale*. — For goods, other than capital goods, not for sale but purchased for use in the business in their present condition, and which are not intended for further processing, which are on hand as of December 31, 1987, a presumptive input tax equivalent to 8% of the value of the goods shall be allowed, which amount may be credited against the output tax of a VAT-registered person, provided that the tax thereon has not been taken up or claimed as deferred sales tax credit.

81 *Rollo* (G.R. No. 175707), p. 164.

82 Expanded Value Added Tax (E-VAT) Law, Republic Act No. 7716 [1994]
SEC. 104. *Tax Credits*. — (*a*) *Creditable input tax.* — Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 108 hereof on the following transactions shall be creditable against the output tax:
(1) Purchase or importation of goods:
(A) For sale; or
(B) For conversion into or intended to form part of a finished product for sale including packaging materials; or
(C) For use as supplies in the course of business; or
(D) For use as materials supplied in the sale of service; or
(E) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code, except automobiles, aircraft and yachts.
(2) Purchase of services on which a value-added tax has been actually paid.
The input tax on domestic purchase of goods or properties shall be creditable[.]

83 *Rollo* (G.R. No. 175707), p. 167.

84 Id.

85 Id.

86 Id. at 168.

87 Id. at 399.

> "[P]etitioner acquired the contested property from the National Government under a VAT-free transaction. The Government, as a vendor was outside the operation of the VAT and ergo, could not possibly have passed on any VAT or sales tax as part of the purchase price to the petitioner as vendee."[88]

> x x x [T]he grant of transitional input tax credit indeed presupposes that the manufacturers, producers and importers should have previously paid sales taxes on their inventories. They were given the benefit of transitional input tax credits, precisely, to make up for the previously paid sales taxes which were now abolished by the VAT Law. It bears stressing that the VAT Law took the place of privilege taxes, percentage taxes and sales taxes on original or subsequent sale of articles. These taxes were substituted by the VAT at the constant rate of 0% or 10%.[89]

3. CA-G.R. No. 61516 Resolution (November 30, 2006)

Upon petitioner's Motion for Reconsideration, the Court of Appeals affirmed its decision, but we find the following statement by the appellate court worthy of note:

> We concede that the inventory restrictions under Revenue Regulation No. 7-95 limiting the coverage of the inventory only to acquisition cost of the materials used in building "improvements" has already been deleted by Revenue Regulation 6-97. This notwithstanding, we are poised to sustain our earlier ruling as regards the refund presently claimed.[90]

B. G.R. No. 180035

1. CTA Case No. 6021 Decision (January 30, 2002)

The CTA sustained petitioner's position and held that respondent erred in basing the transitional input tax credit of real estate dealers on the value of the improvements.[91] The CTA ratiocinated as follows:

> This Court, in upholding the position taken by the petitioner, is convinced that Section 105 of the Tax Code is clear in itself. Explicit therefrom is the fact that a taxpayer shall be allowed a transitional/presumptive input tax credit based on the value of its beginning inventory of goods which is defined in Section 100 as to encompass even real property. x x x.[92]

The CTA went on to point out inconsistencies it had found between the transitory provisions of Revenue Regulations No. 7-95 and the law it sought to implement, in the following manner:

---

88 Id. at 397.
89 Id. at 398.
90 Id. at 439.
91 Records (G.R. No. 180035 [CTA Case No. 6021]), p. 259.
92 Id. at 258.

> Notice that letter (a)(ii) of the x x x transitory provisions[93] states that goods or properties purchased with the object of resale in their present condition comes with the corresponding 8% presumptive input tax of the value of the goods, which amount may also be credited against the output tax of a VAT-registered person. It must be remembered that Section 100 as amended by Republic Act No. 7716 extends the term "goods or properties" to real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business. This provision alone entitles Petitioner to the 8% presumptive input tax of the value of the land (goods or properties) sold. However in letter (a)(iii) of the same Transitory Provisions, Respondent apparently changed his (*sic*) course when it declared that real estate dealers are only entitled to the 8% of the value of the improvements. This glaring inconsistency between the two provisions prove that Revenue Regulations No. 7-95 was not a result of an intensive study and analysis and may have been haphazardly formulated.[94]

The CTA held that the implementing regulation, which provides that the 8% transitional input tax shall be based on the improvements only of the real properties, is neither valid nor effective.[95] The CTA also sustained petitioner's argument that Revenue Regulations No. 7-95 provides no specific date as to when the inventory list should be submitted. The relevant portion of the CTA decision reads:

> The only requirement is that the presumptive input tax shall be supported by an inventory of goods as shown in a detailed list to be submitted to the BIR. Moreover, the requirement of filing an inventory of goods not later than January 31, 1996 in the transitory provision of the same regulation refers to the recognition of presumptive input tax on goods or properties on hand as of December 31, 1995 of taxpayers already liable to VAT as of that date.
>
> Clearly, Petitioner is entitled to the presumptive input tax in the amount of ₱5,698,200,256.00, computed as follows:
>
> | | |
> |---|---|
> | Book Value of Inventory x x x | ₱71,227,503,200.00 |
> | Multiply by Presumptive Input Tax rate | 8% |
> | Available Presumptive Input Tax | ₱5,698,200,256.00 |

---

93 Revenue Regulations No. 7-95, Transitory Provisions
(a) *Presumptive Input Tax Credits —*
(i) For goods, materials or supplies not for sale but purchased for use in business in their present condition, which are not intended for further processing and are on hand as of December 31, 1995, a presumptive input tax equivalent to 8% of the value of the goods or properties shall be allowed.
(ii) For goods or properties purchased with the object of resale in their present condition, the same presumptive input tax equivalent to 8% of the value of the goods unused as of December 31, 1995 shall be allowed, which amount may also be credited against the output tax of a VAT-registered person.
(iii) For real estate dealers, the presumptive input tax of 8% of the book value of improvements constructed on or after January 1, 1988 (the effectivity of Executive Order No. 273) shall be allowed.

94 Records (G.R. No. 180035 [CTA Case No. 6021]), p. 260.

95 Id. at 263-264.

> The failure of the Petitioner to consider the presumptive input tax in the computation of its output tax liability for the 1st quarter of 1998 results to overpayment of the VAT for the same period.
>
> To prove the fact of overpayment, Petitioner presented the original Monthly VAT Declaration for the month of January 1998 showing the amount of P77,151,020.46 as the cash component of the value-added taxes paid (Exhibits E-14 & E-14-A) which is the subject matter of the instant claim for refund.
>
> In Petitioner's amended quarterly VAT return for the 1st quarter of 1998 (Exhibit D-1), Petitioner deducted the amount of ₱77,151,020.46 from the total available input tax to show that the amount being claimed would no longer be available as input tax credit.
>
> In conclusion, the Petitioner has satisfactorily proven its entitlement to the refund of value-added taxes paid for the first quarter of taxable year 1998.
>
> **WHEREFORE,** in view of the foregoing, the Petition for Review is **GRANTED.** Respondents are hereby **ORDERED** to **REFUND** or issue a **TAX CREDIT CERTIFICATE** in favor of the Petitioner the total amount of ₱77,151,020.46 representing the erroneously paid value-added tax for the first quarter of 1998.[96]

2. CTA Case No. 6021 Resolution (March 28, 2003)

The CTA **reversed** its earlier ruling upon respondents' motion for reconsideration and thus denied petitioner's claim for refund. The CTA reasoned and concluded as follows:

> The vortex of the controversy in the instant case actually involves the question of whether or not Section 4.105-1 of Revenue Regulations No. 7-95, issued by the Secretary of Finance upon recommendation of the Commissioner of Internal Revenue, is valid and consistent with and not violative of Section 105 of the Tax Code, in relation to Section 100 (a)(1)(A).
>
> x x x x
>
> We agree with the position taken by the respondents that Revenue Regulations No. 7-95 is not contrary to the basic law which it seeks to implement. As clearly worded, Section 105 of the Tax Code provides that a person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall be allowed 8% transitional input tax subject to the filing of an inventory as prescribed by regulations.
>
> Section 105, which requires the filing of an inventory for the grant of the transitional input tax, is couched in a manner where there is a need for an implementing rule or regulation to carry its intendment. True to its wordings, the BIR issued Revenue Regulations No. 7-95 (*specifically Section 4.105-1*) which succinctly mentioned that the basis of the

---

96 Id. at 263-265.

presumptive input tax shall be the improvements in case of real estate dealers.[97]

x x x x

WHEREFORE, in view of the foregoing, the instant Motion for Reconsideration filed by respondents is hereby **GRANTED.** Accordingly, petitioner's claim for refund of the alleged overpaid Value-Added Tax in the amount of ₱77,151,020.46 covering the first quarter of 1998 is hereby **DENIED** for lack of merit.[98]

3. **CA-G.R. SP No. 76540 Decision (April 30, 2007)**

The Court of Appeals affirmed the CTA's Resolution denying petitioner's claim for refund, and we quote portions of the discussion from the Court of Appeals decision below:

To Our mind, the key to resolving the jugular issue of this controversy involves a deeper analysis on how the much-contested transitional input tax credit has been encrypted in the country's value-added tax (VAT) system.

x x x x

x x x [T]he Commissioner of Internal Revenue promulgated **Revenue Regulations No. 7-95** which laid down, among others, the basis of the transitional input tax credit for real estate dealers:[99]

x x x x

The Regulation unmistakably allows credit for transitional input tax of any person who becomes liable to VAT or who elects to be a VAT-registered person. More particularly, real estate dealers who were beforehand not subject to VAT are allowed a tax credit to cushion the staggering effect of the newly imposed 10% output VAT liability under RA No. 7716.

Bearing in mind the purpose of the transitional input tax credit under the VAT system, We find it incongruous to grant petitioner's claim for tax refund. We take note of the fact that petitioner acquired the Global City lots from the National Government. The transaction was not subject to any sales or business tax. Since the seller did not pass on any tax

---

97 Id. at 316.

98 Id. at 319.

99 SECTION 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 sale 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 Executive Order No. 273 (January 1, 1988).

liability to petitioner, the latter may not claim tax credit. Clearly then, petitioner cannot simply demand that it is entitled to the transitional input tax credit.

x x x x

Another point. Section 105 of the National Internal Revenue Code, as amended by EO No. 273, explicitly provides that the transitional input tax credit shall be based on "the beginning inventory of goods, materials and supplies **or** the actual value-added tax paid on such goods, materials and supplies, whichever is higher." Note that the law did not simply say – the transitional input tax credit shall be 8% of the beginning inventory of goods, materials and supplies.

Instead, lawmakers went on to say that the creditable input tax shall be *whichever is higher* between the value of the inventory and the actual VAT paid. Necessarily then, a comparison of these two figures would have to be made. This strengthens Our view that previous payment of the VAT is indispensable to determine the actual value of the input tax creditable against the output tax. So too, this is in consonance with the present tax credit method adopted in this jurisdiction whereby an entity can credit against or subtract from the VAT charged on its sales or outputs the VAT paid on its purchases, inputs and imports.

We proceed to traverse another argument raised in this controversy. Petitioner insists that the term "goods" which was one of the bases in computing the transitional input tax credit must be construed so as to include **real properties held primarily for sale to customers**. Petitioner posits that respondent Commissioner practically rewrote the law when it issued Revenue Regulations No. 7-95 which limited the basis of the 8% transitional input tax credit to the value of *improvements* alone.

Petitioner is clearly mistaken.

The term "goods" has been defined to mean any movable or tangible objects which are appreciable or tangible. More specifically, the word "goods" is always used to designate wares, commodities, and personal chattels; and does not include *chattels real.* "Real property" on the other hand, refers to land, and generally whatever is erected or growing upon or affixed to land. It is therefore quite absurd to equate "goods" as being synonymous to "properties". The vast difference between the terms "goods" and "real properties" is so obvious that petitioner's assertion must be struck down for being utterly baseless and specious.

Along this line, We uphold the validity of Revenue Regulations No. 7-95. The authority of the Secretary of Finance, in conjunction with the Commissioner of Internal Revenue, to promulgate all needful rules and regulations for the effective enforcement of internal revenue laws cannot be controverted. Neither can it be disputed that such rules and regulations, as well as administrative opinions and rulings, ordinarily should deserve weight and respect by the courts. Much more fundamental than either of the above, however, is that all such issuances must not override, but must remain consistent and in harmony with, the law they seek to apply and implement. Administrative rules and regulations are intended to carry out,

> neither to supplant nor to modify, the law. Revenue Regulations No. 7-95 is clearly not inconsistent with the prevailing statute insofar as the provision on transitional input tax credit is concerned.[100]

4. CA-G.R. SP No. 76540 Resolution (October 8, 2007)

In this Resolution, the Court of Appeals denied petitioner's Motion for Reconsideration of its Decision dated April 30, 2007.

C. G.R. No. 181092

1. CTA Case No. 5694 Decision (September 29, 2000)

The CTA ruled that petitioner is not automatically entitled to the 8% transitional input tax allowed under Section 105 of the Tax Code based solely on its inventory of real properties, and cited the rule on uniformity in taxation duly enshrined in the Constitution.[101] According to the CTA:

> As defined under the above Section 104 of the Tax Code, an "input tax" means the VAT paid by a VAT-registered person in the course of his trade or business on importation of goods or services from a VAT-registered person; and that such tax shall *include the transitional input tax* determined in accordance with Section 105 of the Tax Code, *supra*.[102]

> Applying the rule on statutory construction that particular words, clauses and phrases should not be studied as detached and isolated expressions, but the whole and every part of the statute must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole, the phrase "transitional input tax" found in Section 105 should be understood to encompass goods, materials and supplies which are subject to VAT, in line with the context of "input tax" as defined in Section 104, most especially that the latter includes, and immediately precedes, the former under its statutory meaning. Petitioner's contention that the 8% transitional input tax is statutorily presumed to the extent that its real properties which have not been subjected to VAT are entitled thereto, would directly contradict "input tax" as defined in Section 104 and would invariably cause disharmony.[103]

The CTA held that the 8% transitional input tax should not be viewed as an outright grant or presumption without need of prior taxes having been paid. Expounding on this, the CTA said:

> The simple instance in the aforesaid paragraphs of requiring the tax on the materials, supplies or goods comprising the inventory to be currently unutilized as deferred sales tax credit before the 8% presumptive input tax can be enjoyed readily leads to the inevitable conclusion that such 8% tax cannot be just granted to any VAT liable person if he has no

---

100 CA *rollo* (G.R. No. 180035 [CA-G.R. SP No. 76540]), pp. 524-532.
101 Records (G.R. No. 181092 [CTA Case No. 5694]), pp. 218-219.
102 Id. at 220.
103 Id. at 220-221.

> priorly paid creditable sales taxes. Legislative intent thus clearly points to priorly paid taxes on goods, materials and supplies before a VAT-registered person can avail of the 8% presumptive input tax.[104]

Anent the applicability to petitioner's case of the requirement under Article VI, Section 28, par. 1 of the Constitution that the rule of taxation shall be uniform and equitable, the CTA held thus:

> Granting *arguendo* that Petitioner is statutorily presumed to be entitled to the 8% transitional input tax as provided in Section 105, even without having previously paid any tax on its inventory of goods, Petitioner would be placed at a more advantageous position than a similar VAT-registered person who also becomes liable to VAT but who has actually paid VAT on his purchases of goods, materials and supplies. This is evident from the alternative modes of acquiring the proper amount of transitional input tax under Section 105, supra. One is by getting the equivalent amount of 8% tax based on the beginning inventory of goods, materials and supplies and the other is by the actual VAT paid on such goods, materials and supplies, whichever is higher.
>
> As it is supposed to work, the transitional input tax should answer for the 10% output VAT liability that a VAT-registered person will incur once he starts business operations. While a VAT-registered person who is allowed a transitional input tax based on his actual payment of 10% VAT on his purchases can utilize the same to pay for his output VAT liability, a similar VAT-registered person like herein Petitioner, when allowed the alternative 8% transitional input tax, can offset his output VAT liability equally through such 8% tax even without having paid any previous tax. This obvious inequity that may arise could not have been the intention and purpose of the lawmakers in granting the transitional input tax credit. x x x[105]
>
> Evidently, Petitioner is not similarly situated both as to privileges and liabilities to that of a VAT-registered person who has paid actual 10% input VAT on his purchases of goods, materials and supplies. The latter person will not earn anything from his transitional input tax which, to emphasize, has been paid by him because the same will just offset his 10% output VAT liability. On the other hand, herein Petitioner will earn *gratis* the amount equivalent to 10% output VAT it has passed on to buyers for the simple reason that it has never previously paid any input tax on its goods. Its gain will be facilitated by herein claim for refund if ever granted. This is the reason why we do not see any incongruity in Section 4.105-1 of Revenue Regulations No. 7-95 as it relates to Section 105 of the 1996 Tax Code, contrary to the contention of Petitioner. Section 4.105-1 (*supra*), which bases the transitional input tax credit on the value of the improvements, is consistent with the purpose of the law x x x.[106]

---

104 Id. at 223.
105 Id. at 223-224.
106 Id. at 224-225.

2. CA-G.R. SP No. 61158 Decision (December 28, 2007)

The Court of Appeals affirmed the CTA's denial of petitioner's claim for refund and upheld the validity of the questioned Revenue Regulation issued by respondent Commissioner of Internal Revenue, reasoning as follows:

> Sec. 105 of the NIRC, as amended, provides that the allowance for the 8% input tax on the beginning inventory of a VAT-covered entity is "subject to the filing of an inventory as prescribed by regulations." This means that the legislature left to the BIR the determination of what will constitute the beginning inventory of goods, materials and supplies which will, in turn, serve as the basis for computing the 8% input tax.
>
> While the power to tax cannot be delegated to executive agencies, details as to the enforcement and administration of an exercise of such power may be left to them, including the power to determine the existence of facts on which its operation depends x x x. Hence, there is no gainsaying that the CIR and the Secretary of Finance, in limiting the application of the input tax of real estate dealers to improvements constructed on or after January 1, 1988, merely exercised their delegated authority under Sec. 105, id., to promulgate rules and regulations defining what should be included in the beginning inventory of a VAT-registered entity.
>
> x x x x
>
> In the instant case, We find that, contrary to petitioner's attacks against its validity, the limitation on the beginning inventory of real estate dealers contained in Sec. 4.105-1 of RR No. 7-95 is reasonable and consistent with the nature of the input VAT. x x x.
>
> Based on the foregoing antecedents, it is clear why the second paragraph of Sec. 4.105-1 of RR No. 7-95 limits the transitional input taxes of real estate dealers to the value of improvements constructed on or after January 1, 1988. Since the sale of the land was not subject to VAT or other sales taxes prior to the effectivity of Rep. Act No. 7716, real estate dealers at that time had no input taxes to speak of. With this in mind, the CIR correctly limited the application of the 8% transitional input tax to improvements on real estate dealers constructed on or after January 1, 1988 when the VAT was initially implemented. This is, as it should be, for to grant petitioner a refund or credit for input taxes it never paid would be tantamount to unjust enrichment.
>
> As petitioner itself observes, the input tax credit provided for by Sec. 105 of the NIRC is a mechanism used to grant some relief from burdensome taxes. It follows, therefore, that not having been burdened by VAT or any other sales tax on its inventory of land prior to the effectivity of Rep. Act No. 7716, petitioner is not entitled to the relief afforded by Sec. 105, id.[107]

---

[107] CA *rollo* (G.R. No. 181092 [CA-G.R. SP No. 61158]), pp. 307-311.

The Court of Appeals ruled that petitioner is not similarly situated as those business entities which previously paid taxes on their inputs, and stressed that "a tax refund or credit x x x is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer x x x."[108]

THIS COURT'S RULING

As previously stated, the issues here have already been passed upon and resolved by this Court *En Banc* twice, in decisions that have reached finality, and we are bound by the doctrine of *stare decisis* to apply those decisions to these consolidated cases, for they involve the same facts, issues, and even parties.

Thus, we find for the petitioner.

DISCUSSION

The errors assigned by petitioner to the Court of Appeals and the arguments offered by respondents to support the denial of petitioner's claim for tax refund have already been dealt with thoroughly by the Court *En Banc* in *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*, **G.R. Nos. 158885** and **170680** (Decision - April 2, 2009; Resolution - October 2, 2009); and *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*, **G.R. No. 173425** (Decision - September 4, 2012; Resolution - January 22, 2013).

The Court *En Banc* decided on the following issues in G.R. Nos. 158885 and 170680:

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

Subsequently, in G.R. No. 173425, the Court resolved issues that are identical to the ones raised here by petitioner,[109] thus:

> 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

---

108 Id. at 311.

109 *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 173425, September 4, 2012, 679 SCRA 566, 576-577.

be claimed under Section 105 of the National Internal Revenue Code to the "improvements" on real properties.

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 [sales tax or value-added tax][110] by petitioner on its land before it may claim the input tax credit granted by Section 105 of the National Internal Revenue Code.

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.[111]

The Court's pronouncements in the decided cases regarding these issues are discussed below. The doctrine of *stare decisis et non quieta movere*, which means "to abide by, or adhere to, decided cases,"[112] compels us to apply the rulings by the Court to these consolidated cases before us. Under the doctrine of *stare decisis*, "when this Court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle, and apply it to all future cases, where facts are substantially the same; regardless of whether the parties and property are the same."[113] This is to provide stability in judicial decisions, as held by the Court in a previous case:

> Stand by the decisions and disturb not what is settled. *Stare decisis* simply means that for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different. It proceeds from the

---

110 *Rollo* (G.R. No. 175707), p. 26, petitioner used "sales tax or value-added tax."

111 Id. at 25-26.

112 Black's Law Dictionary, Abridged Fifth Edition, Copyright 1983 by West Publishing Co., 3rd Reprint – 1987.

113 *Ty v. Banco Filipino Savings and Mortgage Bank*, G.R. No. 188302, June 27, 2012, 675 SCRA 339, 349.

> first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike.[114]

More importantly, we cannot depart from the legal precedents as laid down by the Court *En Banc*. It is provided in the Constitution that "**no doctrine or principle of law laid down by the court in a decision rendered *en banc* or in division may be modified or reversed except by the court sitting *en banc*.**"[115]

What is left for this Court to do is to reiterate the rulings in the aforesaid legal precedents and apply them to these consolidated cases.

As regards the main issue, the Court conclusively held that petitioner is entitled to the 8% transitional input tax on its beginning inventory of land, which is granted in Section 105 (now Section 111[A]) of the NIRC, and granted the refund of the amounts petitioner had paid as output VAT for the different tax periods in question.[116]

Whether the transitional/presumptive input tax credit under Section 105 of the NIRC may be claimed only on the "improvements" on real properties.

The Court held in the earlier consolidated decision, G.R. Nos. 158885 and 170680, as follows:

> **On its face, there is nothing in Section 105 of the Old NIRC that prohibits the inclusion of real properties, together with the improvements thereon, in the beginning inventory of goods, materials and supplies, based on which inventory the transitional input tax credit is computed.** It can be conceded that when it was drafted Section 105 could not have possibly contemplated concerns specific to real properties, as real estate transactions were not originally subject to VAT. At the same time, when transactions on real properties were finally made subject to VAT beginning with Rep. Act No. 7716, no corresponding amendment was adopted as regards Section 105 to provide for a differentiated treatment in the application of the transitional input tax credit with respect to real properties or real estate dealers.
>
> It was Section 100 of the Old NIRC, as amended by Rep. Act No. 7716, which made real estate transactions subject to VAT for the first time. Prior to the amendment, Section 100 had imposed the VAT "on every sale, barter or exchange of goods", without however specifying the

---

114 Id. at 350, citing *Confederation of Sugar Producers Association, Inc. (CONFED) v. Department of Agrarian Reform (DAR)*, 548 Phil. 498, 534 (2007).

115 1987 Constitution, Article VIII, Section 4, Paragraph (3).

116 *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*, G.R. Nos. 158885 and 170680 (Decision - 602 Phil. 100 (2009); Resolution - October 2, 2009, 602 SCRA 159); *and Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 173425 (Decision - September 4, 2012, 679 SCRA 566; Resolution - January 22, 2013, 689 SCRA 76).

kind of properties that fall within or under the generic class "goods" subject to the tax.

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

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

Rep. Act No. 7716 clarifies that it is the real properties "held primarily for sale to customers or held for lease in the ordinary course of trade or business" that are subject to the VAT, and not when the real estate transactions are engaged in by persons who do not sell or lease properties in the ordinary course of trade or business. It is clear that those regularly engaged in the real estate business are accorded the same treatment as the merchants of other goods or properties available in the market. In the same way that a milliner considers hats as his goods and a rancher considers cattle as his goods, a real estate dealer holds real property, whether or not it contains improvements, as his goods.[117] (Citations omitted, emphasis added.)

x x x x

Under Section 105, the beginning inventory of "goods" forms part of the valuation of the transitional input tax credit. Goods, as commonly understood in the business sense, refers to the product which the VAT-registered person offers for sale to the public. With respect to real estate dealers, it is the real properties themselves which constitute their "goods". Such real properties are the operating assets of the real estate dealer.

Section 4.100-1 of RR No. 7-95 itself includes in its enumeration of "goods or properties" such "real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business." Said definition was taken from the very statutory language of Section 100 of the Old NIRC. **By limiting the definition of goods to "improvements" in Section 4.105-1, the BIR not only contravened the definition of "goods" as provided in the Old NIRC, but also the definition which the same revenue regulation itself has provided**.[118] (Emphasis added.)

---

117 *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*, 602 Phil. 100, 118-120 (2009).

118 Id. at 125-126.

The Court then emphasized in its Resolution in G.R. No. 158885 and G.R. No. 170680 that Section 105 of the old NIRC, on the transitional input tax credit, remained intact despite the enactment of Republic Act No. 7716. Section 105 was amended by Republic Act No. 8424, and the provisions on the transitional input tax credit are now embodied in Section 111(A) of the new NIRC, which reads:

> 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 [F]inance, upon recommendation of the Commissioner,* be allowed input tax on his beginning inventory of goods, materials and supplies equivalent for 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.[119]

In G.R. Nos. 158885 and 170680, the Court asked, "If the plain text of Republic Act No. 7716 fails to supply any apparent justification for limiting the beginning inventory of real estate dealers only to the improvements on their properties, how then were the Commissioner of Internal Revenue and the courts *a quo* able to justify such a view?"[120] The Court then answered this question in this manner:

> *IV.*
>
> The fact alone that the denial of FBDC's claims is in accord with Section 4.105-1 of RR 7-95 does not, of course, put this inquiry to rest. If Section 4.105-1 is itself incongruent to Rep. Act No. 7716, the incongruence cannot by itself justify the denial of the claims. We need to inquire into the rationale behind Section 4.105-1, as well as the question whether the interpretation of the law embodied therein is validated by the law itself.
>
> x x x x
>
> It is correct, as pointed out by the CTA, that upon the shift from sales taxes to VAT in 1987 newly-VAT registered people would have been prejudiced by the inability to credit against the output VAT their payments by way of sales tax on their existing stocks in trade. Yet that inequity was precisely addressed by a transitory provision in E.O. No. 273 found in Section 25 thereof. **The provision authorized VAT-registered persons to invoke a "presumptive input tax equivalent to 8% of the value of the inventory as of December 31, 1987 of materials and supplies which are not for sale, the tax on which was not taken up or claimed as deferred sales tax credit," and a similar presumptive input**

---

119 *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue,* G.R. No. 158885 and G.R. No. 170680, October 2, 2009, 602 SCRA 159, 163.

120 *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue,* supra note 117 at 120.

> **tax equivalent to 8% of the value of the inventory as of December 31, 1987 of goods for sale, the tax on which was not taken up or claimed as deferred sales tax credit**.[121] (Emphasis ours.)

Whether there must have been previous payment of sales tax or value-added tax by petitioner on its land before petitioner may claim the input tax credit granted by Section 105 (now Section 111[A]) of the NIRC.

The Court discussed this matter lengthily in its Decision in G.R. Nos. 158885 and 170680, and we quote:

> Section 25 of E.O. No. 273 perfectly remedies the problem assumed by the CTA as the basis for the introduction of transitional input tax credit in 1987. If the core purpose of the tax credit is only, as hinted by the CTA, to allow for some mode of accreditation of previously-paid sales taxes, then Section 25 alone would have sufficed. **Yet E.O. No. 273 amended the Old NIRC itself by providing for the transitional input tax credit under Section 105, thereby assuring that the tax credit would endure long after the last goods made subject to sales tax have been consumed.**
>
> **If indeed the transitional input tax credit is integrally related to previously paid sales taxes, the purported causal link between those two would have been nonetheless extinguished long ago. Yet Congress has reenacted the transitional input tax credit several times; that fact simply belies the absence of any relationship between such tax credit and the long-abolished sales taxes. Obviously then, the purpose behind the transitional input tax credit is not confined to the transition from sales tax to VAT.**
>
> x x x **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.**
>
> **x x x [I]t 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.**
>
> x x x x
>
> **The interpretation proffered by the CTA would exclude goods and properties which are acquired through sale not in the ordinary**

---

121 Id. at 120-121.

> **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.
>
> The CTA harped on the circumstance that FBDC was excused from paying any tax on the purchase of its properties from the national government, even claiming that to allow the transitional input tax credit is "tantamount to giving an undeserved bonus to real estate dealers similarly situated as [FBDC] which the Government cannot afford to provide." **Yet the tax laws in question, and all tax laws in general, are designed to enforce uniform tax treatment to persons or classes of persons who share minimum legislated standards. The common standard for the application of the transitional input tax credit, as enacted by E.O. No. 273 and all subsequent tax laws which reinforced or reintegrated the tax credit, is simply that the taxpayer in question has become liable to VAT or has elected to be a VAT-registered person. E.O. No. 273 and the subsequent tax laws are all decidedly neutral and accommodating in ascertaining who should be entitled to the tax credit, and it behooves the CIR and the CTA to adopt a similarly judicious perspective**.[122] (Citations omitted, emphases ours.)

The Court *En Banc* in its Resolution in **G.R. No. 173425** likewise discussed the question of prior payment of taxes as a prerequisite before a taxpayer could avail of the transitional input tax credit. The Court found

---

122 Id. at 121-125.

that petitioner is entitled to the 8% transitional input tax credit, and clearly said that the fact that petitioner acquired the Global City property under a tax-free transaction makes no difference as prior payment of taxes is not a prerequisite.[123] We quote pertinent portions of the resolution below:

> **This argument has long been settled. To reiterate, prior payment of taxes is not necessary before a taxpayer could avail of the 8% transitional input tax credit.** This position is solidly supported by law and jurisprudence, *viz.*:
>
> ***First.*** Section 105 of the old National Internal Revenue Code (NIRC) clearly provides that for a taxpayer to avail of the 8% transitional input tax credit, all that is required from the taxpayer is to file a beginning inventory with the Bureau of Internal Revenue (BIR). It was never mentioned in Section 105 that prior payment of taxes is a requirement. x x x.
>
> x x x x
>
> ***Second.*** Since the law (Section 105 of the NIRC) does not provide for prior payment of taxes, to require it now would be tantamount to judicial legislation which, to state the obvious, is not allowed.
>
> ***Third.*** A transitional input tax credit is not a tax refund *per se* but a tax credit. Logically, prior payment of taxes is not required before a taxpayer could avail of transitional input tax credit. As we have declared in our September 4, 2012 Decision, "[t]ax 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. Tax credit, on the other hand, is an amount subtracted directly from one's total tax liability. It is any amount given to a taxpayer as a subsidy, a refund, or an incentive to encourage investment."
>
> ***Fourth***. The issue of whether prior payment of taxes is necessary to avail of transitional input tax credit is no longer novel. It has long been settled by jurisprudence. x x x.
>
> ***Fifth***. Moreover, in *Commissioner of Internal Revenue v. Central Luzon Drug Corp.*, this Court had already declared that prior payment of taxes is not required in order to avail of a tax credit. x x x[124] (Citations omitted, emphases ours.)

The Court has thus categorically ruled that prior payment of taxes is not required for a taxpayer to avail of the 8% transitional input tax credit provided in Section 105 of the old NIRC and that petitioner is entitled to it, despite the fact that petitioner acquired the Global City property under a tax-free transaction.[125] The Court *En Banc* held:

---

123 *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 173425, January 22, 2013, 689 SCRA 76, 82.

124 Id. at 82-84.

125 *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*, supra note 109.

> Contrary to the view of the CTA and the CA, there is nothing in the abovequoted 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 x x x 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.[126]

Whether Revenue Regulations No. 7-95 is a valid implementation of Section 105 of the NIRC.

In the April 2, 2009 Decision in G.R. Nos. 158885 and 170680, the **Court struck down Section 4.105-1 of Revenue Regulations No. 7-95 for being in conflict with the law**.[127] The decision reads in part as follows:

> [There] is no logic that coheres with either E.O. No. 273 or Rep. Act No. 7716 which supports the restriction imposed on real estate brokers and their ability to claim the transitional input tax credit based on the value of their real properties. In addition, the very idea of excluding the real properties itself from the beginning inventory simply runs counter to what the transitional input tax credit seeks to accomplish for persons engaged in the sale of goods, whether or not such "goods" take the form of real properties or more mundane commodities.
>
> Under Section 105, the beginning inventory of "goods" forms part of the valuation of the transitional input tax credit. Goods, as commonly understood in the business sense, refers to the product which the VAT-registered person offers for sale to the public. With respect to real estate dealers, it is the real properties themselves which constitute their "goods". Such real properties are the operating assets of the real estate dealer.
>
> Section 4.100-1 of RR No. 7-95 itself includes in its enumeration of "goods or properties" such "real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business." Said definition was taken from the very statutory language of Section 100 of the Old NIRC. By limiting the definition of goods to "improvements" in Section 4.105-1, the BIR not only contravened the definition of "goods"

---

126 Id. at 579.

127 *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue,* supra note 119 at 164.

as provided in the Old NIRC, but also the definition which the same revenue regulation itself has provided.

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

It is of course axiomatic that a rule or regulation must bear upon, and be consistent with, the provisions of the enabling statute if such rule or regulation is to be valid. In case of conflict between a statute and an administrative order, the former must prevail. Indeed, **the CIR has no power to limit the meaning and coverage of the term "goods" in Section 105 of the Old NIRC absent statutory authority or basis to make and justify such limitation. A contrary conclusion would mean the CIR could very well moot the law or arrogate legislative authority unto himself by retaining sole discretion to provide the definition and scope of the term "goods."**[128] (Emphasis added.)

Furthermore, in G.R. No. 173425, the Court held:

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

As regards Section 4.105-1 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:

x 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. Pertinent portions of the Resolution read:

---

128 *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*, supra note 117 at 125-127.

> 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 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.

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.[129] (Citations omitted, emphasis ours.)

Whether the issuance of Revenue Regulations No. 7-95 by the BIR, and declaration of validity of said Regulations by the CTA and the Court of Appeals, was in violation of the fundamental principle of separation of powers.

In the Resolution dated October 2, 2009 in G.R. Nos. 158885 and 170680 the Court denied the respondents' Motion for Reconsideration with finality and held:

---

129 *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue,* supra note 109 at 586-588.

[The April 2, 2009 Decision] held that the CIR had no power to limit the meaning and coverage of the term *"goods"* in Section 105 of the Old NIRC sans statutory authority or basis and justification to make such limitation. This it did when it restricted the application of Section 105 in the case of real estate dealers only to improvements on the real property belonging to their beginning inventory.

x x x x

The statutory definition of the term "goods **or** properties" leaves no room for doubt. It states:

> "Sec. 100. *Value-added tax on sale of goods or properties.* — (a) Rate and base of tax. — x x x
>
> (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."

The amendatory provision of Section 105 of the NIRC, as introduced by RA 7716, states:

> "Sec. 105. *Transitional Input [T]ax 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."

The term *"goods or properties"* by the unambiguous terms of Section 100 includes *"real properties held primarily for sale to c[u]st[o]mers or held for lease in the ordinary course of business."* Having been defined in Section 100 of the NIRC, the term *"goods"* as used in Section 105 of the same code could not have a different meaning. This has been explained in the Decision dated April 2, 2009, thus:

x x x x

Section 4.105-1 of RR 7-95 restricted the definition of *"goods," viz*.:

> "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)."

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 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.

On January 1, 1997, RR 6-97 was issued by the Commissioner of Internal Revenue. RR 6-97 was basically a reiteration of the same Section 4.105-1 of RR 7-95, except that the RR 6-97 **deleted** the following paragraph:

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

It is clear, therefore, that under RR 6-97, the allowable transitional input tax credit is not limited to improvements on real properties. The particular provision of RR 7-95 has effectively been repealed by RR 6-97 which is now in consonance with Section 100 of the NIRC, insofar as the definition of real properties as goods is concerned. The failure to add a specific repealing clause would not necessarily indicate that there was no intent to repeal RR 7-95. The fact that the aforequoted paragraph was deleted created an irreconcilable inconsistency and repugnancy between the provisions of RR 6-97 and RR 7-95.

x x x x

> As pointed out in Our Decision of April 2, 2009, to give Section 105 a restrictive construction that transitional input tax credit applies only when taxes were previously paid on the properties in the beginning inventory and there is a law imposing the tax which is presumed to have been paid, is to impose conditions or requisites to the application of the transitional tax input credit which are not found in the law. The courts must not read into the law what is not there. To do so will violate the principle of separation of powers which prohibits this Court from engaging in judicial legislation.[130] (Emphases added.)

As the Court *En Banc* held in G.R. No. 173425, the issues in this case are not novel. These same issues have been squarely ruled upon by this Court in the earlier decided cases that have attained finality.[131]

It is now this Court's duty to apply the previous rulings to the present case. ***Once a case has been decided one way, any other case involving exactly the same point at issue, as in the present case, should be decided in the same manner***.[132]

Thus, we find that petitioner is entitled to a refund of the amounts of: **1) ₱486,355,846.78 in G.R. No. 175707, 2) ₱77,151,020.46 in G.R. No. 180035, and 3) ₱269,340,469.45 in G.R. No. 181092, which petitioner paid as value-added tax, or to a tax credit for said amounts.**

WHEREFORE, in view of the foregoing, the consolidated petitions are hereby **GRANTED**. The following are **REVERSED** and **SET ASIDE**:

1) Under **G.R. No. 175707**, the **Decision** dated **April 22, 2003** of the Court of Appeals in **CA-G.R. SP No. 61516** and its subsequent **Resolution** dated **November 30, 2006**;

2) Under **G.R. No. 180035**, the **Decision** dated **April 30, 2007** of the Court of Appeals in **CA-G.R. SP No. 76540** and its subsequent **Resolution** dated **October 8, 2007**; and

3) Under **G.R. No. 181092**, the **Decision** dated **December 28, 2007** of the Court of Appeals in **CA-G.R. SP No. 61158.**

Respondent Commissioner of Internal Revenue is ordered to **REFUND, OR, IN THE ALTERNATIVE, TO ISSUE A TAX CREDIT CERTIFICATE** to petitioner Fort Bonifacio Development Corporation, the following amounts:

---

130 *Fort Bonifacio Development Corp. v. Commissioner of Internal Revenue*, supra note 119 at 164-169.

131 *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*, supra note 123 at 90.

132 *Ty v. Banco Filipino Savings and Mortgage Bank*, supra note 113 at 350.

1) **₱486,355,846.78** paid as output value-added tax for the **second quarter of 1997 (G.R. No. 175707)**;

2) **₱77,151,020.46** paid as output value-added tax for the **first quarter of 1998 (G.R. No. 180035)**; and

3) **₱269,340,469.45** paid as output value-added tax for the **fourth** quarter **of 1996 (G.R. No. 181092)**.

SO ORDERED.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

PRESBITERO J. VELASCO, JR.
Associate Justice

JOSE P. PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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's Division.

MARIA LOURDES P. A. SERENO
Chief Justice