REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

GRAND PLAZA HOTEL CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 7794

Members:

BAUTISTA, Chairperson
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, ***JJ.***

Promulgated:

FEB 18 2011
PBFernando 1:05 p.m.

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DECISION

COTANGCO-MANALASTAS, *J.:*

Before this Court are the Petition for Review filed on June 11, 2008 and a Supplement to the Petition for Review filed on October 20, 2008, seeking the cancellation and setting aside of the assessment issued against petitioner in relation to its alleged deficiency value-added tax (VAT) in the amount of P228,943,589.15 for taxable year 2002 and previous years.

STATEMENT OF FACTS

Petitioner Grand Plaza Hotel Corporation is a corporation duly organized and existing under and by virtue of Philippine laws, with principal office located at 10th Floor, The Heritage Hotel, EDSA Extension corner Roxas Boulevard, Pasay City.[1]

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[1] Par. 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues, docket, p. 258

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), who is vested with authority to implement national internal revenue laws. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On December 11, 2006, a Preliminary Assessment Notice (PAN) dated November 28, 2006 was received by petitioner indicating its alleged liability for deficiency VAT for taxable year 2002 amounting to P228,943,589.15, inclusive of interest. This deficiency VAT arose from petitioner's transaction with the Philippine Amusement and Gaming Corporation (PAGCOR).[2]

The Details of Discrepancy attached to the PAN showed that petitioner erroneously recorded its transactions with PAGCOR, amounting to P194,122,294.84, as exempt sales when the transaction should have been subject to VAT. Respondent averred that PAGCOR's Charter had been effectively amended by Republic Act (RA) No. 7716 or the E-VAT law on January 1, 1996 and by Section 108 of the National Internal Revenue Code (NIRC) of 1997. Respondent likewise alleged that petitioner is liable for output tax on previous years' (covering the period from 1996 to 2001) transactions with PAGCOR totaling P108,714,740.83, since PAGCOR is subject to VAT beginning January 1, 1996.[3]

On December 27, 2006, petitioner, through its external auditors Fernandez Santos & Lopez, filed its letter-reply to the PAN. In its letter-reply, petitioner maintained that PAGCOR refuses to pay the VAT on its transactions with petitioner, citing Section 13(2)(a) of Presidential Decree (PD) No. 1869 (hereinafter referred to as the "PAGCOR Charter") which exempts it from all kinds of taxes, levies, fees or

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[2] Exhibit "B"

[3] Par. 4, Summary of Admitted Facts, Joint Stipulation of Facts and Issues, docket, p. 259

assessments of any kind, nature or description levied, established or collected by any municipal, provincial or national government authority. Petitioner also averred that PAGCOR is relying on Section 108(B)(3) of the Tax Code, which imposes VAT at zero percent (0%) on services rendered to tax-exempt entities under special laws, such as PAGCOR. Finally, petitioner asserted that the assessment for alleged deficiency VAT for its previous years (1996 to 2001) transactions with PAGCOR is already barred by prescription.[4]

On December 29, 2006, petitioner received a Formal Letter of Demand (FLD) dated December 27, 2006 for VAT Assessment No. VT-02-000213, essentially repeating the findings in the PAN. Attached to the FLD were the details of the tax deficiency assessment.[5]

On January 26, 2007, petitioner, through its external auditors Fernandez Santos & Lopez, filed its letter-protest. In the said letter-protest, petitioner reiterated its arguments in its December 27, 2006 letter-reply to the PAN.[6]

On May 14, 2008, petitioner received the Final Decision on Disputed Assessment (FDDA) dated February 28, 2008, finding petitioner liable for deficiency VAT amounting to P228,943,589.15, inclusive of interest.[7] Respondent cited the following as basis of his decision:

> "1. PAGCOR transactions (P194,122,294.84) – per verification, this amount was recorded as exempt sales, when in fact it was transaction between you and PAGCOR. VAT Ruling No. 029-03 dated June 20, 2003 explicitly confirms that the 10% VAT on transactions with PAGCOR can be passed on to the said entity. PAGCOR's charter has been amended by RA 7716 (EVAT Law) effective January 1, 1996 and under Section 108 of the 1997 Tax Code.

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[4] Exhibit "C"; Par. 5, Summary of Admitted Facts, Joint Stipulation of Facts and Issues, docket, pp. 259-260

[5] Exhibit "D"; Par. 6, Summary of Admitted Facts, Joint Stipulation of Facts and Issues, docket, p. 260

[6] Exhibits "E" and "E-1"

[7] Exhibits "F" and "F-1"

2. Output tax from previous years PAGCOR transactions (P108,714,740.83) – as ruled upon in the above ruling, PAGCOR transaction is already subject to VAT beginning January 1, 1996. The basic VAT due from previous years was lifted from the account A/R PAGCOR Tax."

As a consequence, petitioner filed the instant Petition for Review[8] and Supplemental Petition for Review[9] on June 11, 2008 and October 20, 2008, respectively.

For his part, respondent filed his Answer on August 1, 2008 [10] and Supplemental Answer on January 29, 2009[11], interposing the following defenses:

"7. The assessment for year 2002 Value Added Tax Deficiency in the amount of P228,943,589.15 was issued in accordance with law and regulations.

8. Petitioner puts great capital on the case of Commissioner of Internal Revenue vs. Acesite (Philippines) Hotel Corporation (hereinafter referred to as 'Acesite'). However, while the said case similarly involves PAGCOR's tax exemption privilege and where it was held that this privilege includes the indirect tax of VAT thereby entitling therein respondent Acesite zero percent (0%) VAT rate, herein respondent avers that this case is inapplicable.

9. The Acesite case involved VAT payments for the period from January 1996 to April 1997, in other words, before the effectivity of the Tax Code of 1997. As a matter of fact, the Honorable Supreme Court clearly based its ruling on the provisions of the Tax Code of 1977, stating thus:

> Thus, while it was proper for PAGCOR not to pay the 10% VAT charged by Acesite, the latter is not liable for the payment of it as it is exempt in this particular transaction by operation of law to pay indirect tax. Such exemption falls within the former **<u>Section 102 (b) (3)</u>** of the **<u>1977 Tax Code</u>**, as amended (now Sec. 108 [b][3] of R.A. 8424), which provides:
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> **<u>Section 102</u>**. Value-added tax on sale of services – (a) Rate and base of tax - There shall be levied,

[8] Docket, pp. 1-24
[9] Docket, pp. 177-185
[10] Docket, pp. 69-77
[11] Docket, pp. 242-254

assessed and collected, a value-added tax equivalent to 10% of gross receipts derived by any person engaged in the sale of services xxx; Provided, that the following services performed in the Philippines by VAT-registered persons shall be subject to 0%.

xxxx

(b) Transactions subject to zero percent (0%) rated. –

xxxx

(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 (0%) rate.' (emphasis and underscoring supplied)

10. So while it is quite clear from the above jurisprudence that there is such VAT exemption under the Tax Code of 1977, the Tax Code of 1997 is a different matter.

11. It is undisputed that Presidential Decree (PD) 1896, the charter creating PAGCOR, granted the latter an exemption from the payment of taxes from its enactment on 11 July 1983. Section 13 of P.D. 1869 pertinently provides:

"Sec. 13. *Exemptions* –

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 (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. L

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(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 or operator as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator.' (Emphasis supplied.)

12. However, this Charter was amended by the subsequent enactment of the Tax Code of 1997 on 1 January 1998 which imposed the VAT on **ALL** sales of services. This fact is further confirmed by BIR VAT Ruling No. 029-03 dated 20 June 2003, which explicitly states that the 10% VAT on transactions with PAGCOR can be passed on to the said entity.

13. Currently, the pertinent provision relating to VAT on Sale of Services is Section 108 of the NIRC of 1997, which provides:

'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.

The phrase 'sale or exchange of services' means the performance of all kinds or services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films, persons engaged in milling processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, resthouses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire another domestic common carriers by

> land, air and water relative to their transport of goods or cargoes; services of franchise grantees of telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 119 of this Code; services of banks, non-bank financial intermediaries and finance companies and non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. The phrase 'sale or exchange of services' shall likewise include:
>
> XXX'

14. It is to be noted from the above provision that the law does not categorically define what constitutes 'service' which may be 'sold or exchanged' in the course of business, but, a catch-all phrase, it **embraces the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, by a person**, regardless of whether the performance thereof calls for the exercise or use of the physical or mental faculties, **including** but not limited to, several items of services as enumerated and similar services.

15. Its basic premise, therefore, is that any sales transaction undertaken in the course of business which does not constitute sale of goods (Section 106, NIRC of 1997), and which is not expressly exempt from VAT under the Code (Section 109, NIRC of 1997), is embraced in the classification of a 'service' subject to the 10% VAT.

16. Finally, such stance was previously upheld by this Honorable Court and sustained by the Honorable Supreme Court:

> 'Both the Commissioner of Internal Revenue **and the Court of Tax Appeals** correctly ruled that the services rendered by COMASERCO to Philamlife and its affiliates are subject to VAT. As pointed out by the Commissioner, **the performance of all kinds of services for others for a fee, remuneration or consideration is considered as sale of services subject to VAT**. As the government agency charged with the enforcement of the law, the opinion of the Commissioner of Internal Revenue, in the absence of any showing that it is plainly wrong, is entitled to great weight.
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> **Also, it has been the long standing policy and practice of this Court to respect the conclusions of quasi-judicial agencies, such as the Court of Tax Appeals** which, by the nature of its functions, is dedicated

> exclusively to the study and consideration of tax cases and has necessarily developed an expertise on the subject, unless there has been an abuse or improvident exercise of is authority.' (emphasis supplied.)

17. Clearly, even in the absence of a specific mention in the provision, a certain service, rendered in the Philippines by a person, for others, for a fee, remuneration or consideration and not expressly exempt from VAT under the NIRC of 1997, is a sale of service contemplated under Section 108 of the NIRC of 1997.

18. The assessment involved herein is for petitioner's year 2002 Value Added Tax Deficiency in the amount of P228,943,589.15. An assessment made under the Tax Code of 1997 and clearly outside the jurisprudential rule created by the Acesite case which governs the assessments under the Tax Code of 1977.

19. Finally, it is a well-settled rule in taxation that assessments are *prima facie* presumed correct and made in good faith. The taxpayer has the duty of proving otherwise, and in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed.

Supplemental Answer:

RESPONDENT'S RIGHT TO ASSESS PETITIONER HAS NOT PRESCRIBED

"4. The assessment was issued within the period prescribed by law.

5. Granting without conceding, that certain portions of the deficiency assessment were beyond the three (3) year period from the last day prescribed by law for filing, there exist particular circumstances in this case which would justify the assessment beyond the ordinary three (3) year prescriptive period;

6. While it is true that generally, the assessment of internal revenue taxes can only be issued within three (3) years from the last day prescribed by the law for the filing of the return thereof, such limitation is inapplicable in this case as the petitioner did not file the required internal revenue tax returns for its VATable sales on PAGCOR transactions on the dates prescribed by law and implementing rules and regulations. This is an undisputable fact

7. The applicable provision is Section 222 of the Tax Code of 1997 which explicitly provides that an assessment can still be issued even beyond the reglementary period in case of a false or fraudulent return with intent to evade taxes, or of failure to file a return. In such cases, the tax may be assessed or a proceeding in court for the collection of such tax may be filed without

assessment at anytime within ten (10) years after the discovery of falsity, fraud or **omission**.

8. Hence, because of petitioner's failure to declare and file the necessary return for its VATable sales on PAGCOR transactions, the assessments herein was lawfully issued within ten (10) years from discovery thereof, within the meaning and legal contemplation of the said provision.

PETITIONER CANNOT RELY ON PAGCOR'S ALLEGED EXEMPTION UNDER ITS CHARTER BECAUSE THE SAME HAS BEEN EXPRESSLY AMENDED BY R.A. NO. 7716 (EVAT LAW) AND THE 1997 TAX CODE.

9. Petitioner alleges that PAGCOR's exemption under special laws effectively rendered its transactions with the same subject to VAT at zero percent (0%) rate. However, there can be no doubt that PAGCOR's Charter has been amended by R.A. 7716 (EVAT Law, effective 1 January 1996) and the Tax Code of 1997, subjecting transactions with such entity to the 10% VAT.

10. The Old Tax Code, as amended by R.A. 7716 and subsequently renumbered by the Tax Code of 1997, provides:

> 'Any person who, in the course of trade or business sells, barters, exchanges, leases, *goods or properties*, renders services, and any person who imports goods shall be subject to the value-added tax...'
>
> xxx xxx xxx
>
> 'There shall be levied, assessed and collected on every sale, barter or exchange of *goods and properties*, a value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.'
>
> xxx xxx xxx
>
> 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*.
>
> The phrase 'sale or exchange of services' means the performance of all kinds of services in the Philippines for others for a fee, remuneration of consideration, *including... services of franchise*

> *grantees of telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 119 of this Code...'*

11. PAGCOR is engaged in the sale of service and in the use or lease of its properties, hence, it is subject to VAT. One of PAGCOR's franchised activities is the *operation of gambling casinos*. TITLE I, SECTION I of its Charter (P.D. 1869) provides, in part, as follows:

> '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;
>
> (b) To establish and operate clubs and casinos, for amusement and recreation including sports and gaming pools (basketball, football, lotteries, etc.) and such other forms of amusement and recreation including games of chance...
>
> A Gambling House (i.e. a gambling casino) means a building, place or room kept for use as a place to gamble or to keep or exhibit for the purpose of gaming any bank table, alley, machine, wheel, or device.'

12. It is very clear that PACGOR's gambling operations are embraced under the term 'sale or exchange of services, including the use or lease of properties' (supra) because this term includes the word 'use' of its properties by the gamblers, e.g. its casino building and the gaming tables, slot machines, and other gambling devices or paraphernalia provided therein for use by the said gamblers. Therefore, it is very clear that PAGCOR is subject to the 10% VAT, pursuant to Section 102 of the Tax Code, as amended by R.A. 7716, and as subsequently renumbered by the 1997 Tax Code.

13. Petitioner also contends that R.A. No. 7716 and the 1997 Tax Code, being 'general laws', cannot repeal a 'special law'. Therefore, PAGCOR's Charter under P.D. 1869, which is a 'special law', cannot be amended by the said amendatory laws.

14. Respondent agrees that a special law may not be deemed amended by a general law by mere implication; that, implied

repeal is not favored; and that, before a special law may be deemed amended by a general law, such amendment must be 'expressly' so provided in the said general law. However, there is no amendment by mere implication in this case. On the contrary, respondent avers that the amendment here is explicit.

15. R.A. 7716 had expressly amended the tax proviso of PAGCOR's Charter. Section 3 R.A. 7716 amended Section 102 of the Old Tax Code, as follows:

> '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*.
>
> The phrase 'sale or exchange of services' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, *including....services of franchise grantees of telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 117 (now Sec. 119) of this Code...*'

16. Section 12 of R.A. 7716, further amended, Section 117 (now Sec. 119) of the Tax Code, as follows:

> 'Sec. 117. Tax on franchise – Any provision of general (sic) or special law to the contrary notwithstanding, there shall be levied, assessed and collected in respect to all franchises on electric, gas and water utilities a tax of two percent (2%) on the gross receipts derived from the business covered by the law granting the franchise.'

17. Section 20 of R.A. 7716 further provided in its Repealing Clauses, as follows:

> 'Sec. 20. Repealing Clauses – The provisions of any special law relative to the rate of franchise taxes are hereby *expressly repealed...*'

It is very clear from the foregoing express provisions of R.A. 7716, as later amended by R.A. 8241 (20 December 1996) and the 1997 Tax Code, that 'all' legislative franchise grantees became subjects to the 10% VAT, except only the following which remained under the franchise tax, in lieu of the 10% VAT:

> - Franchise grantees of radio and television broadcasting whose annual gross receipts of the preceding year does not exceed Ten

> Million pesos (P10,000,000) and which did not opt for VAT registration; and
>
> - Electric, gas and water utilities.

18. The services of a casino operation, like that of the **PAGCOR**, by the express (sic) provisions of R.A. 7716, is not included among the said exceptions. Very clearly, **PAGCOR** is *expressly* included in the catch all proviso *'all other franchise grantees.'* Therefore, PAGCOR was subject to the 10% VAT since January 1, 1996 (effectivity of R.A. No. 7716)

19. Moreover, the meaning of 'express amendment' of a legislative franchise, by a general law, had already been resolved by the Court in the case of CAGAYAN ELECTRIC POWER & LIGHT CO., INC., petitioner, vs. COMMISSIONER OF INTERNAL REVENUE and COURT OF TAX APPEALS, respondent (GR No. L-60126, 25 September 1985). The issue in this case was the amendment of the old Section 24 of the Code, imposing a higher income tax on all corporations, unless otherwise specifically exempt therefrom under Sections 24 and 27 of the said Code.

20. Section 24, Old Tax Code, was amended by Section 1 of R.A. 5431, as follows:

> '(d) The provisions of existing special or general laws to the contrary notwithstanding, all corporate taxpayers not specially exempt under Sections twenty-four (c)(1) and twenty-seven of this Code shall pay the rates provided in this section All corporations, agencies or instrumentalities owned controlled by the Government, including the Government Service Insurance System and the Social Security System but excluding educational institutions, shall pay such rate of tax upon their taxable net income as are imposed by this section upon associations or corporations engaged in a similar business or industry.'

Section 9 of R.A. 5431 further provided, as follows:

> 'SECTION 9. *All special laws, acts and parts thereof, which are inconsistent with the provisions of this Act are hereby amended or repealed.'*

21. The above petitioner contended that its legislative franchise, as electric utility company, was not expressly amended by R.A. 5431. The Court denied its contention, as follows:

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> 'Republic Act No. 5431 in amending Section 24 of the Tax Code by subjecting to income tax all corporate taxpayers not expressly exempted therein and in Section 27 of the Tax Code had the effect of withdrawing petitioner's exemption from income tax.'

22. It will be observed from the foregoing that the amendments made under R.A. 5431 were exactly similar in character to the amendments made under R.A. 7716, i.e., all taxpayers not specifically included in the exceptions, are included. In the same vein, since PAGCOR is not included among the exceptions, provided by R.A. 7716, it accordingly became subject to the 10% VAT, in lieu of the franchise tax heretofore prescribed under its Charter.

23. Finally, and to emphasize the point further, the Honorable Supreme Court also held that there is an effective repeal in any of the following cases:

> 'In the case of Lichoco vs. Civil Aeronoautics Board (GR No. 32979, 29 February 1972) it was held, 'Where the later general act provides that all laws or parts thereof which are inconsistent therewith are repealed or modified accordingly.'
>
> In the case of Lichauco & Co. vs. Apostol (44 Phil 302) it was held, 'Where the later statute is so broad in its terms and so clear and explicit in its words as to show that it was intended to cover the whole subject and therefore to displace the prior statue.'
>
> In the case of Pacis vs. Avena (GR No. 22526, 29 November 1966) it was held, 'As between two laws on the same subject matter, which are irreconcilably inconsistent, that which is passed later prevails since it is the latest expression of the legislative will.'

24. Finally, as to petitioner's contention that a final demand is necessary before any interest can accrue, suffice it to say that there is no such requirement under Section 249 of the 1997 Tax Code.

25. It is a well-settled rule in taxation that assessments are *prima facie* presumed correct and made in good faith. The taxpayer has the duty of proving otherwise, and in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed."

On February 16, 2009, the parties submitted their Joint Stipulation of Facts and Issues[12], which was approved in a Resolution promulgated on February 23, 2009. In the same Resolution, the Pre-trial Conference was terminated.[13]

During trial, a Motion for Preliminary Hearing for the Limited Purpose of Resolving the Legal Issues was filed by petitioner on February 25, 2009, praying for this Court to allow the conduct of a preliminary hearing in order for the parties to adduce evidence solely on the two legal issues, namely: (a) whether or not the Petition for Review was filed within the prescriptive period as required by law; and (b) whether or not transactions between petitioner and PAGCOR for the taxable year 2002 is subject to ten percent (10%) VAT rate.[14] The said Motion was granted in a Resolution dated April 13, 2009.[15]

Petitioner presented and offered in evidence Exhibits "A" to "M" for the limited purpose of resolving the legal issues.[16] The said exhibits were thereafter admitted in a Resolution dated September 4, 2009.[17]

On the other hand, during the hearing held on November 26, 2009, respondent manifested that he will not present any evidence since the same pertains only to legal issues. Both parties also manifested their intention to file their respective Memorandum. Hence, this Court granted the parties thirty (30) days from November 26, 2009, within which to file their Memoranda.[18]

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[12] Docket, pp. 258-262
[13] Docket, p. 263
[14] Docket, pp. 269-274
[15] Docket, pp. 277-278
[16] Docket, pp. 290-293
[17] Docket, pp. 344-345
[18] Transcript of Stenographic Notes during the hearing held on November 26, 2009, pp. 3-4

The Memorandum for the Petitioner[19] was filed on January 25, 2010. On the same date, respondent's Memorandum was filed though registered mail.[20] Thus, on February 23, 2010, the case was submitted for decision of this Court.[21]

STATEMENT OF ISSUES

The parties submitted the following issues[22] for this Court's disposition:

"1. Whether or not the Petition for Review was filed within the prescriptive period as required by law.

2. Whether or not transactions between Petitioner and PAGCOR for the taxable year 2002 is subject to ten percent (10%) VAT rate.

3. Whether or not Petitioner's sale of goods and/or services and/or lease to PAGCOR for the taxable year 2002 is effectively subjected to zero percent (0%) rate.

4. Whether or not the right of the government to assess VAT on previous years' (covering the period 1996 to 2001) transactions between Petitioner and PAGCOR had already prescribed.

5. Whether or not the right of the government to asses deficiency VAT on 1st, 2nd and 3rd Quarters of taxable year 2002 had already prescribed.

6. Whether or not the assessment made by Respondent covering previous years, i.e. 1996-2001 is void.

7. Whether or not the 20% interest was properly computed."

Nevertheless, as earlier mentioned, the legal issues cited in petitioner's Motion for Preliminary Hearing shall first be resolved and addressed.

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[19] Docket, pp. 359-380
[20] Docket, pp. 382-399
[21] Docket, p. 403
[22] Issues to be Resolved, Joint Stipulation of Facts and Issues, docket, p. 261

DISCUSSION/RULING

The crux of the controversy in this case is a purely legal issue which primarily delve on whether or not petitioner's transactions with PAGCOR are effectively subject to ten percent (10%) VAT beginning January 1, 1996 up to the year 2002. Considering that the resolution of the said legal issue may completely dispose of the instant case and may render moot the rest of the issues submitted for resolution by both parties; thus, the succeeding discussions will focus on the disposition of the said issue.

Petitioner's Argument

In assailing the assessment issued by respondent, petitioner asserts that it's transactions with PAGCOR are subject to zero percent VAT and not ten percent (10%) VAT, citing as its basis the ruling of the Supreme Court in the case of *The Commissioner of Internal Revenue vs. Acesite (Philippines) Hotel Corporation*[23] (*Acesite case*).

Respondent's Argument

On the other hand, respondent avers that the *Acesite case* is not applicable to the present Petition since in the said case the Supreme Court based its ruling on the provisions of the Tax Code of 1977. Respondent further contends that PAGCOR's Charter had been expressly repealed by Republic Act (RA) No. 7716 (E-VAT Law) and by the NIRC of 1997 (RA No. 8424). Respondent maintains that the applicable provision in this case is Section 108(A) of the NIRC of 1997, the pertinent portion of which reads:

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[23] G.R. 147295, February 16, 2007

> "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.
>
> **The phrase 'sale or exchange of services' means the performance of all kinds or services in the Philippines for others for a fee, remuneration or consideration,** including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films, persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, resthouses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land, air and water relative to their transport of goods or cargoes; common carriers by air and sea relative to their transport of passengers, goods or cargoes from one place in the Philippines to another place in the Philippines; sales of electricity by generation companies, transmission, and distribution companies; services of franchise grantees of telephone and telegraph, radio and television broadcasting **and all other franchise grantees except those under Section 119 of this Code; services of banks, non-bank financial intermediaries and finance companies; and non-life insurance companies** (except their crop insurances), including surety, fidelity, indemnity and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. The phrase *'sale or exchange of services'* shall likewise include:" (*Emphasis supplied*)

On the basis of the above-quoted provision, respondent is of the belief that any sale transaction undertaken in the course of business which does not constitute sale of goods (Section 106, NIRC of 1997), and which is not expressly exempt from VAT under the Code (Section 109, NIRC of 1997), is embraced in the classification of a "service" subject to the 10% VAT. Since the transaction between petitioner and PAGCOR is included in the classification of a "service", respondent concluded that such transaction is subject to VAT.

We rule in favor of petitioner.

First, it must be pointed out that in the case of *Commissioner of Internal Revenue vs. Acesite (Philippines) Hotel Corporation*[24], the Supreme Court already settled the issue as to PAGCOR's exemption under PD No. 1869. In the said case, the High Tribunal ruled that under PAGCOR's Charter, it is granted exemption from payment of taxes except franchise tax; which 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. Such exemption is extended to entities or individuals dealing with PAGCOR in casino operations. The pertinent portion of Section 13 of PD No. 1869 reads:

> "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 (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 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."

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[24] G.R. 147295, February 16, 2007

In the same *Acesite case*, the High Court also expounded on the rationale behind the exemption extended to entities transacting with PAGCOR, citing the case of *Commissioner of Internal Revenue vs. John Gotamco & Sons, Inc.*[25], the pertinent portion of the case states:

> "The rationale for the exemption from indirect taxes provided for in P.D. 1869 and the extension of such exemption to entities or individuals dealing with PAGCOR in casino operations are best elucidated from the 1987 case of *Commissioner of Internal Revenue v. John Gotamco & Sons, Inc.*, where the absolute tax exemption of the World Health Organization (WHO) upon an international agreement was upheld. We held in said case that the exemption of contractee WHO should be implemented to mean that the entity or person exempt is the contractor itself who constructed the building owned by contractee WHO, and such does not violate the rule that tax exemptions are personal because the **manifest intention of the agreement is to exempt the contractor so that no contractor's tax may be shifted to the contractee WHO. Thus, the proviso in P.D. 1869, extending the exemption to entities or individuals dealing with PAGCOR in casino operations, is clearly to proscribe any indirect tax, like VAT, that may be shifted to PAGCOR.**" (*Emphasis supplied*)

Considering that petitioner's transaction with PAGCOR pertains to the latter's casino operations, PAGCOR's exemption from taxes, specifically from VAT, clearly extends to its transaction with petitioner.

As previously mentioned, the assailed assessment issued by respondent involves petitioner's transactions with PAGCOR from 1996 to 2002. Petitioner's services to PAGCOR relate to services rendered to an entity whose exemption under special law, which is PAGCOR's Charter, effectively would subject the supply of such services to zero percent (0%) rate. Such zero percent rate is categorically provided under Section 108(B)(3) of the National Internal Code of 1997, to wit:

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

xxx xxx xxx

[25] G.R. L-31092, February 27, 1987

> (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.**" (*Emphasis supplied*)

Indeed, the rate of VAT applicable to petitioner's transaction with PAGCOR, as an exempt entity, should be zero percent. Consequently, the assailed assessment subjecting petitioner's transactions with PAGCOR to 10% VAT should be cancelled.

The Court takes this occasion to reiterate the hornbook doctrine in the interpretation of tax laws that "(a) statute will not be construed as imposing a tax unless it does so clearly, expressly, and unambiguously. . . (A) tax cannot be imposed without clear and express words for that purpose. Accordingly, the general rule of requiring adherence to the letter in construing statutes applies with peculiar strictness to tax laws and the provisions of a taxing act are not to be extended by implication." Parenthetically, in answering the question of who is subject to tax statutes, it is basic that "in case of doubt, such statutes are to be construed most strongly against the government and in favor of the subjects or citizens because burdens are not to be imposed nor presumed to be imposed beyond what statutes expressly and clearly import."[26]

A thorough study of the provisions cited by respondent, which supposedly repealed the exemption provided under PD No. 1869 and those which purportedly subjected petitioner to 10% VAT, reveals that said provisions failed to clearly, expressly and unambiguously establish that petitioner may rightfully be subjected to

[26] *Commissioner of Internal Revenue vs. Court of Appeals, et al.*, G.R. No. 115349, April 18, 1997

pay the 10% VAT. Failing in this regard, this Court has no other option but to consider the exemption of PAGCOR provided under its Charter and to treat its transaction with herein petitioner as effectively zero-rated sale of service.

Anent the averment of respondent that the *Acesite case* is not applicable, this Court is not persuaded.

At the outset, it must be noted that the circumstances surrounding this case are substantially similar to that of the *Acesite case*. Both petitions concern the same kind of tax, which is VAT. In both cases, the VAT arose from Acesite's and herein petitioner's transactions with PAGCOR in relation to its casino operations. Also, in the *Acesite case*, the taxable years involved were 1996 and 1997; while in the present petition, respondent alleges that PAGCOR is already subject to VAT beginning January 1, 1996 and thus petitioner herein should be assessed output tax for its PAGCOR transactions covering the period from 1996 to 2002.

The only difference that lies between this two cases is that in the *Acesite case*, Acesite paid the VAT on its transactions with PAGCOR and thereafter claimed the refund of the said amount; while in the present petition, petitioner did not pay the VAT assessed which arose from its transaction with PAGCOR and now seeks the cancellation of the said VAT assessment. Taking into consideration the foregoing similarity in factual background between the *Acesite case* and the present case, this Court finds the application of the *Acesite case* doctrine proper.

While it may be true that the *Acesite case* interpreted the provision of the Tax Code of 1977, it does not mean that the Supreme Court in the said case totally disregarded the provisions under RA 7716 and the NIRC of 1997 relating to the exemption of PAGCOR and the resultant zero-rated sales transactions of Acesite. In fact, the High Court in the said Decision quoted a portion of the Decision of the Court of Appeals, citing Section 108(B)(3) of RA No. 8424 as basis for its ruling that transactions between PAGCOR and Acesite is effectively subject to zero percent rate. The relevant parts of the ruling in the *Acesite case* are hereunder quoted:

> **"A close scrutiny of the above provisos clearly gives PAGCOR a blanket exemption to taxes with no distinction on whether the taxes are direct or indirect. We are one with the CA ruling that PAGCOR is also exempt from indirect taxes, like VAT**, as follows:
>
> > Under the above provision [Section 13 (2) (b) of P.D. 1869], the term 'Corporation' or operator refers to PAGCOR. Although the law does not specifically mention PAGCOR's exemption from indirect taxes, PAGCOR is undoubtedly exempt from such taxes because the law exempts from taxes persons or entities contracting with PAGCOR in casino operations. Although, differently worded, the provision clearly exempts PAGCOR from indirect taxes. **In fact, it goes one step further by granting tax exempt status to persons dealing with PAGCOR in casino operations. The unmistakable conclusion is that PAGCOR is not liable for the P30,152,892.02 VAT and neither is Acesite as the latter is effectively subject to zero percent rate under Sec. 108 B (3). R.A. 8424.**' (Emphasis supplied.)
>
> Indeed, by extending the exemption to entities or individuals dealing with PAGCOR, the legislature clearly granted exemption also from indirect taxes. **It must be noted that the indirect tax of VAT, as in the instant case, can be shifted or passed to the buyer, transferee, or lessee of the goods, properties, or services subject to VAT. Thus, by extending the tax exemption to entities or individuals dealing with PAGCOR in casino operations, it is exempting PAGCOR from being liable to indirect taxes.** *(Emphasis supplied)*

Clearly, the High Tribunal in the said case took consideration not only of the 1977 Tax Code but also the relevant provisions of RA No. 8424, and still found transactions of PAGCOR with other entities effectively zero-rated. Undoubtedly, the Supreme Court did not treat the enactment of RA No. 8424 as an express repeal of the exemption provided under PAGCOR's Charter. L

Similarly worthy of emphasis is the fact that PD No. 1869 is a special law which governs the franchise of PAGCOR. Between the provisions of PD No. 1869 as against the provisions under the NIRC of 1997, which is a general law, the former necessarily prevails. This is in accordance with the rule that on a specific matter, the special law shall prevail over the general law; which shall be resorted to only to supply deficiencies in the former. In addition, where there are two statutes, the earlier special and the later general – the terms of the general broad enough to include the matter provided for in the special – the fact that one is special and the other is general creates a presumption that the special is to be considered as remaining an exception to the general, one as a general law of the land, the other as the law of a particular case.[27]

This Court is also mindful of the fact that by tradition and 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.[28] 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.[29]

In the light of the foregoing circumstances, this Court must uphold the previous ruling of the Supreme Court in the *Acesite case* that the dealings of PAGCOR with other entities are subject to a zero percent VAT rate. Consequently, petitioner's transactions with PAGCOR are subject to zero percent VAT and

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[27] *Commissioner of Internal Revenue vs. Philippine Airlines*, G.R. No. 180066, July 7, 2009
[28] *Caram Resources Corp. et al. vs. Judge Maximo C. Contreras, MeTC, Branch 61, Makati, Metro Manila*, A.M. No. MTJ-93-849 October 26, 1994, 237 SCRA 725
[29] *Commission on Higher Education vs. Atty. Felina S. Dasig*, G.R. No. 172776, December 17, 2008

petitioner should not be liable for the amount of VAT as indicated in the assailed assessment issued by respondent.

WHEREFORE, premises considered, the instant Petition for Review and Supplemental Petition for Review are hereby **GRANTED**. Accordingly, the assessment issued against petitioner for deficiency value-added tax in the amount of P228,943,589.15 for taxable years 1996 to 2002 is hereby **CANCELLED**.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

OLGA PALANCA-ENRIQUEZ
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.

LOVELL R. BAUTISTA
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.

ERNESTO D. ACOSTA
Presiding Justice