Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1431** (CTA Case No. 8449)
	Present:
- versus -	**DEL ROSARIO,** *PJ,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
	Promulgated:
PERCEPTION GAMING, INC., Respondent.	SEP 28 2017 4:05 p.m.

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DECISION

CASANOVA, *J.*:

This Petition for Review[1] was filed, *via* registered mail, by the Commissioner of Internal Revenue on March 10, 2016 pursuant to Section 2 (a)(1)[2] Rule 4 of Administrative Matters No. 05-11-07-CTA, otherwise known as the "Revised Rules of the Court of Tax Appeals". It

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[1] CTA *En Banc* Rollo, pp. 5-12

[2] "**SEC. 2.** *Cases within the jurisdiction of the Court en banc.* – The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;"

assails the Decision[3] dated August 26, 2015 and Resolution[4] dated February 9, 2016, rendered by the First Division of the Court of Tax Appeals (CTA) in CTA Case No. 8449, which partially granted Perception Gaming, Inc.'s claim for refund in the reduced amount of ₱353,961.50 representing its erroneously paid output Value Added Tax (VAT) for the 1st quarter of calendar year 2010.

Petitioner Commissioner of Internal Revenue (CIR) is the one charged with the administration and enforcement of national internal revenue laws, including the granting of refund or tax credit of taxes erroneously or illegally collected, and other refundable or creditable taxes under the Tax Code. He holds office at the 4th Floor, Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.

On the other hand, respondent Perception Gaming, Inc. (PGI) is a corporation existing by virtue of Philippines laws with principal place of business at the 24th floor, 6750 Ayala Avenue, Makati City. It is primarily engaged in the business of supplying and leasing out gaming machines to entities authorized by the Philippine Amusement Gaming Corporation (PAGCOR) to operate gaming centers.

For the period of January to March 2010, respondent PGI leased gaming equipment to All Point Leisure Corp., BPC Management Group, Inc. (Market Bingo), Bingo Pinoy Corp., and Kingluck Amusement and Games, who are all authorized by PAGCOR as operators of casinos (hereinafter shall be collectively referred to as "PAGCOR-Authorized Bingo Operators").

During the said period, respondent subjected its gross receipts from the sales of services to both PAGCOR and the PAGCOR-Authorized Bingo Operators to twelve percent (12%) output VAT in the amount of ₱549,114.69

Thus, on April 22, 2010, respondent filed with the BIR, through the Electronic Filing and Payment System (eFPS) its quarterly VAT Return for the 1st quarter of calendar year (CY) 2010. It reported sales in the amount of ₱4,575,955.75, output VAT of ₱549,114.69, purchases in the amount of ₱1,626,276.58, and input VAT of ₱195,153.19.

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[3] Division Docket, pp. 621-655
[4] *Ibid.*, pp. 697-709

On March 30, 2012, respondent filed with the BIR an administrative claim for refund and Application for Tax Credits/Refunds (BIR Form No. 1914) for its VAT payments for the 1st quarter of CY 2010 in the aggregate amount of ₱744,267.88.

Claiming inaction thereof, respondent elevated the matter to the CTA, *via* a Petition for Review, on March 30, 2012.

Thereafter, trial ensued.

On August 26, 2015, the court *a quo* promulgated a Decision in this wise:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, *[the CIR]* is hereby **ORDERED TO REFUND** the reduced amount of **₱353,961.50** to *[PGI]*, representing erroneously paid output VAT for the first quarter of CY 2010.
>
> **SO ORDERED**."

On September 16, 2015, respondent filed a Motion for Reconsideration (Re: Decision dated August 26, 2015)[5] praying that the above Decision be set aside and a new one be rendered, ordering petitioner CIR to refund the entire amount of ₱744,267.88 representing its erroneously paid output VAT and excess input VAT for the 1st quarter of CY 2010.

While on September 15, 2015, petitioner filed, *via* registered mail, his Motion for Reconsideration (of the Decision dated 26 August 2015)[6] praying that respondent's entire claim for refund be denied in full.

Thus, on February 9, 2016, the court *a quo* promulgated a Resolution, denying both parties' Motions for Reconsideration for lack of merit.

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[5] *Id.*, pp. 656-672
[6] *Id.*, pp. 673-677

Undaunted, petitioner appealed the matter to the Court *En Banc* on March 10, 2016 *via* the instant Petition for Review[7]. He prays that the Decision dated August 26, 2015 be reversed and set aside and that a new one be rendered denying PGI's claim for refund in its entirety.

On April 27, 2016, the Court *En Banc* issued a Resolution[8] directing respondent to file its comment within ten (10) days from receipt thereof. After asking for an extension of time to file the same, respondent filed its Comment[9] on May 31, 2016.

Thereafter, in a Resolution[10] dated June 27, 2016, the Court *En Banc* gave due course to the instant Petition and granted the parties a period of thirty (30) days within which to file their respective memorandum.

Complying thereon, respondent filed its Memorandum on August 10, 2016[11], stating that, it is adopting the arguments it advanced in its Comment; while petitioner, on the other hand, failed to file his memorandum as per Records Verification[12] dated August 31, 2016.

Accordingly, in a Resolution[13] dated September 21, 2016, the Court *En Banc* deemed the instant case submitted for decision.

The sole issue[14] raised by the petitioner in his Petition is *"Whether the Honorable First Division of the CTA erred in denying herein Petitioner's Motion for Reconsideration."*

In assailing the Decision promulgated by the court *a quo*, petitioner mainly argues that respondent's lease of gaming equipment and performance of related technical services are subject to twelve percent (12%) VAT. He continues that, while it is true, PAGCOR is not liable for indirect taxes, such as VAT, and PAGCOR-Authorized Bingo Operators are effectively subject to zero rated (0%) VAT, the said privilege, however, does not extend to PGI since the latter deals merely with

[7] *Supra* No. 1
[8] CTA *En Banc* Rollo, pp. 73-74
[9] *Ibid.*, 79-91
[10] *Id.*, pp. 93-94
[11] *Id.*, pp. 95-109
[12] *Id.*, p. 110
[13] *Id.*, pp. 112-113
[14] Issue, Petition for Review, *Id.*, p. 6

PAGCOR-Authorized Bingo Operators, and not PAGCOR itself. Stated differently, petitioner claims that the tax exemption privilege of PAGCOR is extended only to those persons or entities directly contracting with PAGCOR in casino operations, such as the PAGCOR-Authorized Bingo Operators, and not those who are merely contracting with PAGCOR-Authorized Bingo Operators, as in the case of herein respondent. Petitioner also reminds the Court *En Banc* that tax refunds are in the nature of tax exemptions which result to loss of revenue for the government. Thus, such exemptions must not rest on vague, uncertain or indefinite inference, but should be granted only by clear and unequivocal provision of law.

On the other hand, respondent asserts that petitioner's arguments are misguided and, therefore, deserves scant consideration. Respondent insists that in its application for refund of erroneously paid output VAT, it did not invoke the tax-exemption privilege of the PAGCOR-Authorized Bingo Operators as what petitioner claims it to be, but rather the proviso written in the PAGCOR Charter itself which confers indirect tax-exemption to the suppliers of PAGCOR and its operators, such as PAGCOR-Authorized Bingo Operators. Thus, respondent surmises that being a provider of essential facilities and technical services to the PAGCOR-Authorized Bingo Operators, it is rightfully exempt from VAT under the PAGCOR Charter.

After due consideration, *We* find no merit in the instant Petition.

Noticeably, the issues and arguments raised by petitioner in his Petition for Review had already been analyzed, weighed and passed upon extensively in the assailed Decision and Resolution rendered by the court *a quo*. Petitioner did not raise anything new to merit any modification or reversal of the assailed Decision and Resolution. Nonetheless, at the risk of being repetitive, *We* shall again address petitioner's arguments.

In the Decision dated August 26, 2015, two (2) classes of VAT were discussed to have been erroneously paid for by herein respondent representing the services it rendered for the 1st taxable quarter of CY 2010, *to wit*:

a) Output VAT on gross receipts from effectively zero-rated sales of services to PAGCOR and PAGCOR-Authorized Bingo Operators in the amount of ₱549,114.69; and

b) Input VAT attributable to its effectively zero-rated (0%) sales of services amounting to ₱195,153.19.

Now, in view of the fact that respondent's claim for refund of input VAT has been denied by the court *a quo* in the said Decision, it is safe to assume that the present issue raised herein by petitioner pertains only to respondent's claim for output VAT. As such, *We* need not belabor on the matter of respondent's input VAT.

Verily, on July 11, 1983, Presidential Decree (PD) No. 1869[15] was signed into law, creating a body corporate known as the Philippine Amusement and Gaming Corporation or PAGCOR. Among its corporate powers, PAGCOR may enter into, make, conclude, perform, and carry out contracts of every kind and nature for any lawful purpose which are necessary, appropriate, proper or incidental to any of its business or purpose including but not limited to investment agreements, joint venture agreements, management agreements, agency agreements, whether as principal or as an agent, manpower supply agreements, or any other similar agreements or arrangements.[16]

Pursuant to such power, PAGCOR authorized certain persons, firms, associations or corporations, such as All Point Leisure Corp., BPC Management Group, Inc. (Market Bingo), Bingo Pinoy Corp., and Kingluck Amusement and Games, as operators of casinos which includes bingo gaming venues.

In the instant case, respondent is primarily engaged in the business of supplying and leasing out gaming machines to the PAGCOR Bingo Operators under lease agreements. Pursuant to the lease agreements, respondent's sales revenue will be in the form of lease payments from the machines as a percentage in the revenues shared between PAGCOR, the PAGCOR-Authorized Bingo Operators, and respondent.

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[15] "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 (PAGCOR)"
[16] Sec 3 (h), *ibid.*

The controversy arose when respondent claimed to have erroneously subjected its gross receipts of ₱4,575,955.75 for the 1st quarter of 2010 to 12% VAT in the total amount of ₱549,114.69, when, instead, it should have been subjected to effectively zero percent (0%) VAT.

After trial, the court *a quo* found merit in respondent's argument but, reduced the amount refunded to ₱353,961.50 since it was only the actual payment that was made by respondent in its VAT Returns[17]. The breakdown of the amount refunded are as follows:

TAXABLE QUARTER	GROSS RECEIPTS	OUTPUT TAX	INPUT TAX	ACTUAL VAT PAID
1st Quarter of 2010	₱4,575,955.75	₱549,114.69	₱195,153.19	₱353,961.50

We uphold the Decision of the court *a quo*.

Under Section 13 of PD No. 1869, as amended, PAGCOR was given special privileges such as tax exemption from income and other taxes, whether local or national, save only for the five percent (5%) franchise tax on gross revenues or earnings, the said Section provides that:

> "SEC. 13. Exemptions. —
>
> *x x x*
>
> (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 (5%) percent 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.

[17] See Exhibits "H", "E-1", "G", and "Q"

(b) Others: The exemptions 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 *<u>or</u>* operator as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator.**" *(Emphases and Underscoring Ours)*

As clear as daylight, the above-quoted provision grants PAGCOR exemption from the payment of corporate income tax and other taxes, including any form of charges, fees or levies (with the exception of the 5% franchise tax on gross revenues or earnings) with respect to its income from gaming operations. The provision further states that the exemptions granted to PAGCOR for earnings derived from casino operations shall inure to the benefit of and extend "to those receiving compensation or other remuneration from the Corporation (referring to PAGCOR) or operator as a result of essential facilities furnished and/or technical services rendered to the Corporation **or** operator."

Apparently, it is not only PAGCOR that is exempt from paying income and other taxes, whether local or national. The said exemption also extends to PAGCOR's licensees and franchisees such as the PAGCOR-Authorized Bingo Operators. Henceforth, both PAGCOR and the PAGCOR-Authorized Bingo Operators enjoys exemption from certain taxes such as VAT. The question now arises, what is the VAT liability of those persons or entities transacting with and/or performing services to said tax exempt entities? Section 108 (B)(3) of the National Internal Revenue Code of 1997, as amended, sheds light into the matter, *viz*:

"**SEC. 108.** *Value-added Tax on Sale of Services and Use or Lease of Properties –*

x x x

> *(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**:
>
> *x x x*
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> (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;" *(Emphases Ours)*

From the foregoing, it follows that any service performed in the Philippines by VAT-registered persons, such as respondent PGI, to entities enjoying tax exemption under special laws, such as PAGCOR and the PAGCOR-Authorized Bingo Operators, is subject to zero percent (0%) VAT. Therefore, by subjecting its gross receipts for technical services rendered to the PAGCOR-Authorized Bingo Operators during the 1st quarter of 2010 to the standard rate of twelve percent (12%) VAT, respondent has indeed incurred erroneously paid output VAT.

On a final note, *We* are well aware that tax refunds partake the nature of tax exemptions, a legislative grace, which cannot be allowed unless granted in the most explicit and categorical language.[18] However, lest it not be forgotten that the judiciary does not settle policy issues; the Court can only declare what the law is and not what the law should be. Under *Our* system of government, policy issues are within the domain of the political branches of government and of the people themselves as the repository of all state power.[19] And, since *We* adhere to the cardinal rule in statutory construction that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation, it has been *Our* consistent ruling, where the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application.[20]

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[18] *See* Commissioner of Internal Revenue vs. Fortune Tobacco Corporation, G.R. Nos. 167274-75, July 21, 2008
[19] *See* Humberto Basco, et. al. vs. Philippine Amusements and Gaming Corporation (PAGCOR), G.R. No. 91649, May 14, 1991
[20] Milagros E. Amores vs. House of Representatives Electoral Tribunal, et al., G.R. No. 189600, June 29, 2010 *citing* Twin Ace Holdings Corporation v. Rufina and Company, G.R. No. 160191, June 8, 2006

Hence, in view of the foregoing, *We* find no cogent reason to disturb the assailed Decision and Resolution rendered by the court *a quo*.

WHEREFORE, the Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Decision dated August 26, 2015 and Resolution dated February 9, 2016 in CTA Case No. 8449 are both **AFFIRMED**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

(With Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

(On Leave)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1431** (CTA Case No. 8449)
	Present: **DEL ROSARIO**, *P.J.*, **CASTAÑEDA, JR.**, **BAUTISTA**, **UY**,
-versus-	**CASANOVA**, **FABON-VICTORINO**, **MINDARO-GRULLA**, **RINGPIS-LIBAN**, and **MANAHAN**, *JJ.*
PERCEPTION GAMING, INC., *Respondent.*	Promulgated: SEP 28 2017 4:05 p.m.

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying the Petition for Review for lack of merit.

I wish to add that since the evidence[1] of respondent clearly shows that the VAT was passed on to and paid by the PAGCOR operators, namely: All Pointe Leisure Corporation; BPC Management Group, Inc. (Market Bingo); Bingo Pinoy Corp.; and Kingluck Amusement and Games, respondent should accordingly reimburse the afore-named PAGCOR operators the amounts the latter paid for VAT since the transaction between them and respondent is clearly exempt from VAT. This relief is simply

[1] Exhibit B-2 with attached copies of Official Receipt Nos. 0101, 0103, 0104, 0105, 0107, 0109, 0110, 0111, 0114, 0117, 0121, 0123, 0125, 0126, 0129, and 0131, Docket Vol. I, pp. 18 and 25 to 40.

consistent with the principle that no person shall be allowed to enrich himself at the expense of others. In fact, in *Ecco Asia Nacap Nederland BV (Joint Venture) vs. Commissioner of Internal Revenue*,[2] this Court opined:

> "Let it be stressed to the point of being repetitive that under the obtaining circumstances, petitioner is not the statutory taxpayer and the person entitled to claim a tax refund. As earlier stated, the statutory taxpayer in the case at bar is the NPC. It is only the NPC that can validly claim for a refund or tax credit and not petitioner.
>
> Be that as it may, petitioner has the option to collect the alleged VAT payments it made from the NPC based on the principle of *solutio indebiti*, principally governed by Articles 2142 and 2154 of the New Civil Code. The NPC, being the proper party to claim the refund or the issuance of tax credit, has the obligation to reimburse petitioner of any amount it may recover so as not to be accused of unjust enrichment. It may be a longer process but it is the proper remedy."

In *Pacific East Asia Cargo Airlines, Inc. and Petron Corporation vs. Commissioner of Internal Revenue*,[3] a similar pronouncement was made, *viz.*:

> "Finally, considering that the evidence of petitioners clearly shows that the excise tax was passed on to and paid by PEAC, conformably to the doctrinal principle that no person shall be allowed to enrich himself at the expense of others, Petron should reimburse PEAC the amounts the latter paid for the excise tax since the transaction between the two petitioners is clearly exempt from excise tax. It would be unjust enrichment on the part of Petron, if it is relieved of the obligation to reimburse."

All told, I **VOTE** to **DENY** the Petition for Review filed by petitioner Commissioner of Internal Revenue. Respondent, however, should be ordered to reimburse to All Pointe Leisure Corporation; BPC Management Group, Inc. (Market Bingo); Bingo Pinoy Corp.; and Kingluck Amusement and Games the VAT passed on to them.

ROMAN G. DEL ROSARIO
Presiding Justice

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[2] CTA EB No. 579 (CTA Case No. 6595), April 29, 2011.
[3] CTA Case No. 7680, March 3, 2010.