



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated February 10, 2020 which reads as follows:*

**“G.R. No. 229537– ALLEGRO MICROSYSTEMS PHILIPPINES, INC., petitioner, versus CCT-TOYO CONSORTIUM, respondent.**

The liability for the payment of an indirect tax is the main issue in this petition for review on certiorari under Rule 45 of the Rules of Court assailing the Court of Appeals’ Decision dated April 7, 2016 in CA-G.R. SP No. 133076, which annulled the Construction Industry Arbitration Commission’s Final Award dated November 25, 2013 in CIAC Case No. 07-2013.

ANTECEDENTS

Allegro Microsystems Philippines, Inc. is a domestic corporation engaged in the manufacture, testing and export of electronic components. In 2010, Allegro Microsystems entered into a contract<sup>1</sup> with CCT-Toyo Consortium for the construction of its expansion project in the amount of P401,452,000.00 and US\$2,411,495.00. The contract price was later amended to P403,216,000.00.<sup>2</sup> In both instances, the parties agreed that the price is “exclusive of value added tax” or VAT since Allegro Microsystems claimed to be a VAT zero-rated entity, duly registered with the Board of Investments. Upon completion of the project, CCT-Toyo sent a bill exclusive of VAT and Allegro Microsystems paid the full contract price of P403,216,000.00.

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<sup>1</sup> Rollo, pp. 385-395.

<sup>2</sup> Id. at pp. 397-399.

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Meantime, Allegro Microsystems issued another Purchase Order in the amount of P8,304,865.22 for additional works to be performed by CCT-Toyo. In a Letter<sup>3</sup> dated May 2, 2012, CCT-Toyo advised Allegro Microsystems that it will apply for zero-rating of the sale of its services with the Bureau of Internal Revenue. If the BIR will disallow the claim, it shall collect 12% VAT from Allegro Microsystems. Later, the BIR disallowed the application.

Thus, CCT-Toyo demanded from Allegro Microsystems the payment of 12% VAT, both on the original contract and the additional works in the amounts of P48,385,920.00 and P996,583.83, respectively, or a total of P49,382,503.83.<sup>4</sup> Yet, Allegro Microsystems ignored the demand prompting CCT-Toyo to file a Request for Arbitration<sup>5</sup> before the CIAC.

In due course, the CIAC denied CCT-Toyo's money claim. In the November 25, 2013 Final Award, the CIAC held that VAT is a form of sales tax and must be collected from CCT-Toyo, the seller, and not from Allegro Microsystems, the buyer. Moreover, the parties' contract stated that the price is "exclusive of value added tax" but is silent on any agreement to shift the burden of paying from the seller to the buyer,<sup>6</sup> thus:

The Sole Arbitrator hereby denies claimant's money claims on the ground that there is no agreement between the parties to shift the burden of paying VAT from the claimant to the respondent under the Construction Contract.

Further, the Sole Arbitrator hereby denies respondent's counterclaim for attorney's fees in the amount of P1,243,000.00. The parties shall bear their own costs of lawyer's/attorney's fees and litigation expenses.

SO ORDERED.<sup>7</sup>

Aggrieved, CCT-Toyo appealed to the CA. In its April 7, 2016 Decision, the CA annulled the CIAC's Final Award and ordered Allegro Microsystems to pay the total amount of P49,382,503.88 representing the 12% VAT, with legal interest of 6% per annum from June 30, 2011. It held that the phrase "exclusive of value added tax" in the agreement means that the contract price does not yet include the VAT component of the transaction. At any rate, there was no waiver

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<sup>3</sup> Id. at p. 413.

<sup>4</sup> Id. at p. 415.

<sup>5</sup> Id. at pp. 428-435.

<sup>6</sup> Id. at pp. 504-531.

<sup>7</sup> Id. at p. 530.

*with*

of the VAT. Moreover, Allegro Microsystems is the one ultimately liable to pay VAT owing to its very nature as an indirect tax – which is demanded, in the first instance, from, or is paid by, one person in the expectation and intention that he can shift the burden to someone else.<sup>8</sup>

The CA likewise explained that CCT-Toyo is the person initially liable for the payment of VAT under Section 105,<sup>9</sup> Chapter I, Title IV of the NIRC. However, VAT should be understood not in the context of the person or entity directly liable for its payment. Rather, VAT should be taken in terms of its nature as a tax on consumption,<sup>10</sup> such that it may either be incorporated in the value of the goods, properties or services sold or leased or charged as an additional amount to the price or value.<sup>11</sup> The seller, lessor or service provider has the option to follow either way in charging the VAT to its clients or customers. Thus, CCT-Toyo was correct in exercising the second option of charging an additional 12% of the contract price since it was not incorporated in the contract price.<sup>12</sup> Accordingly, the CA ordered Allegro Microsystems to pay CCT-Toyo its money claim:

**GIVEN ALL OF THESE**, the instant petition is **GRANTED**. The Final Award dated November 25, 2013 of Arbitrator Maria Clara B. Tankeh-Asuncion of the Construction Industry Arbitration Commission is **ANNULLED** and **SET ASIDE**. Accordingly, respondent Allegro Microsystems Philippines, Inc. is **ORDERED** to pay the amount of Php49,382,503.88 representing the 12% Value Added Tax on the contract price under the Construction Contract and Purchase Order No. 115402, with legal interest of 6% *per annum* from June 30, 2011.

However, in accordance with the pronouncements of this decision, the parties shall bear their own costs for attorney's fees and litigation expenses. Lastly, arbitration costs shall be equally divided between them.

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<sup>8</sup> Id. at pp. 56-75. Penned by Associate Justice Maria Elisa Sempio Diy and concurred in by Associate Justices Ramon M. Bato, Jr. and Manuel M. Barrios.

<sup>9</sup> Section 105. *Persons Liable*. – Any person who, in the course of trade or business, sells, barter, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value added tax imposed in Sections 106 to 108 of this Code.

The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of Republic Act No. 7716. xxx

<sup>10</sup> See Note 8, *LVM Construction Corporation v. F.T. Sanchez/SOCOR/KIMWA (Joint Venture)*, G.R. No. 181961, December 5, 2011.

<sup>11</sup> Id., citing *CIR v. Acesite (Philippines) Hotel Corporation*, G.R. No. 147295, February 16, 2007.

<sup>12</sup> Id. at pp. 74-75.

with

**SO ORDERED.**

Allegro Microsystems sought reconsideration<sup>13</sup> but was denied.<sup>14</sup> Hence, this petition.<sup>15</sup>

**RULING**

The petition is unmeritorious.

Indirect taxes, like VAT or excise tax, are those in which the liability for the payment thereof falls on one person but the burden thereof can be shifted or passed on to another person, such as when the tax is imposed upon goods before reaching the consumer who ultimately pays for it. When the seller passes on the tax to his buyer, the former, in effect, shifts the burden to the purchaser as part of the price of goods sold or services rendered.<sup>16</sup>

This system of indirect taxation facilitates the collection of taxes. The taxing authority conveniently demands payment of the VAT from the seller of goods or services, who acts as intermediary, and the latter, in turn, collects said amount from the end buyer or consumer. This may be done by either incorporating the VAT component in the value of the goods, properties or services sold or leased or by charging the VAT as an additional amount to the price or value.<sup>17</sup>

Applying this principle, Allegro Microsystems cannot evade payment of the 12% VAT. To repeat, being in the nature of an indirect tax, Allegro Microsystems is not directly liable for the payment of VAT, but it remains the final purchaser or end-user of the goods or services that should ultimately bear the burden of the tax.<sup>18</sup> Hence, the CA was correct in ruling that CCT-Toyo is entitled to collect the 12% VAT from Allegro Microsystems.

Relatively, Allegro Microsystems cannot validly insist on its status as a zero-rated entity to avoid payment of the corresponding 12% VAT on the construction of its building. Also, it is erroneous to argue that the shifting of the burden to pay VAT is merely permissive on the part of CCT-Toyo considering that Allegro's only defense

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<sup>13</sup> Id. at pp. 688-710.

<sup>14</sup> Id. at pp. 78-81.

<sup>15</sup> Id. at pp. 12-49.

<sup>16</sup> CIR v. PLDT, *supra*.

<sup>17</sup> CIR v. Acesite (Philippines) Hotel Corporation, *supra*.

<sup>18</sup> CIR v. PLDT, *supra*.

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before the CIAC for the non-payment of VAT was its zero-rated status.<sup>19</sup> In fact, even before the CA, Allegro Microsystems admits that the contract was initially intended to be “inclusive of value added tax” but the final contract was changed to “exclusive of value added tax” to reflect that is a zero-rated entity.<sup>20</sup>

Nonetheless, the BIR already denied CCT-Toyo’s application for zero-rating for the construction of the building. It aptly explained that Allegro Microsystems is registered with the BOI as an export producer of semiconductor devices. As an exporter, Allegro Microsystems is claiming incentives under Executive Order (EO) No. 226 or the Omnibus Investment Code of 1987 which entitles it to automatic zero-rating of purchases. The BIR was quick to point out that the subject transaction only involves the construction of its building and this “is not among those services performed by subcontractors and/or contractors in processing, converting, or manufacturing goods for an enterprise whose export sales exceed seventy percent (70%) of the total annual production.” In the same manner, the building construction “does not directly form part nor contribute to the latter’s goods or final products that are to be exported. They are not ‘supplies’, ‘raw materials’, and ‘semi-manufactures products’ used in the manufacture, processing or production of ALLEGRO’S export products and forming part thereof.”<sup>21</sup>

To be sure, the treatment of a transaction between seller, lessor or service provider and its client or customers, as zero-rated is anchored on the Cross Border Doctrine. In *CIR v. Toshiba*,<sup>22</sup> this Court held that the Philippine VAT system adheres to the Cross Border Doctrine, which essentially means that no VAT shall be imposed to form part of the costs of goods destined for consumption outside of the territorial border of the taxing authority. As such, the actual export of goods and services from the Philippines to a foreign country must be free of VAT; while, those destined for use or consumption within the Philippines shall be imposed with VAT. Here, even if Allegro Microsystems is a BOI-registered export company, the construction of its building does not directly form part of the cost components of its products being exported or are destined for consumption outside the territorial border of the Philippines.

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<sup>19</sup> Rollo, pp. 481-499.

<sup>20</sup> See Note 13, at p. 701.

<sup>21</sup> Id. at pp. 423-426, BIR Revenue Ruling No. 610-2012, dated November 8, 2012, citing Section 4.108-5 of RR No. 16-05, as amended, implementing Section 108 (B) of the Tax Code.

<sup>22</sup> G.R. 150154, August 9, 2005.

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**FOR THESE REASONS**, the petition is **DENIED** and the assailed Court of Appeals' Decision dated April 7, 2016 in CA-G.R. SP No. 133076 is **AFFIRMED**.

**SO ORDERED.**" *Reyes, J. Jr, J., on leave.*

Very truly yours,

  
**LIBRADA C. BUENA**  
Division Clerk of Court

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court ~~11/21~~

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