Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SPECIAL SECOND DIVISION

WATERFRONT MACTAN CASINO HOTEL, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE ,
Respondent.

CTA CASE NO. 8222
For: Cancellation of VAT assessment

Present:
CASTAÑEDA, JR., *Chairperson*
CASANOVA, and
MINDARO-GRULLA, JJ.

Promulgated:
MAY 3 1 2013 3:55 p.m.

x---x

D E C I S I O N

MINDARO-GRULLA, J.:

This a Petition for Review filed on January 31, 2011 by Waterfront Mactan Casino Hotel, Inc. as petitioner against the Commissioner of Internal Revenue (CIR) as respondent, for the Court in Division, pursuant to pursuant to Section 7(a)(1) of Republic Act (RA) No. 1125, An Act Creating the Court of Tax Appeals, as amended[1], as well as Rule 4, Section 3 (a) (1), in relation to Rule 8, Section 4(a), of the Revised Rules of the Court of Tax Appeals (RRCTA)[2].

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1 Sec. 7. *Jurisdiction*. - The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

x x x x x x

(2) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds or internal revenue taxes, fees of other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

x x x x x x

2 Rule 4. Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

Petitioner seeks cancellation of the value-added tax (VAT) assessment for the taxable year 2006 in the amount of Twenty-Two Million Six Hundred Thirty-Eight Thousand One Hundred Six Pesos and 79/100 (₱22,638,106.79).

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines, with principal office at Salinas Drive, Lahug, Cebu City.[3]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), vested with the authority to act as such, including among others, the power to authorize the examination of taxpayers' books of accounts and to issue deficiency assessments of internal revenue taxes. She holds office at the BIR National Office Building, Diliman, Quezon City.

On August 31, 2007, respondent issued Letter of Authority No. 200700007009[4] for the purpose of examining petitioner's books of accounts and other accounting records

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(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

x x x x x x

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code of other laws administered by the Bureau of Internal Revenue;

x x x x x x

Rule 8. Sec. 4. *Where to appeal; mode of appeal.* –

(a) An Appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected; the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

[3] Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 93.
[4] Exhibit "1".

for all internal revenue taxes for the taxable period January 1, 2006 to December 31, 2006. The examination of petitioner's business operations led to the eventual issuance by respondent of a Preliminary Assessment Notice (PAN)[5] on March 16, 2009 and a Formal Letter of Demand and Audit Result/Assessment Notice[6] dated January 5, 2010, covering deficiency income tax, withholding tax on compensation, and VAT for the taxable year 2006. The summary of the deficiency tax assessments is as follows:

	BASIC	INCREMENTS	TOTAL
Income Tax Deficiency	₱ 22,290.04	₱ 11,145.02	₱ 33,435.06
Withholding Tax on Compensation Deficiency	6,232.77	3,428.02	9,660.79
Value-added Tax Deficiency	13,673,238.47	8,431,830.39	22,105,068.86
Total Deficiency Taxes	₱13,701,761.28	₱ 8,446,403.43	₱22,148,164.71

In a letter[7] to respondent dated June 24, 2010, petitioner manifested that it already paid the assessments for deficiency withholding tax on compensation and income tax through e-payment facility. With respect to the assessment for deficiency VAT, petitioner informed respondent that it initially charged Philippine Amusement and Gaming Corporation (PAGCOR) with output tax, but the said corporation disputed it based on PAGCOR's claim that it is VAT-exempt and it even furnished petitioner with a copy of the Court Order in OSJ Case No. 2004-1, declaring PAGCOR's exemption from all taxes.

It appears that the factual basis of the deficiency VAT assessment was the income payments received by petitioner from PAGCOR that were not subjected to VAT, computed as follows:[8]

Sales to PAGCOR	
Add: Sales/Revenue not subject to VAT	₱ 28,529,561.10
Unsupported Exempt Sales	83,540,274.54
Total Sales to PAGCOR not subjected to VAT	₱112,069,835.64

[5] Exhibit "8".
[6] Exhibits "10" and "11".
[7] Exhibit "A".
[8] Par. 5, Stipulation of Facts, JSFI, Docket p. 94

On July 30, 2010, respondent issued the Final Decision on Disputed Assessment[9], informing petitioner that its protest was duly "reconsidered" but respondent maintained that petitioner's claim for VAT-exempt sales to PAGCOR has no legal basis, to wit:

VAT Sales per VAT return		₱135,167,626.46
Add: Sales to PAGCOR		
(1) Sales/Revenue not subjected to VAT	₱28,529,561.10	
(2) Unsupported exempt sales	83,540,274.54	112,069,835.64
		247,237,462.10
Output Tax		29,668,495.45
Less: Input Tax per VAT returns		11,964,377.62
VAT Due		17,704,117.83
Less: VAT payments per return		4,255,737.56
Deficiency VAT		13,448,380.27
Add: Interest		9,189,726.52
Total Deficiency VAT		₱ 22,638,106.79

Petitioner was likewise informed that the above deficiency tax assessment should be paid immediately and that the same was respondent's final decision, hence, the instant petition.

Respondent filed her Answer[10] on March 7, 2011, where she raised the following Special and Affirmative Defenses:

> "The Philippine Amusement and Gaming Corporation (PAGCOR) is not exempt from the payment of income and VAT pursuant to the provision of RA 9337; and
>
> The 'Administrative Protest' filed by petitioner did not state the applicable laws, rules and regulations, or jurisprudence on which the protest is based. Hence, the same is without force and effect and the assessment notice was rendered final, executory and demandable."

Thereafter, on March 8, 2011, notice was issued for a pre-trial conference set on April 14, 2011, which was reset to May 12, 2011.

[9] Exhibit "13"
[10] Docket, pp. 44-66.

Petitioner filed its Pre-trial Brief on May 10, 2011; while respondent filed her Pre-trial Brief on April 11, 2011.

On July 8, 2011, the parties filed with this Court their Joint Stipulation of Facts and Issues, which was later approved in a Resolution dated July 12, 2011. In the same Resolution, the pre-trial conference was deemed terminated.

Trial proceeded, during which petitioner presented Ms. Precilla O. Toriano as its sole witness.

On January 31, 2012,[11] petitioner filed its Formal Offer of Evidence, offering Exhibits "A" to "G", inclusive of submarkings; which this Court admitted in a Resolution dated March 13, 2012.[12]

The documentary evidence formally offered by petitioner and admitted are as follows:

EXHIBITS	DESCRIPTION
"A"	Photocopy of formal protest dated June 24, 2010, filed by the petitioner with the Bureau of Internal Revenue LYTDO--Cebu City on June 25, 2010
"B"	Certified true copy of the Contract of Lease-issued by the National Archives of the Philippines on August 22, 2011- executed by Waterfront Mactan Casino Hotel, Incorporated ("WMCH") and Philippine Amusement and Gaming Corporation ("PAGCOR") dated September 13, 1995 consisting of 24 pages acknowledged by the parties before Notary Public Carlos R. Bautista, Jr. of the City of Manila and recorded in his notarial register as Doc. No. 220, Page No. 24, Book No. VI, Series of 1995.
"B-1"	Original copy of Official Receipt No. 1327525 V dated August 24, 2011 in the amount of ₱182.00 issued by the National Archives of the Philippines
"C"	Certified true copy of the *Amended Contract of Lease* – issued on August 26, 2011 by the Regional Trial Court of Manila as repository of notarial records for the year 2003 – executed by Waterfront Mactan Casino Hotel, Incorporated ("WMCH") and Philippine Amusement and Gaming Corporation ("PAGCOR") dated January 31, 2003 consisting of 12 pages acknowledged by the parties before Notary Public Carlos R. Bautista, Jr. of the City of Manila and recorded in his notarial register as

[11] Docket, pp. 132-138.
[12] Docket, pp. 202-203.

	Doc. No. 2, Page No. 99, Book No. IX, Series of 2003.
"D"	Certified true copy of the *Supplement to the Amended Contract of Lease* - issued on August 26, 2011 by the Regional Trial Court of Manila as repository of notarial records for the year 2003 – executed by Waterfront Mactan Casino Hotel, Incorporated ("WMCH") and Philippine Amusement and Gaming Corporation ("PAGCOR") consisting of three pages acknowledged by the parties on December 30, 2003 before Notary Public Roderick R. Concolacion of the City of Manila and recorded in his notarial register as Doc. No. 432, Page No. 88, Book No. VII, Series of 2003.
"E"	Certified true copy of the *Addendum to Supplement to the Amended Contract of Lease* dated January 9, 2004 – issued by the National Archives of the Philippines on Augsut 22, 2011 – executed by Waterfront Mactan Casino Hotel, Incorporated ("WMCH") and Philippine Amusement and Gaming Corporation ("PAGCOR") consisting of four pages acknowledged by the parties on January 13, 2004 before the Notary Public Renato U. de Pano, Jr. of the City of Manila and recorded in his notarial register as Doc. No. 745, Page No. 149, Book No. VIII, Series of 2004.
"E-1"	Original copy of Official Receipt No. 1327526 V dated August 24, 2011 in the amount of ₱57.00 issued by the National Archives of the Philippines.
"F"	Certified true copy of the *Addendum to Amended Contract of Lease* - issued on August 26, 2011 by the Regional Trial Court of Manila as repository of notarial records for the year 2005 - executed by Waterfront Mactan Casino Hotel, Incorporated ("WMCH") and Philippine Amusement and Gaming Corporation ("PAGCOR") consisting of five pages acknowledged by the parties on January 21, 2005 before Notary Public Roderick R. Concolacion of the City of Manila and recorded in his notarial register as Doc. No. 79, Page No. 84, Book No. I, Series of 2005.
"F-1"	Original copy of Judiciary Official Receipt No. 1200506 issued by the RTC-Manila Court on August 26, 2011 in the amount of ₱200.00
"G"	Original copy of the Judicial Affidavit of Ms. Precilla O. Toriano dated October 10, 2011 and submitted before the Court on October 10, 2010 (sic).

Respondent likewise, presented its sole witness, Mr. Roben H. Saguin.

On June 11, 2012, respondent filed her Formal Offer of Documentary Evidence,[13] offering Exhibits "1" to "14",

[13] Docket, pp. 227-233.

inclusive of submarkings; which this Court admitted in a Resolution dated July 12, 2012.[14]

The documentary evidence formally offered by respondent and admitted are as follows:

EXHIBITS	DESCRIPTION
"1"	Letter of Authority (LOA) No. 00007009 dated August 31, 2007 given to Revenue Officers Jennifer Almedilla, Miguel Sulit and Roben Saguin signed by Marissa Cabreros, HREA Administrative & Enforcement (LTDO Makati and Cebu)
"1-A"	Date/Signature of taxpayer/authorized representative, Hannah M. Mendoza, September 10, 2007
"2"	Checklist of Requirements duly signed by Jane T. Tumagan, Group Supervisor Re: Data Files requests for tax audit per Letter of Authority No. 00007009
"2-A"	Dateof receipt on by petitioner's representative, Hannah M. Mendoza, Sept. 10, 2007
"3"	Second Request for the Presentation of Records dated October 16, 2007 (including attachment) duly signed by Jane Tumagan, Group Supervisor
"3-A"	Date of receipt by petitioner's representative, Hannah M. Mendoza, October 17, 2007
"4"	Third Notice (Additional Requirements) duly signed by Jane Tumagan, Group Supervisor
"4-A"	Receipt on by petitioner's representative, Catherine Batad
"5"	Revalidation of the Letter of Authority on February 13, 2008 (shown on the face of Letter of Authority) By: Marissa Cabreros, HREA, Administrative & Enforcement (LTDO Makati & Cebu)
"6"	Notice for Informal Conference dated May 28, 2008 duly signed by Conrado Lee, OIC-Chief, LTDO Cebu
"6-A"	Receipt on by petitioner's representative, Catherine Batad on June 4, 2008
"7"	Memorandum Report dated December 12, 2008 duly signed by Roben Saguin et. al. (inclusive of attachments) Re: Recommendation for the issuance of PAN
"8"	Preliminary Assessment Notice dated March 16, 2009 with Details of Audit Findings and other attachments (8 pages)
"9"	Memorandum Report dated May 6, 2010 by Roben Saguin et al. (inclusive of attachments) Re: Recommendation for the issuance of FAN
"10"	Formal Letter of Demand with Details of Audit Findings duly signed by Zenaida Garcia, Asst. Commissioner for Large Taxpayers Service
"10-A"	Receipt on by petitioner's representative on June 7, 2010
"11"	Audit Result/Assessment Notice dated January 5, 2010 signed by Zenaida Garcia, Asst. Commissioner for Large Taxpayers Service (re: VAT, Withholding Tax on Compensation and Income Tax)

[14] Docket, pp. 271-272.

"12"	Memorandum Report dated May 6, 2010 by Roben Saguin et al. (inclusive of attachments) Re: Recommendation for the issuance of Final Decision on Disputed Assessment (FDDA)
"13"	Final Decision on Disputed Assessment dated July 30, 2010 by Zenaida Garcia, Asst. Commissioner for Large Taxpaeyers Service
"13-A"	Receipt on by petitioner's representative on January 4, 2011
"14"	Judicial Affidavit of Roben H. Saguin
"14-A"	Signature of Roben H. Saguin

On October 1, 2012,[15] the instant case was submitted for decision after the filing of respondent's Memorandum[16] on September 20, 2012 *sans* petitioner's memorandum.

The parties submitted the following issues[17] for this Court's disposition:

> "1. Whether or not Petitioner is subject to deficiency VAT on its failure to subject to VAT, sales made to PAGCOR for calendar year 2006.
>
> 2. Whether or not PAGCOR is exempt from payment of VAT pursuant to the provisions of R.A. No. 9337.
>
> 3. Whether or not the Administrative Protest filed by Petitioner is considered as pro-forma for failure on the part of petitioner to state the applicable laws, rules and regulations or jurisprudence on which its protest is based.
>
> 4. Whether or not the assessment against petitioner is considered final and executor *(sic)* for failure to file the Administrative Protest."

The amount of the questioned assessment is not in dispute here, rather, the point of contention is whether or not there is legal basis for the deficiency VAT assessment issued by respondent against petitioner by virtue of petitioner's failure to charge the income payments received from PAGCOR with value-added tax.

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[15] Docket, p. 331.
[16] Docket, pp. 298-326.
[17] JSFI, Docket, pp. 94-95.

Anent the first and second issues, petitioner contends that the Supreme Court had already determined with finality that PAGCOR is exempt from indirect taxes like VAT in the case of *The Commissioner of Internal Revenue vs. Acesite (Philippines) Hotel Corporation*[18].

On the other hand, respondent avers that prior to the enactment of Republic Act (RA) No. 9337, PAGCOR was indeed expressly exempted by law from the payment of income tax pursuant to Section 27(C) of the National Internal Revenue Code (NIRC) of 1997; which provision is in harmony with Presidential Decree (PD) No. 1869, the Charter that created PAGCOR. However, with the passage of RA No. 9337, the only remaining four institutions that are exempt from paying income tax are the Government Service Insurance System (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), and the Philippine Charity Sweepstakes Office (PCSO). Respondent postulates that petitioner is under obligation to pay income tax and VAT corresponding to the income payments it received from PAGCOR because the latter is no longer an entity exempt from the payment of internal revenue taxes with the repeal of PD No. 1869 by RA No. 9337.

In addition, respondent contends that the sale transactions between petitioner and PAGCOR do not fall under the exempt transactions enumerated in Section 109 of the NIRC of 1997.

In this regard, it is important to briefly revisit PD No. 1869 (Consolidating and Amending Presidential Decree Nos. 1067-A, 1067-B, 1067-C, 1399 and 1632, Relative to the Franchise and Powers of the Philippine Amusement and Gaming Corporation) and RA No. 9337 (An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 and 288 of the National Internal Revenue Code of 1997, as Amended, and for Other Purposes), the laws pertinent to respondent's arguments and to the resolution of the instant case.

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[18] G.R. No. 147295, February 16, 2007.

PD No. 1869 was enacted on July 11, 1983 by then President Ferdinand Marcos for the purpose of consolidating the laws relative to the franchise and powers of PAGCOR. Provisions of this enabling law relevant to the taxability of PAGCOR state as follows:

> "SECTION 13. *Exemptions.* —
>
> xxx xxx xxx
>
> (2) *Income and other taxes.* — (a) Franchise Holder: **No tax of any kind or form**, income or otherwise, as well as fees, charges, or levies of whatever nature, **whether National or Local**, **shall be assessed and collected** under this Franchise from the Corporation; **nor shall any form of tax or charge attach in any way to the earnings of the Corporation**, except a Franchise Tax of five percent (5%) of the gross revenue or earnings derived by the Corporation from its operation under this Franchise. Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established, or collected by any municipal, provincial or national government authority.
>
> (b) Others: **The exemption herein granted for earnings derived from the operations conducted under the franchise, specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation(s)**, association(s), agency(ies), or individual(s) **with whom the Corporation or operator has any contractual relationship in connection with the operations of the casino(s)** authorized to be conducted under this Franchise and to those receiving compensation or other remuneration from the Corporation or operator as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator.
>
> The fee or remuneration of foreign entertainers contracted by the Corporation or operator in pursuance of this provision shall be free of any tax." *(Emphasis supplied)*

Based on the afore-quoted provision, PAGCOR is exempt from the assessment or collection of tax, in any kind or form, whether national of local. The same privilege or benefit is extended to corporations with whom PAGCOR has contractual relationship, such as petitioner.

Parallel to this privilege, PAGCOR was among the government-owned and controlled corporations (GOCCs) previously exempted from paying corporate tax under Section 27(C) of the NIRC of 1997, to wit:

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

However, conflict and dispute arose with the enactment of RA No. 9337 on May 24, 2005. Among others, the said law amended Section 27 of the NIRC of 1997, removing PAGCOR as one of the GOCCs exempted from corporate income tax.

The foregoing amendment is the crux of respondent's contention that PAGCOR is no longer exempt from the payment of tax, and consequently, the income payments received by petitioner from PAGCOR is now subject to VAT.

We cannot sustain respondent's position.

A closer look at RA No. 9337 clearly reveals that the elimination of PAGCOR's tax exemption covers only corporate income tax. The amendment of Section 27 of the NIRC of 1997 does not include the removal of PAGCOR's exemption from the VAT coverage.

It is equally noteworthy that Section 27 of the NIRC of 1997 is not even the appropriate provision to consider if we are to delve on PAGCOR's VAT coverage. The applicable provisions here are Sections 108 and 109 of the NIRC of 1997, which provide:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> xxx xxx xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* - The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> xxx xxx xxx
>
> (3) **Services rendered to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;
>
> xxx xxx xxx
>
> SEC. 109. *Exempt Transactions.* - (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax:
>
> xxx xxx xxx
>
> (K) **Transactions which are exempt under** international agreements to which the Philippines is a signatory or under **special laws**, except those under Presidential Decree No. 529; xxx" (*Emphasis supplied*)

Apparently, *transactions exempted from VAT as decreed by special laws* remain to be among the exempt transactions under Section 109 of the NIRC of 1997 and services rendered to entities that are exempted from the payment of VAT under special laws are still subject to zero percent (0%) rate, pursuant to Section 108 of the same Code.

Parenthetically, PD No. 1869 is a special law which decreed PAGCOR's exemption from the coverage of VAT and such exemption was extended to entities that have dealings and relations with it. Accordingly, PAGCOR is still exempted from VAT under Section 109 of the NIRC of 1997 and the contractual dealings of petitioner with PAGCOR are subject to 0% rate in accordance with Section 108.

In fact, the issue of whether or not PAGCOR is liable to pay VAT had been finally settled by the Supreme Court sitting *en banc,* in favor of PAGCOR, in a case filed by the PAGCOR against the Bureau of Internal Revenue. The meticulous disquisition of the Supreme Court in the case of *Philippine Amusement and Gaming Corporation (PAGCOR) vs. The Bureau of Internal Revenue*[19] reads:

> "Anent the validity of RR No. 16-2005, the Court holds that the provision subjecting PAGCOR to 10% VAT is invalid for being contrary to R.A. No. 9337. Nowhere in R.A. No. 9337 is it provided that petitioner can be subjected to VAT. R.A. No. 9337 is clear only as to the removal of petitioner's exemption from the payment of corporate income tax, which was already addressed above by this Court.
>
> As pointed out by the OSG, R.A. No. 9337 itself exempts petitioner from VAT pursuant to Section 7 (k) thereof, which reads:
>
>> Sec. 7. Section 109 of the same Code, as amended, is hereby further amended to read as follows:
>>
>> Section 109. *Exempt Transactions.* - (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax:
>>
>> xxx xxx xxx
>>
>> (k) **<u>Transactions which are exempt</u>** under international agreements to which the Philippines is a signatory or **<u>under special laws</u>**, except Presidential Decree No. 529.
>
> Petitioner is exempt from the payment of VAT, because PAGCOR's charter, P.D. No. 1869, is a special law that grants petitioner exemption from taxes.

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[19] G.R. No. 172087, March 15, 2011.

Moreover, the exemption of PAGCOR from VAT is supported by Section 6 of R.A. No. 9337, which retained Section 108 (B) (3) of R.A. No. 8424, thus:

> [R.A. No. 9337], SEC. 6. Section 108 of the same Code (R.A. No. 8424), as amended, is hereby further amended to read as follows:
>
> SEC. 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties*. —
>
> (A) *Rate and Base of Tax.* — There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties: x x x
>
> xxx xxx xxx
>
> (B) ***Transactions Subject to Zero Percent (0%) Rate***. — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate;
>
> xxx xxx xxx
>
> (3) **Services rendered to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory effectively **subjects the supply of such services to zero percent (0%) rate**;
>
> xxx xxx xxx

As pointed out by petitioner, although R.A. No. 9337 introduced amendments to Section 108 of R.A. No. 8424 by imposing VAT on other services not previously covered, it did not amend the portion of Section 108 (B) (3) that subjects to zero percent rate services performed by VAT-registered persons to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to 0% rate."

With the above pronouncements of the Supreme Court, it becomes an exercise in futility to inquire and address lengthily the issue of whether or not PAGCOR is exempted from payment of VAT and whether the same benefit is extended to petitioner. It becomes an unarguable fact that PAGCOR is not liable to pay VAT and petitioner's transactions with PAGCOR are subject to 0% rate. Perforce, there is no legal basis for the VAT assessment issued by respondent against petitioner in the amount of ₱22,638,106.79 for the taxable year of 2006.

In our system of judicial administration, the Supreme Court has the last word on what the law is, and that its decisions applying or interpreting the laws or the Constitution form part of the legal system of the country, all other courts should take their bearings from the decisions of the Supreme Court.[20] It is the duty of lower courts to obey the decisions of the Supreme Court and render obeisance to its status as the apex of the hierarchy of courts.[21]

We now come to the third and fourth issues to which respondent advances the argument that petitioner's letter dated June 24, 2010 is not a valid administrative protest because it does not categorically declare that it is an administrative protest but merely states that petitioner already paid the income tax and withholding tax deficiency assessments, and it does not state the facts, laws, rules and regulations or jurisprudence to support the protest; contrary to the form prescribed in Section 3.14 of Revenue Regulations (RR) No. 12-99, in relation to Section 228 of the NIRC of 1997. Hence, petitioner's protest had no force and effect and the assessment became final, executory and demandable.

Respondent's ratiocination is not meritorious.

A careful examination of respondent's Final Decision on Disputed Assessment[22] proves that she acknowledged that petitioner's letter dated June 24, 2010 is the latter's protest. The significant parts thereof are quoted hereinafter:

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[20] *Caram Resources Corp. vs. Contreras*, A.M. No. MTJ-93-849, October 26, 1994.
[21] *Commission on Higher Education vs. Dasig*, G.R. No. 172776, December 17, 2008.
[22] Exhibit "13".

> "**WATERFRONT MACTAN CASINO HOTEL, INC.**
> No 1 Airport Road, Mactan, Lapu-Lapu City
> TIN: 003-978-246-000
>
> **FINAL DECISION ON DISPUTED ASSESSMENT**
>
> Gentlemen:
>
> Referring to your letter dated June 24, 2010, please be informed that your **protest** against our calendar year 2006 deficiency tax assessment in the amount of P22,148,164.71, the subject matter of our covering Formal Letter of Demand (Final Assessment Notice), duly received by your representative last June 7, 2010, is hereby reconsidered as follows:
>
> xxx xxx xxx
>
> It is requested that the foregoing deficiency taxes amounting to P22,638,106.79 be paid immediately upon receipt hereof. **This is our final decision. If you disagree, you may appeal this final decision with the Court of Tax Appeals within 30 days upon receipt hereof, otherwise our herewith deficiency tax assessment on income tax, value-added tax, expanded withholding tax and withholding tax on compensation shall become final, executory and demandable**." (*Emphasis supplied*)

It cannot be ignored that respondent made use of the word "protest" in reference to petitioner's letter dated June 24, 2010; thus, it is evident that respondent considered the said letter as petitioner's protest and was given due course.

Furthermore, respondent clearly stated that the FDDA constitutes her final decision and petitioner may appeal the said decision with this Court; otherwise, the assessment will be final and executory. Simply stated, respondent made it clear that the only remaining recourse of petitioner is to appeal its case before this Court. Hence, petitioner should not be faulted for merely complying with respondent's statement.

Likewise, it is worth emphasizing that respondent's acknowledgement of petitioner's protest is unmistakable in the Memorandum dated July 22, 2010, prepared by BIR revenue officers, recommending the issuance of the FDDA[23], pertinent portions thereof read:

> "**MEMORANDUM:**
>
> xxx xxx xxx
>
> Subject: Investigation Report of Waterfront Mactan Casino Hotel, Inc.
> No. 1 Airport Road, Mactan, Lapu-Lapu City
> (AIRT 2006 Tax Investigation)
> L.A. # 0007009 dated August 31, 2007
>
> Date: July 22, 2010
>
> ---
>
> Submitted herewith the 2006 tax docket of Waterfront Mactan Casino Hotel, Inc. **with letter of protest** from Roland U. Mukod, Finance Manager – Waterfront Mactan Casino Hotel, Inc., refuting final assessment on the investigation of the subject taxpayer's all internal revenue taxes for the calendar year 2006. Please take note of the following:
>
> xxx xxx xxx
>
> 2. The Formal Letter of Demand (FLD) was duly received by the subject taxpayer last June 7, 2010. The taxpayer had issued a wavier *(sic)* on the defense of prescription until June 30, 2010 (page 352), thus, this case is not yet prescribed.
>
> 3. **The subject taxpayer has submitted a protest letter and other supporting documents to contest the audit findings no. 4 and 5 per FLD last June 24, 2010.**" *(Emphasis supplied)*

On this point, the ruling of the Supreme Court in the case of *Allied Banking Corporation vs. Commissioner of Internal Revenue* [24] can be applied by analogy. In that case, the Revenue Commissioner argued that the assessment issued against Allied Banking Corporation became final and executory for the latter's failure to protest the Revenue Commissioner's Formal Letter of Demand with Assessment Notices. In disposing the case in favor of Allied Banking Corporation, the Supreme Court held:

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[23] Exhibit "12".
[24] G.R. No. 175097, February 5, 2010.

"(W)e find the CIR estopped from claiming that the filing of the Petition for Review was premature because petitioner failed to exhaust all administrative remedies.

The Formal Letter of Demand with Assessment Notices reads:

> 'Based on your letter-protest dated May 26, 2004, you alleged the following:
>
> xxx xxx xxx
>
> It is requested that the above deficiency tax be paid immediately upon receipt hereof, inclusive of penalties incident to delinquency. **This is our final decision based on investigation. If you disagree, you may appeal this final decision within thirty (30) days from receipt hereof, otherwise said deficiency tax assessment shall become final, executory and demandable.**' (Emphasis supplied)

It appears from the foregoing demand letter that the CIR has already made a final decision on the matter and that the remedy of petitioner is to appeal the final decision within 30 days.

In *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue*, we considered the language used and the tenor of the letter sent to the taxpayer as the final decision of the CIR.

In this case, records show that petitioner disputed the PAN but not the Formal Letter of Demand with Assessment Notices. Nevertheless, we cannot blame petitioner for not filing a protest against the Formal Letter of Demand with Assessment Notices **since the language used and the tenor of the demand letter indicate that it is the final decision of the respondent on the matter. We have time and again reminded the CIR to indicate, in a clear and unequivocal language, whether his action on a disputed assessment constitutes his final determination thereon in order for the taxpayer concerned to determine when his or her right to appeal to the tax court accrues. Viewed in the light of the foregoing, respondent is now estopped from claiming that he did not intend the Formal Letter of Demand with Assessment Notices to be a final decision.**

xxx xxx xxx

> What we are saying in this particular case is that, the Formal Letter of Demand with Assessment Notices which was not administratively protested by the petitioner can be considered a final decision of the CIR appealable to the CTA because the words used, specifically the words 'final decision' and 'appeal', taken together led petitioner to believe that the Formal Letter of Demand with Assessment Notices was in fact the final decision of the CIR on the letter-protest it filed and that the available remedy was to appeal the same to the CTA." *(Emphasis supplied, citations omitted)*

In the same vein, the very language and tenor of respondent's FDDA and the revenue officer's Memorandum unequivocally demonstrated that respondent confirmed the filing of petitioner's protest. In fact, in the FDDA, petitioner was even informed that its remaining recourse is to file the instant petition before this Court.

In fine, respondent cannot simply change her initial position then and to claim now that petitioner failed to file a valid protest, after leading petitioner to believe that there were no procedural flaws in its protest.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the value-added tax assessment issued by respondent against petitioner for the taxable year 2006 in the amount of ₱22,638,106.79 is hereby **CANCELLED** for lack of legal basis.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice