REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

MELCO RESORTS LEISURE (PHP) CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case Nos. 10099 & 10176

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:

SEP 21 2023 2:10PM

x- -x

DECISION

MANAHAN, J.:

In the present consolidated *Petitions for Review*, petitioner prays for the refund or tax credit of allegedly erroneously or illegally collected input value-added tax (VAT) on its purchases of capital goods, domestic purchases of goods (other than capital goods) and services, importations of goods (other than capital goods) and purchases of services rendered by non-residents, to wit:

CTA Case Nos.	Amounts	Periods covered
10099	₱43,469,919.17	3rd quarter of 2017
10176	₱39,220,031.74	4th quarter of 2017

THE PARTIES

Petitioner Melco Resorts Leisure (PHP) Corporation [formerly, MCE Leisure (Philippines) Corporation] is a corporation organized and existing under the laws of the Philippines, with principal address at Asean cor. Roxas

Boulevard, Barangay Tambo, Parañaque City.[1] It is a co-licensee and a holder of a Provisional License, and Regular Casino Gaming Licenses, all issued by the Philippine Amusement and Gaming Corporation (PAGCOR) in accordance with the PAGCOR Charter [Presidential Decree (PD) No. 1869, as amended by Republic Act (RA) No. 9487].[2]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue (CIR) who holds office at the Bureau of Internal Revenue (BIR) National Office Building located at BIR Road, Diliman, Quezon City.[3]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On March 29, 2019, petitioner filed an administrative claim for refund or tax credit of erroneously and illegally paid VAT on purchases attributable or allocable to its revenues from gaming operations, for the 3rd quarter of taxable year 2017, amounting to ₱43,469,919.17.[4] The CIR, however, denied the same in his letter dated April 12, 2019, which was received by petitioner on July 30, 2019.[5]

On June 28, 2019, petitioner filed another administrative claim for refund or tax credit of erroneously and illegally paid VAT on purchases attributable or allocable to its revenues from gaming operations, for the 4th quarter of taxable year 2017, in the amount of ₱39,220,031.74.[6] The CIR likewise denied the same in his letter dated September 17, 2019, which was received by petitioner on September 20, 2019.[7]

---

[1] Par. 1, Stipulation of Facts, *Joint Stipulations of Facts and Issues* (JSFI), Docket (CTA Case No. 10099) – Vol. I, p. 385. Refer also to Exhibit "P-1", Docket (CTA Case No. 10099) – Vol. I, pp. 187 to 192.

[2] Exhibits "P-2", "P-3", "P-4", Docket (CTA Case No. 10099) – Vol. I, p. 193, 194, and 197, respectively.

[3] Par. 2, Stipulation of Facts, JSFI, Docket (CTA Case No. 10099) – Vol. I, p. 385.

[4] Par. 3, Stipulation of Facts, JSFI, Docket (CTA Case No. 10099) – Vol. I, p. 385; and Exhibits "P-20" and "P-20-1", Docket (CTA Case No. 10099) – Vol. I, pp. 235 to 247.

[5] Exhibit "P-22", Docket (CTA Case No. 10099) – Vol. I, pp. 261.

[6] Par. 4, Stipulation of Facts, JSFI, Docket (CTA Case No. 10099) – Vol. I, p. 385; and Exhibits "P-21" to "P-21-1", Docket (CTA Case No. 10099) – Vol. I, pp. 248 to 260.

[7] Exhibit "P-23", Docket (CTA Case No. 10099) – Vol. I, p. 262.

PROCEEDINGS BEFORE THIS COURT

For an orderly presentation, the Court deems it proper to separately state the proceedings that took place prior to the consolidation of the present cases.

<u>CTA Case No. 10099</u>:

Alleging respondent's inaction on its claim for refund amounting to ₱43,469,919.17,[8] petitioner filed its *Petition of Review* on July 1, 2019.[9]

On August 15, 2019, respondent filed a *Motion for Extension of Time to File Answer*,[10] which the Court granted in the Order dated August 27, 2019,[11] thereby giving respondent until September 16, 2019 to file his *Answer*. Respondent filed the same on September 16, 2019.[12]

The Pre-Trial Conference was set on November 21, 2019.[13]

Respondent transmitted the *BIR Records* for this case on September 25, 2019.[14]

On November 13, 2019, petitioner filed its *Omnibus Motion: I. To Consolidate with CTA Case No. 10176; and II. To Postpone Pre-Trial Conference set on November 21, 2019 at 9:00 A.M.*[15] In the Order dated November 20, 2019,[16] the Court ordered respondent to file his comment or opposition to the said *Motion To Consolidate*, and granted the said *Motion To Postpone Pre-Trial Conference*, thereby cancelling the scheduled Pre-Trial Conference, until its further orders.

---

[8] Par. 20, *Petition for Review*, Docket (CTA Case No. 10099) – Vol. I, at p. 14.
[9] Docket (CTA Case No. 10099) – Vol. I, pp. 10 to 30.
[10] Docket (CTA Case No. 10099) – Vol. I, pp. 70 to 72.
[11] Docket (CTA Case No. 10099) – Vol. I, p. 75.
[12] Docket (CTA Case No. 10099) – Vol. I, pp. 79 to 88.
[13] *Notice of Pre-Trial Conference* dated September 24, 2019, Docket (CTA Case No. 10099) – Vol. I, pp. 90 to 91.
[14] Docket (CTA Case No. 10099) – Vol. I, pp. 94 to 96.
[15] Docket (CTA Case No. 10099) – Vol. I, pp. 102 to 106.
[16] Docket (CTA Case No. 10099) – Vol. I, pp. 121 to 122.

Respondent, however, failed to file his comment.[17]

In the meantime, on November 15, 2019, respondent filed his *Pre-Trial Brief.* [18]

In the Resolution dated February 3, 2020,[19] the Court granted petitioner's *Motion To Consolidate with CTA Case No. 10176.*

CTA Case No. 10176:

Appealing the denial of petitioner's refund claim amounting to ₱39,220,031.74, the *Petition for Review* for this case was filed by petitioner on October 1, 2019.[20]

On October 30, 2019, respondent filed his *Motion for Extension of Time to File Answer,*[21] which the Court granted in the Order dated November 8, 2019,[22] thereby giving respondent until December 2, 2019 to file his *Answer.*

Petitioner filed its *Motion for Consolidation [with CTA Case No. 10099]* on November 13, 2019.[23] Respondent, however, failed to file his comment thereto.[24]

Respondent filed his *Answer* on December 2, 2019,[25] interposing certain special and affirmative defenses, which are substantially the same as those proffered by respondent in CTA Case No. 10099.

[17] *Records Verification* dated January 3, 2020 issued by this Court's Judicial Records Division, Docket (CTA Case No. 10099) – Vol. I, p. 129.
[18] Docket (CTA Case No. 10099) – Vol. I, pp. 108 to 110.
[19] Docket (CTA Case No. 10099) – Vol. I, pp. 134 to 135.
[20] Docket (CTA Case No. 10176), pp. 6 to 23.
[21] Docket (CTA Case No. 10176), pp. 64 to 67.
[22] Docket (CTA Case No. 10176), pp. 69 to 70.
[23] Docket (CTA Case No. 10176), pp. 74 to 77.
[24] *Records Verification* dated January 8, 2020 issued by the Judicial Records Division of this Court, Docket (CTA Case No. 10176), p. 102.
[25] Docket (CTA Case No. 10176), pp. 79 to 88.

On December 11, 2019, respondent filed a *Motion to Defer Transmittal of BIR Records*,[26] which the Court granted in the Resolution dated January 20, 2020.[27]

In the Resolution dated February 3, 2020,[28] the Court consolidated CTA Case No. 10176 with CTA Case No. 10099.

<u>After the consolidation of the cases:</u>

In the Resolution dated February 17, 2020,[29] the Court set the Pre-Trial Conference on April 2, 2020, and directed the parties to submit their respective consolidated *Pre-Trial Briefs*, and judicial affidavits of their intended witness/es and exhibits.

Respondent filed his *Pre-Trial Brief* on August 20, 2020.[30] On the other hand, the *Consolidated Pre-Trial Brief for Petitioner* was submitted on November 6, 2020.[31]

The *BIR Records* for CTA Case No. 10176 was transmitted on November 10, 2020;[32] and *Respondent's Pre-Trial Brief* for the same case was filed on November 11, 2020.[33]

After three (3) resettings,[34] the Pre-Trial Conference was eventually held on March 4, 2021.[35]

On March 19, 2021, the parties filed their *Joint Stipulation of Facts and Issues*,[36] which the Court approved in its Resolution dated May 26, 2021,[37] thereby deeming the

---

[26] Docket (CTA Case No. 10176), pp. 97 to 100.
[27] Docket (CTA Case No. 10176), p. 105.
[28] Docket (CTA Case No. 10099) – Vol. I, pp. 107 to 108.
[29] Docket (CTA Case No. 10099) – Vol. I, p. 138.
[30] Docket (CTA Case No. 10099) – Vol. I, pp. 148 to 151.
[31] Docket (CTA Case No. 10099) – Vol. I, pp. 263 to 295.
[32] Docket (CTA Case No. 10099) – Vol. I, pp. 350 to 352.
[33] Docket (CTA Case No. 10099) – Vol. I, pp. 354 to 358.
[34] Resolution dated June 15, 2020, Docket (CTA Case No. 10099) – Vol. I, p. 147; *Notice of Resetting* dated September 15, 2020, Docket (CTA Case No. 10099) – Vol. I, p. 164; Resolution dated December 9, 2020, Docket (CTA Case No. 10099) – Vol. I, pp. 365 to 366.
[35]; Minutes of the hearing held on, and Order dated, March 4, 2021, Docket (CTA Case No. 10099) – Vol. I, pp. 367 to 369, and 377 to 383, respectively.
[36] Docket (CTA Case No. 10099) – Vol. I, pp. 385 to 414.
[37] Docket (CTA Case No. 10099) – Vol. I, pp. 441 to 442.

termination of the Pre-Trial. The Pre-Trial Order dated September 27, 2021 was then issued.[38]

Trial ensued, with both parties presenting and offering their respective documentary and testimonial evidence.

Petitioner offered the testimonies of the following individuals, namely: (1) Mr. Julius-Ver De Guzman,[39] petitioner's Financial Controller; (2) Mr. Rafael B. Taladtad, Jr.,[40] petitioner's Director for Revenue Audit; and (2) Ms. Madonna Mia S. Dayego,[41] the Court-commissioned independent certified public accountant (ICPA).[42]

The *Report* dated August 12, 2021 of the said ICPA was submitted on October 25, 2021.[43]

On February 3, 2022, petitioner filed its *Formal Offer of Evidence*,[44] to which respondent filed his *Comment (On Petitioner's Formal Offer of Evidence)* on February 16, 2022.[45] In the Resolution dated April 19, 2022,[46] the Court admitted all of petitioner's offered exhibits.

For his part, respondent offered the testimonies of the following Revenue Officers: (1) Mr. Joel M. Aguila,[47] and (2) Ms. Ma. Theresa L. Espino.[48]

---

[38] Docket (CTA Case No. 10099) – Vol. I, pp. 511 to 531.

[39] Exhibit "P-31", Docket (CTA Case No. 10099) – Vol. I, pp. 173 to 186; Minutes of the hearing held on, and Order dated, June 15, 2021, Docket (CTA Case No. 10099) – Vol. I, pp. 477 to 481, and 484 to 487, respectively.

[40] Exhibit "P-32", Docket (CTA Case No. 10099) – Vol. I, pp. 301 to 311; Minutes of the hearing held on, and Order dated, June 15, 2021, Docket (CTA Case No. 10099) – Vol. I, pp. 477 to 481, and 484 to 487, respectively.

[41] Exhibit "P-36", Docket (CTA Case No. 10099) – Vol. I, pp. 610 to 618; Minutes of the hearing held on, and Order dated, November 23, 2021, Docket (CTA Case No. 10099) – Vol. II, pp. 625 to 629.

[42] *Oath of Commission* dated July 8, 2021, Docket (CTA Case No. 10099) – Vol. I, p. 500; Minutes of the hearing held on, and Order dated, July 8, 2021, Docket (CTA Case No. 10099) – Vol. I, pp. 497 to 499, and 501 to 502, respectively.

[43] Exhibit "P-34", Docket (CTA Case No. 10099) – Vol. I, pp. 533 to 601.

[44] Docket – Vol. II, pp. 640 to 694.

[45] Docket – Vol. II, pp, 761 to 763.

[46] Docket – Vol. II, pp. 774 to 778.

[47] Exhibit "R-9", Docket (CTA Case No. 10099) – Vol. I, pp. 116 to 120; Minutes of the hearing held on, and Order dated, June 21, 2022, Docket (CTA Case No. 10099) – Vol. II, pp. 779 to 781.

[48] Exhibit "R-10", Docket (CTA Case No. 10099) – Vol. I, pp. 155 to 159; Minutes of the hearing held on, and Order dated, June 21, 2022, Docket (CTA Case No. 10099) – Vol. II, pp. 779 to 781. *om*

On July 1, 2022, respondent filed his *Formal Offer of Evidence*,[49] to which petitioner filed its *Comment [On Respondent's Formal Offer of Evidence dated June 30, 2022]* on July 11, 2022.[50] In the Resolution dated August 5, 2022,[51] the Court admitted all of respondent's offered exhibits.

In the *Manifestation* dated September 9, 2022,[52] respondent stated that he is adopting the arguments he raised in his *Answers* filed before the Court on September 16, 2019 and on December 2, 2019 as his Memorandum. On the other hand, the *Memorandum for Petitioner* was filed on September 12, 2022.[53]

This case was submitted for decision on September 23, 2022.[54]

THE ISSUE STIPULATED BY THE PARTIES

The parties stipulated the following issue for this Court's resolution, *viz.*:

> "WHETHER PETITIONER IS ENTITLED TO A REFUND OR TAX CREDIT OF ERRONEOUSLY AND ILLEGALLY PAID VAT ON PURCHASES OF CAPITAL GOODS, DOMESTIC PURCHASES OF GOODS (OTHER THAN CAPITAL GOODS) AND SERVICES, IMPORTATION OF GOODS (OTHER THAN CAPITAL GOODS), AND PURCHASE OF SERVICES RENDERED BY NONRESIDENTS, WHICH ARE ATTRIBUTABLE OR ALLOCABLE TO REVENUES FROM GAMING OPERATIONS, FOR THE 3RD [AND] 4TH QUARTERS OF 2017[,] AMOUNTING TO P43,469,919.17 AND P39,220,031.74, RESPECTIVELY, OR IN THE AGGREGATE AMOUNT OF P82,689,950.91."[55]

---

[49] Docket (CTA Case No. 10099) – Vol. II, pp. 781 to 785.
[50] Docket (CTA Case No. 10099) – Vol. II, pp. 787 to 788.
[51] Docket (CTA Case No. 10099) – Vol. II, pp. 790 to 791.
[52] Docket (CTA Case No. 10099) – Vol. II, pp. 792 to 794.
[53] Docket (CTA Case No. 10099) – Vol. II, pp. 796 to 831.
[54] Resolution dated September 23, 2022, Docket (CTA Case No. 10099) – Vol. II, p. 833.
[55] Stipulation of Issue, JSFI, Docket (CTA Case No. 10099), p. 386.

Petitioner's arguments:

Petitioner argues that Section 13(2)(b), in relation to Section 13(2)(a), of PD No. 1869, as amended, grants PAGCOR licensees/contractees exemption from taxes on its gaming-related operations; that the VAT passed on to petitioner on its purchases related or allocable to gaming operations is contrary to the express provision of Section 13(2)(b), in relation to Section 13(2)(a), of PD No. 1869, as amended, and, hence, erroneously or illegally paid; that petitioner, to whom the economic burden of the input tax is shifted, is allowed to claim a tax refund or issuance of tax credit certificate as PD No. 1869, as amended, clearly grants PAGCOR and its licensees an exemption from both direct and indirect taxes, such as VAT; and that petitioner timely filed its claim for refund or issuance of tax credit certificate of its erroneously and illegally paid VAT, arising from the 3rd and 4th quarters for taxable year 2017, pursuant to Sections 204 and 229 of the 1997 National Internal Revenue Code (NIRC), as amended.

Respondent's counter-arguments:

Respondent contends that petitioner, being a mere licensee of PAGCOR, is not entitled to the tax exemption under PD No. 1869; that petitioner's reliance on the theory that Section 13(2)(B), in relation to Section 13(2)(A), of PD No. 1869, exempts it from payment of income taxes, is misplaced; that even on the assumption that petitioner is exempt from payment of VAT, petitioner cannot claim a refund from respondent; and that the recourse of the petitioner is not to claim the same from the respondent but from its suppliers.

THE COURT'S RULING

The present consolidated *Petitions for Review* are denied.

Petitioner, as a PAGCOR licensee, is NOT exempt from taxes, including VAT, pursuant to Section 13(2) of PD No. 1869, as amended.

It is noteworthy that what is being claimed for refund in the aggregate amount of ₱82,689,950.91 represents alleged VAT passed-on to petitioner on its purchases related or allocable to its gaming operations.

Apropos, it is elementary that taxes are classified into direct or indirect, depending on who pays or bears the burden thereof. A direct tax is one where the person supposed to pay the tax really pays it, without transferring the burden to someone else.[56] On the other hand, an indirect tax is one where the tax is imposed upon goods before reaching the consumer who ultimately pays for it, not as a tax, but as part of the purchase price.[57]

Relative thereto, it must be emphasized that the VAT is a tax on consumption, an indirect tax that the provider of goods and services may pass on to the latter's customers.[58]

Petitioner invokes Section 13(2) of PD No. 1869[59], as amended, as basis for its supposed indirect tax exemption, to wit:

> "SEC. 13. *Exemptions.* —
>
> xxx xxx xxx
>
> (2) *Income and other taxes.* — (a) **<u>Franchise Holder</u>: 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, <u>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</u>.**

---

[56] *Maceda vs. Macaraig, Jr., et al.*, G.R. No. 88291, June 8, 1993.
[57] *Id.*.
[58] *Panasonic Communication Imaging Corporation of the Philippines vs. Commissioner of Internal Revenue*, G.R. No. 178090, February 8, 2010.
[59] 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).

> (b) **<u>Others</u>: 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 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.
>
> xxx xxx xxx."
> *(Emphases and underscoring added)*

Based on the foregoing provision, it is clear that PAGCOR is exempt from the payment of any tax, whether national or local, except for a franchise tax at the rate of 5% of the gross revenue or earning derived by it from its operation under PD No. 1869; and that the said tax exemption inures to the benefit of and extend: (1) to corporations, associations, agencies, or individuals with whom PAGCOR or operator has any contractual relationship in connection with the operation of casino(s) authorized under PD No. 1869; and (2) to those receiving compensation or other remuneration from PAGCOR or operator as a result of essential facilities furnished and/or technical services rendered to PAGCOR or operator.

In other words, PD No. 1869 lays down the imposition of a five percent (5%) franchise tax of the gross revenues or earnings derived from its operations conducted under the Franchise, which shall be due and payable *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.[60] Since the payment of the said five percent (5%) franchise tax shall be *"in lieu of all kinds of taxes"*, the tax exemption privilege being enjoyed by PAGCOR is dependent on such payment.

---

[60] Refer to *Philippine Amusement and Gaming Corporation (PAGCOR) vs. The Bureau of Internal Revenue, et al.*, G.R. No. 215427, December 10, 2014.

Relative thereto, it is already settled that PAGCOR is exempt from payment of indirect taxes, like VAT.[61]

In *Bloomberry Resorts and Hotels, Inc. vs. Bureau of Internal Revenue,* [62] the Supreme Court ruled that all *contractees and licensees* of PAGCOR, upon payment of the 5% franchise tax, shall likewise be exempted from all other taxes,[63] including VAT.

However, in *Thunderbird Pilipinas Hotels and Resorts, Inc. vs. Commissioner of Internal Revenue,*[64] the Supreme Court clarified that the abovementioned exemptions do not apply to a PAGCOR *licensee* authorized to operate its own casino, as follows:

> A more deliberate reading of Section 13(2)(b) of Presidential Decree No. 1869 and the amendments under Republic Act No. 9487 provides more formidable support for the conclusion in this case. The amendments merely pertained to giving PAGCOR the authority to issue licenses for casino operations. Had Congress also intended to extend the tax exemptions to PAGCOR licensees, it could have easily done so by expanding Section 13(2)(b) and adding words such as "licensees of PAGCOR" and the like. **There must be a positive provision, not merely a vague implication, of the law creating that exemption**.
>
> Presidential Decree No. 1869 was issued to centralize the operation of casinos into one corporate entity, PAGCOR. Section 1 states:
>
>> SECTION 1. *Declaration of Policy.* – It is hereby declared to be the policy of the State to centralize and integrate all games of chance not heretofore authorized by existing franchises or permitted by law in order to attain the following objectives:
>>
>> *(a) To centralize and integrate the right and authority to operate and conduct games of chance into* ***one corporate entity*** *to be controlled, administered and supervised by the Government;*

---

[61] *Commissioner of Internal Revenue vs. Acesite (Philippines) Hotel Corporation,* G.R. No. 147205, February 16, 2007.
[62] G.R. No. 212530, August 10, 2016.
[63] *Id.*
[64] G.R. No. 211327, November 11, 2020.

> *(b)* To establish and operate clubs and casinos for amusement and recreation, including sports gaming pools (basketball, football, lotteries, etc.) and such other forms of amusement and recreation including games of chance, which may be allowed by law within the territorial jurisdiction of the Philippines and which will: (1) generate sources of additional revenue to fund infrastructure and socio-civic projects, such as flood control programs, beautification, sewerage and sewage projects, Tulungann ng Bayan Centers, Nutritional Programs, Population Control and such other essential public services; (2) create recreation and integrated facilities which will expand and improve the country's existing tourist attractions; and (3) minimize, if not totally eradicate, the evils, malpractices and corruptions that are normally prevalent in the conduct and operation of gambling clubs and casinos without direct government involvement. (*emphasis supplied*)

Thus, when the tax exemptions were granted under Section 13 of Presidential Decree No. 1869, the legislature contemplated a scenario where the casino operations would be centralized under the sole and exclusive authority of PAGCOR.

Under Section 13(2)(a), PAGCOR was granted tax exemption on earnings derived from its casino operations. This tax exemption was, under Section 13(2)(b), also extended to entities that have a contractual relationship with PAGCOR in connection with its operation of casinos.

In other words, the clause "operations of the casino(s) authorized to be conducted under this Franchise" under Section 13(2)(b) referred to casinos operated by PAGCOR itself.

The legislature, then, could not have envisioned that the clause would cover casinos operated by PAGCOR licensees since, at that time, PAGCOR had the sole and exclusive authority to operate casinos. Had that been its intention, Congress should have unequivocally provided in the amendatory law, Republic Act No. 9487, that tax exemptions extend to PAGCOR licensees.

> As stated earlier, it is a settled rule that tax exemptions are strictly construed and must be couched in clear language. This Court has held that "if an exemption is found to exist, *it must not be enlarged by construction*, since the reasonable presumption is that the state has granted in express terms all it intended to grant at all.
>
> Again, the ruling in *Acesite* is more applicable.
>
> There, this Court construed Section 13(2) of Presidential Decree No. 1869 to resolve the issue of "whether PAGCOR's tax exemption privilege includes the indirect tax of VAT to entitle Acesite to zero percent (0%) [value-added tax] rate." Upon examining Section 13(2), this Court ruled that PAGCOR is exempt from both direct taxes (under paragraph a) and indirect taxes (under paragraph b). It categorically explained that "*the proviso in [Presidential Decree No.] 1869, extending exemption to entities or individuals dealing with PAGCOR in casino operations, is clearly to proscribe any indirect tax, like [value-added tax], that may be shifted to PAGCOR.*" Ultimately, the tax exemptions granted under Section 13 were primarily meant to favor only PAGCOR, and not any other entity.
>
> Thus, following this Court's pronouncement in *Acesite*, we construe Section 13(2)(b) of Presidential Decree No. 1689 to mean that ***the tax exemption of PAGCOR extends only to those individuals or entities that have contracted with PAGCOR in connection with PAGCOR's casino operations. The exemption does not include private entities that were licensed to operate their own casinos***. (*emphasis in the original*)

This was further clarified in Revenue Memorandum Circular (RMC) No. 32-2022, which provides:

> ...For VAT purposes, however, the ruling of the Court in *CIR v. Acesite (Philippines) Hotel Corporation*, as further clarified by the Court in the recent case of *Thunderbird Pilipinas Hotel & Resorts, Inc. v. CIR*, is instructive. There, the Court clarified that PAGCOR, pursuant to its Charter, is also exempt from indirect tax, like VAT, on its gaming operations. The tax exemption of PAGCOR extends only to those individuals or entities that have contracted with PAGCOR (PAGCOR Contractees and not Licensees) in connection with PAGCOR's gaming operations. This is to proscribe any indirect tax, like VAT, that may be shifted to PAGCOR.
>
> Thus, pursuant to *Acesite* and *Thunderbird* rulings, for PAGCOR Licensees, their revenues from gaming operations,

> involving sale of goods and/or services in the course of trade or business, are generally subject to VAT. In the event, however, that they have also contracted with PAGCOR in connection with the latter's gaming operations, then, the goods they provided and/or services performed to PAGCOR in relation to such gaming operations are subject to zero percent (0%) VAT pursuant to Sections 106(A)(2)(b) and 108(B)(3) of the NIRC of 1997, as amended.

In the instant case, petitioner is a licensee of PAGCOR, thus, PAGCOR's exemption does not inure to its benefit.

Petitioner has no legal personality to file the subject refund claims.

Even assuming *arguendo* that petitioner enjoys PAGCOR's exemptions, it is still not entitled to the refund since the alleged VAT passed on by petitioner's suppliers and paid by petitioner cannot be said to have been erroneously or illegally collected. Likewise, petitioner has no legal personality to file the subject refund claims.

In *Philippine Airlines, Inc. vs. Commissioner of Internal Revenue* (*PAL* case),[65] the Supreme Court held as follows:

> "...the propriety of a tax refund claim is hinged on the kind of exemption which forms its basis. **If the law confers an exemption from <u>both direct or indirect taxes</u>, a claimant is entitled to a tax refund <u>even if it only bears the economic burden of the applicable tax</u>.** On the other hand, if the exemption conferred only applies to direct taxes, then the statutory taxpayer is regarded as the proper party to file the refund claim.
>
> xxx xxx xxx
>
> ...given the foregoing direct and indirect tax exemptions under its franchise, and applying the principles as above-discussed, **PAL is endowed with the legal standing to file the subject tax refund claim, <u>notwithstanding the fact that it is not the statutory taxpayer as contemplated by law</u>.**"

---

[65] G.R. No. 198759, July 1, 2013. *on*

The legal standing of a person to file a refund claim would depend on the tax exemption being enjoyed by the said person. If the law confers a direct or indirect tax exemption, a claimant is entitled to a tax refund even if it only bears the economic burden of the applicable tax. On the other hand, if the exemption conferred only applies to direct taxes, then the statutory taxpayer is regarded as the proper party to file the refund claim.

In this case, pursuant to Section 13(2) of PD No. 1869, as amended, and as shown by the evidence presented herein, the direct and *indirect* tax exemptions of PAGCOR do not extend to petitioner, as a licensee of PAGCOR.

However, petitioner anchors the filing of the instant claim for refund of the alleged erroneously collected and paid input VAT on Sections 204 and 229 of the 1997 NIRC, as amended, which read as follows:

> "SEC. 204. *Authority of the Commissioner to Compromise/Abate and Refund or Credit Taxes.* — The Commissioner may —
>
> xxx xxx xxx
>
> (C) **Credit or refund taxes erroneously or illegally received** or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however,* that a return filed showing an overpayment shall be considered as a written claim for credit or refund." *(Emphasis added)*
>
> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national **internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected,** until a claim for refund or credit has been duly filed with the Commissioner; but such suit or

> proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." *(Emphases added)*

Parenthetically, the foregoing provisions allow the recovery of taxes erroneously or illegally collected. An "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property not subject to taxation, or by some officer having no authority to levy the tax, or one which is some other similar aspect is illegal. [66] Notably, erroneous or wrongful payment includes excessive payment because they all refer to payment of taxes not legally due.[67]

With the application of Section 229, the rules relative to legal standing to file refund claims are further qualified, **specifically those involving the refund of passed on VAT or input VAT**.

In *Coca-Cola Bottlers Philippines, Inc. vs. Commissioner of Internal Revenue*,[68] the Supreme Court ruled as follows:

> "Petitioner, in advancing its claim for refund or tax credit, cannot rely on Section 229 of the 1997 NIRC, as amended. Time and again, the Court had consistently ruled on the inapplicability of Section 229 to claims for the recovery of unutilized input VAT. In *Commissioner of Internal Revenue v. San Roque Power Corporation (San Roque)*,[69] the Court explained that **input VAT is <u>not</u> 'excessively' collected as understood under Section 229 because at the time the input VAT is collected, the amount paid is correct and proper. If said input VAT is in fact 'excessively' collected as understood under Section 229,**

---

[66] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012, citing the definition provided in BLACK'S LAW DICTIONARY, Fifth Edition, p. 486.
[67] *Commissioner of Internal Revenue vs. San Roque Power Corporation, et seq.*, G.R. Nos. 187485, 196113, and 197156, February 12, 2013.
[68] G.R. No. 222428, February 19, 2018.
[69] 703 Phil. 300, 365 (2013), G.R. Nos. 187485, 196113 & 197156, February 12, 2013. *on*

then it is the person legally liable to pay the input VAT, and not the person to whom the tax is passed on and who is applying the input VAT as credit for his own output VAT, who can file the judicial claim for refund or credit outside the VAT system. The Court, in *San Roque*, explained as follows:

> III. 'Excess' Input VAT and 'Excessively' Collected Tax
>
> **The input VAT is not 'excessively' collected as understood under Section 229 because at the time the input VAT is collected the amount paid is correct and proper**. The input VAT is a tax liability of, and legally paid by, a VAT-registered seller of goods, properties or services used as input by another VAT-registered person in the sale of his own goods, properties, or services. This tax liability is true even if the seller passes on the input VAT to the buyer as part of the purchase price. The second VAT-registered person, who is not legally liable for the input VAT, is the one who applies the input VAT as credit for his own output VAT. **If the input VAT is in fact 'excessively' collected as understood under Section 229, then it is the first VAT-registered person - the taxpayer who is legally liable and who is deemed to have legally paid for the input VAT - who can ask for a tax refund or credit under Section 229 as an ordinary refund or credit outside of the VAT System.** In such event, the second VAT-registered taxpayer will have no input VAT to offset against his own output VAT.
>
> In a claim for refund or credit of 'excess' input VAT under Section 110(B) and Section 112(A), the input VAT is not 'excessively' collected as understood under Section 229. At the time of payment of the input VAT the amount paid is the correct and proper amount. **Under the VAT System, there is no claim or issue that the input VAT is 'excessively' collected, that is, that the input VAT paid is more than what is legally due.** The person legally liable for the input VAT cannot claim that he overpaid the input VAT by the mere existence of an 'excess' input VAT. The term 'excess' input VAT simply means that the input VAT available as credit exceeds the output VAT, not that the input VAT is excessively collected because it is more than what is legally due. **Thus, the** cm

> **<u>taxpayer who legally paid the input VAT cannot claim for refund or credit of the input VAT as 'excessively' collected under Section 229</u>.**
>
> x x x x
>
> **x x x Only the person legally liable to pay the tax can file the judicial claim for refund. <u>The person to whom the tax is passed on as part of the purchase price has no personality to file the judicial claim under Section 229</u>.**
>
> x x x x
>
> **Any suggestion that the 'excess' input VAT under the VAT System is an 'excessively' collected tax under Section 229 may lead taxpayers to file a claim for refund or credit for such 'excess' input VAT under Section 229 as an ordinary tax refund or credit outside of the VAT System.** Under Section 229, mere payment of a tax beyond what is legally due can be claimed as a refund or credit. There is no requirement under Section 229 for an output VAT or subsequent sale of goods, properties, or services using materials subject to input VAT.
>
> **From the plain text of Section 229, it is clear that what can be refunded or credited is a tax that is 'erroneously, xxx illegally, xxx excessively or in any manner wrongfully collected.' In short, there must be a wrongful payment because what is paid, or part of it, is not legally due. As the Court held in *Mirant*, Section 229 should 'apply only to instances of erroneous payment or illegal collection of internal revenue taxes.' <u>Erroneous or wrongful payment includes excessive payment because they all refer to payment of taxes not legally due</u>. Under the VAT System, there is no claim or issue that the 'excess' input VAT is 'excessively or in any manner wrongfully collected.' In fact, if the 'excess' input VAT is an 'excessively' collected tax under Section 229, then the taxpayer claiming to apply such 'excessively' collected input VAT to offset his output VAT may have no legal basis to make such offsetting. The person legally liable to pay the input VAT can**

> **claim a refund or credit for such 'excessively' collected tax, and thus there will no longer be any 'excess' input VAT. This will upend the present VAT System as we know it.**" *(Emphases and underscoring added)*

It is clear from the foregoing that input VAT is not 'excessively' collected as understood under Section 229 because at the time the input VAT is collected, the amount paid is correct and proper.

Moreover, even if said input VAT is in fact 'excessively' collected as understood under Section 229, then it is the person legally liable to pay the input VAT, and *not* the person to whom the tax is passed on and who is applying the input VAT as credit for his or her own output VAT, who can file the judicial claim for refund or credit outside the VAT system.

In this case, it is noteworthy that petitioner is a VAT-registered person.[70] Correspondingly, the VAT passed on to petitioner by its suppliers are input VAT.[71] As such, the aggregate amount of the present claims, *i.e.*, ₱82,689,950.91, cannot be treated as 'excessively' collected as understood under Section 229 of the 1997 NIRC, as amended, and thus, may not be refunded by petitioner thereunder.

As a corollary, there is no showing that the same amount being claimed for refund is in fact 'excessively' collected as understood under the same Section 229. But even if it was shown to be so, the same is still of no moment, and petitioner cannot still be entitled to refund the said amount.

In other words, whether or not the amount being refunded in the present cases may be considered as, or is shown to be, excessively collected under Section 229 of the 1997 NIRC, as amended, the result is the same: petitioner is **not entitled** to the refund of the said aggregate amount.

---

[70] Exhibit "P-5", Docket (CTA Case No. 10099) – Vol. I, pp. 198 to 199.

[71] "The term 'input tax' means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person." [Section 110 (A)(3), NIRC of 1997, as amended].

It must be emphasized that actions for tax refund or credit, as in the present case, are in the nature of tax exemptions. As such, they are regarded as derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[72] Petitioner has the burden of proof to establish its entitlement thereto. Having failed to discharge the said burden of proof, the present refund claims must perforce be denied.

WHEREFORE, in light of the foregoing considerations, the present consolidated *Petitions for Review* are **DENIED** for lack of merit.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Marian Ivy F. Reyes-Fajardo
(With Dissenting Opinion)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

[72] *Commissioner of Internal Revenue vs. S.C. Johnson & Son, Inc.*, G.R. No. 127105, June 25, 1999.

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 cases were 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

SPECIAL FIRST DIVISION

MELCO RESORTS LEISURE (PHP) CORPORATION, *Petitioner,*	**CTA Case Nos. 10099 & 10176**
	Members:
- versus -	**DEL ROSARIO,** *PJ, Chairperson,* **MANAHAN,** and **REYES-FAJARDO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: **SEP 21 2023**; 2:10PM

x- -x

DISSENTING OPINION

REYES-FAJARDO, *J.*:

With due respect to my esteemed colleague Associate Justice Catherine T. Manahan, I dissent from the majority opinion for the reasons discussed in the ensuing paragraphs.

Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue, represented by Commissioner Kim S. Jacinto[1] settled that the income tax exemption of the Philippine Amusement and Gaming Corporation ("PAGCOR") extends to its licensees and contractees. The Supreme Court discussed as follows:

> Section 13 of PD No. 1869 evidently states that payment of the 5% franchise tax by PAGCOR and its contractees and licensees exempts them from payment of any other taxes, including corporate income tax, quoted hereunder for ready reference:
>
> Sec. 13. Exemptions. -
>
> . . .
>
> (2) Income and other taxes. - (a) Franchise Holder: No tax of any kind or form, income or

---

[1] G.R. No. 212530, August 10, 2016.

qV

> **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.
>
> (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.** [2]

> As previously recognized, the above-quoted provision providing for the said exemption was neither amended nor repealed by any subsequent laws (i.e. Section 1 of R.A. No. 9337 which amended Section 27(C) of the NIRC of 1997); thus, it is still in effect. Guided by the doctrinal teachings in resolving the case at bench, **it is without a doubt that, like PAGCOR, its contractees and licensees remain exempted from the payment of corporate income tax and other taxes since the law is clear that said exemption inures to their benefit.** [3]

Based on the foregoing, it is clear that pursuant to Section 13(2)(a) and (b) of PD No. 1869: (1) the income of PAGCOR from gaming operations is subject to five percent (5%) franchise tax; (2) upon payment of the five percent (5%) franchise tax, PAGCOR's income from its gaming operations are exempt for **all other taxes**; (3) the tax regime or incentive of PAGCOR inures to the benefit of and

---

2 Emphasis supplied.

3 Emphasis supplied.

extend to all its contractees and **licensees** upon showing of the payment of the five percent (5%) *franchise tax*.

True, *Thunderbird Pilipinas Hotels and Resorts, Inc. v. Commissioner of Internal Revenue*[4] held in 2020 that PAGCOR's income tax exemptions only extend to entities or individuals in a contractual relationship with PAGCOR in connection with its casino operations and not to PAGCOR licensees. However, in the more recent case of *Saint Wealth Ltd. v. Bureau of Internal Revenue,*[5] the Supreme Court *En Banc* reiterated the doctrine laid down in *Bloomberry* and held that **PAGCOR's licensees** are only liable to pay a five percent (5%) franchise tax for income derived from its gaming operations. To wit:

> Clearly, both law and jurisprudence mandate that PAGCOR's licensees are only liable to pay a five percent (5%) franchise tax for income derived from its gaming operations. However, a plain reading of the PAGCOR Charter and the ruling in *Bloomberry* shows that the liability of paying the five percent (5%) franchise tax only applies to PAGCOR's licensees which are connected to the operations of casinos and other related amusement places.
>
> Stated differently, **the payment of this five percent (5%) franchise tax only applies to PAGCOR licensees which operate casinos and other related amusement places**, and excludes those licensees who derive profit from other means, such as POGOs. Thus, POGOs, including offshore-based POGO licensees, are not taxed under the PAGCOR Charter.[6]

In ruling in above manner, the Supreme Court *En Banc* has clearly overturned its Third Division's previous ruling in *Thunderbird* and reverted to the original doctrine in *Bloomberry*.

It should be emphasized that the doctrine *stare decisis et non quieta movere*, as embodied in Article 8 of the Civil Code of the Philippines,[7] enjoins adherence to judicial precedents and requires courts in a country to follow the rule established in a decision of the Supreme Court thereof. As a matter of necessary judicial practice, courts should adhere to that principle and apply it to all future cases

---

4 G.R. No. 211327, November 11, 2020.

5 G.R. Nos. 252965 & 254102, December 7, 2021.

6 Emphasis supplied.

7 ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.

in which the facts are substantially the same.[8] Thus, with respect to the question of whether or not PAGCOR's tax exemption under its Charter inures to the benefit of its contractees and licensees, the doctrine in *Bloomberry* as reiterated in *Saint Wealth Ltd.* must be applied.

Here, petitioner was able to show that it is a licensee of PAGCOR. Petitioner is one of the corporations composing the Consortium, which was granted the Gaming License dated April 29, 2015 issued by PAGCOR for the period from December 12, 2008 until July 11, 2033.[9]

Petitioner also proved that the five percent (5%) franchise tax was paid and remitted by PAGCOR to the BIR as evidenced by the following: a) *PAGCOR Certification dated October 8, 2019,* [10] b) *PAGCOR Certification dated July 8, 2019,*[11] c) *Statement of Franchise Tax Remittances for calendar year 2017 issued by PAGCOR,*[12] d) *PAGCOR's BIR Form No. 2553 (Return of Percentage Tax Payable under Special Laws) for the 3rd quarter of 2017,*[13] and e) *PAGCOR's BIR Form No. 2553 (Return of Percentage Tax Payable under Special Laws) for the 4th quarter of 2017,*[14] among others.

On the issue of petitioner's legal standing to file the subject tax refund claims, *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*[15] held that the propriety of a tax refund claim is hinged on the kind of exemption which forms its basis. Thus, if the law confers an exemption from both direct or indirect taxes, a claimant is entitled to a tax refund even if it only bears the economic burden of the applicable tax. On the other hand, if the exemption conferred only

---

8 *Commissioner of Internal Revenue v. Insular Life Assurance Co. Ltd.*, G.R. No. 197192, June 4, 2014.

9 Exhibit "P-3", Docket - Vol. I p. 42. Refer also to Formal Offer of Evidence, Docket - Vol. II, p. 642.

10 Exhibit "P-26", Docket - Vol. I p. 335. Refer also to Formal Offer of Evidence, Docket - Vol. II, p. 657-661.

11 Exhibit "P-26", Docket - Vol. I p. 336. Refer also to Formal Offer of Evidence, Docket - Vol. II, p. 657-661.

12 Exhibit "P-28", Docket - Vol. I p. 337. Refer also to Formal Offer of Evidence, Docket - Vol. II, p. 657-661.

13 Exhibit "P-29", Docket - Vol. I p. 338. Refer also to Formal Offer of Evidence, Docket - Vol. II, p. 657-661.

14 Exhibit "P-30", Docket - Vol. I p. 344. Refer also to Formal Offer of Evidence, Docket - Vol. II, p. 657-661.

15 G.R. No. 198759, July 1, 2013.

applies to direct taxes, then the statutory taxpayer is regarded as the proper party to file the refund claim.[16]

In this case, Section 13(2)(a) of PD No. 1869 provides that the five percent (5%) franchise tax on the gross revenues or earnings derived by PAGCOR from its operations conducted under the franchise, which shall be due and payable *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] Clearly, PD No. 1869 grants PAGCOR an exemption from both direct and indirect taxes. The same tax exemption inures to the benefit of petitioner, a PAGCOR licensee, as provided under Section 13(2)(a) and (b) of PD No. 1869, giving petitioner a legal standing to file the subject tax refund claims.

Accordingly, I **SUBMIT** that petitioner should be allowed to refund the amount of input value-added tax it paid for its purchases attributable to revenues for its gaming operations for the third quarter of taxable year 2017 to the extent that it has proven its entitlement thereto.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

---

16 *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 198759, July 1, 2013.

17 *Philippine Amusement and Gaming Corporation (PAGCOR) v. The Bureau of Internal Revenue, et al.*, G.R. No. 215427, December 10, 2014.