19-000291-0076

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NOS. 10099 & 10176

MELCO RESORTS LEISURE (PHP) CORPORATION,
Petitioner,

- versus -

NOTICE OF RESOLUTION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. AYESHA HANIA B. GUILING-MATANOG
ATTY. MARVEEN B. DE LA PAZ
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

LAYUG CELICIOUS-SY AND VILLAPANDO
Unit 503, 5th Floor, The Linden Suites
37 San Miguel Avenue, Ortigas Center
1600 Pasig City

GREETINGS:

You are hereby notified by these presents that on **August 5, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **August 6, 2024.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

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:

AUG 0 5 2024 4:20PM

x - x

RESOLUTION

MANAHAN, *J.*:

For resolution are the following:

1. Petitioner's *Motion for Partial Reconsideration [of Amended Decision dated February 21, 2024]* filed on March 15, 2024 without respondent's comment;[1] and,

2. Respondent's *Motion for Partial Reconsideration (Re: Decision dated 5 February 2024)* filed on March 19, 2024 with petitioner's *Opposition [To Respondent's Motion for Partial Reconsideration dated March 19, 2024]*, filed on April 11, 2024.

Both parties moved for the partial reconsideration of the Court's Amended Decision promulgated on February 21, 2024 which partially granted petitioner's Petition for Review relative to the latter's claim for refund of input value-added taxes (VAT) for the four quarters of taxable year (TY) 2017.

[1] Records Verification dated April 17, 2024.

Quoted below is the dispositive portion of the assailed Amended Decision, to wit:

> "**WHEREFORE,** premises considered, petitioner's *Motion for Reconsideration (of Decision dated September 21, 2023)* filed on October 12, 2023, is **PARTIALLY GRANTED**.
>
> Accordingly, respondent is hereby **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE (TCC)** to petitioner the reduced amounts of P84,035.00 and P411,279.00 for the third and fourth quarters of TY 2017, respectively, or in the aggregate amount of P495,314.00 representing tax paid on importation of goods other than capital goods.
>
> **SO ORDERED**."

Petitioner's Motion for Partial Reconsideration

Petitioner reiterates the argument that the Court erred in applying the provisions of Section 112 of the 1997 National Internal Revenue Code (NIRC), as amended, to the present claim for refund emphasizing that it should have instead taken into consideration Sections 204 and 229 of the said Code anchored on the recovery of erroneously or illegally collected taxes and not on a claim of excess and/or unutilized input VAT. Petitioner postulates that Philippine Amusement and Gaming Corporation (PAGCOR)'s tax exemption under its charter extends to its licensees, thereby exempting the latter from the payment of income tax and other taxes, such as VAT. It follows that the input VAT passed on to and collected from its purchases is deemed erroneously or illegally collected, hence, should be refunded, including the indirect VAT. It then invokes the principle of *solutio indebiti* and maintains that the Government should restore to petitioner the sums representing taxes that have been erroneously paid.

Petitioner further asserts that it timely filed its claim for refund of alleged erroneously paid VAT for the 3rd and 4th quarters of TY 2017 and cited the case of *Unisys Public Sector Services Corporation vs. Commissioner of Internal Revenue,*[2] where the Court allegedly held that it is the taxpayer's monthly

---

[2] CTA EB No. 1232, dated November 29, 2016.

payment that is material in determining the timeliness of filing the claim for refund.

Petitioner also mentions the alleged error of the Court in the disallowance pertaining to the common purchases allocated to exempt sales and VATable sales in the amount of Php173,952.00. It takes exception to the amount of Php149,701.13 which refers to common purchases allocated to exempt sales (and disallowed by the Court) and argues that the allocation of common purchases to gaming and non-gaming revenue does not automatically connote that said expenses are not attributable to gaming operations. Petitioner maintains that said allocation simply means the separation of amounts, evidenced by a single invoice or receipt, to classify which amount is directly attributable to the gaming and non-gaming revenues. It goes on to state that common purchases attributable or allocable to exempt sales are a valid source of input VAT on importation of goods and is a proper subject of a claim for refund.

Respondent's Motion for Partial Reconsideration

Respondent's view differs from the Court's reconsidered ruling that the input VAT paid on petitioner's importation should be refunded and relies heavily on his original contention that as a mere licensee of PAGCOR, the petitioner is not entitled to tax exemption under Presidential Decree (PD) No. 1869 including the input VAT paid on its importation.

Even granting that petitioner is exempt from the payment of VAT, respondent asserts that it cannot claim a refund from the Bureau of Internal Revenue (BIR) but should address its claim against its suppliers who shifted to them the input VAT. This, according to respondent, is more in accord with the Court's rulings in the cases of *Hedcor, Inc. vs. Commissioner of Internal Revenue*[3] and in *Maibarara Geothermal, Inc. vs. Commissioner of Internal Revenue.*[4]

In its Opposition to respondent's *Motion for Partial Reconsideration,* petitioner dismisses the arguments of

---

[3] CTA Case No. 8875, dated July 11, 2017.
[4] CTA Case Nos. 8871, 8937, 8999 and 9042, dated August 2, 2017.

respondent as mere rehash of those previously raised and resolved by the Court in the assailed Amended Decision.

Petitioner emphasizes that contrary to respondent's contentions, the Court already declared that it is exempt from taxes under Section 13(2) of PD No. 1869.

RULING OF THE COURT

We shall first resolve the timeliness of the filing of both Motions for Partial Reconsideration.

On February 21, 2024, the Court issued an Amended Decision in the above-captioned case, partially granting petitioner's Motion for Reconsideration. A copy of the Amended Decision was received by petitioner on February 29, 2024 and by respondent on March 5, 2024.[5] Pursuant to Section 1 of Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA), a party dissatisfied with a decision of the Court must file a motion for reconsideration or new trial within fifteen (15) days from receipt thereof, and we quote:

> **"Rule 15**
> **Motion for Reconsideration or New Trial**
>
> **Section 1.** *Who may and when to file motion.* – Any aggrieved party may seek a reconsideration or new trial of any decision, resolution or order of the Court by filing a motion for reconsideration or new trial for fifteen days from the date of receipt of notice of the decision, resolution or order of the Court in question."

Counted from receipt of the Amended Decision, petitioner had until March 15, 2024 to file its Motion for Reconsideration.

On the other hand, respondent had until March 20, 2024 to file his Motion for Reconsideration.

---

[5] Court Docket, Volume II, p. 902.

Records show that petitioner filed its Motion for Partial Reconsideration on March 15, 2024 while respondent filed his Motion for Partial Reconsideration on March 19, 2024.

Based on the afore-quoted provisions, both motions are timely filed.

We now proceed to the rule on the merits of the parties' Motions for Partial Reconsideration.

Ruling on Petitioner's Motion for Partial Reconsideration

The additional grant of refund notwithstanding, petitioner still insists that it is entitled to the refund or tax credit of its excess or unutilized input VAT attributable to its revenues from its gaming operations because the privileges granted to PAGCOR under its charter specifically PD No. 1869, inures to the benefit of its licensees and contractees such as exemption from taxes including income tax and VAT. The Court, according to petitioner, should have applied Sections 204 and 229 of the 1997 NIRC, as amended, instead of Section 112 of the same Code.

On the reconsidered amount pertaining to the input VAT paid on importations, petitioner takes exception to the disallowance of the amount pertaining to "common purchases allocated to exempt sales" and disagrees with the Court's ruling that such amount is not directly attributable to petitioner's exempt sales. Petitioner reasons that the allocation of common purchases to gaming and non-gaming operations does not necessarily mean that said expenses are no longer directly attributable to gaming revenues.

Petitioner's arguments are without merit.

The facts clearly show that the present claim for refund involves alleged excess input VAT attributable to petitioner's purchases of capital goods, domestic purchases of goods (other than capital goods) and purchases of services rendered by non-residents which are attributable to its gaming operations. In its Petition for Review in CTA Case Nos. 10099 & 10176, petitioner specifically prayed for the refund or tax credit of input 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 for the third (3rd) and fourth (4th) quarters of TY 2017.

By the very nature of the claim for refund of alleged excess input VAT filed by petitioner as borne out by the records of this case, the Court approached and resolved the same in light of the relevant provisions of the 1997 NIRC, as amended, focusing particularly on zero-rated sales to determine whether petitioner complied with the requisites on refunds of alleged excess input VAT. Instructive in the resolution of the issues raised in this case is the ruling of the Supreme Court in the case of *Luzon Hydro-Corp vs. CIR,*[6] and we quote:

> **A claim for refund or tax credit for unutilized input VAT may be allowed only if the following requisites concur, namely: (a) the taxpayer is VAT-registered; (b) the taxpayer is engaged in zero-rated or effectively zero-rated sales; (c) the input taxes are due or paid; (d) the input taxes are not transitional input taxes;(e) the input taxes have not been applied against output taxes during and in the succeeding quarters; (f) the input taxes claimed are attributable to zero or effectively zero-rated sales** ; (g) for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas; (h) where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and (i) the claim is filed within two years after the close of the taxable quarter when such sales were made." (*Emphasis supplied*)

Based on the foregoing, it is important to note that one of the essential requirements for a refund of excess/unutilized input VAT is that the taxpayer must be engaged in zero-rated or effectively zero-rated sales. In previously decided cases

---

[6] G.R. No. 188260, November 13, 2013.

involving the same parties,[7] the Court observed that petitioner is not engaged in zero-rated or effectively zero-rated sales, one of the essential requisites for an entitlement to the refund of excess/unutilized input VAT.

It remains undisputed that petitioner is engaged in the business of developing and operating tourist facilities, including hotel casino entertainment complexes with hotel, retail and amusement areas and themed development components, without being engaged in retail trade, and in casino gaming activities. These activities are not considered zero-rated or effectively zero-rated sales under the relevant provisions of the 1997 NIRC, as amended, thus, cannot be the source of the claimed input VAT.

As regards the timeliness of the filing of the claim for refund, the prescriptive period to be applied for the input VAT paid on importation is the one specified under Sections 204(C) and 229 of the 1997 NIRC, as amended, and we quote:

> "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 supplied*)
>
> xxx xxx xxx
>
> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* - No suit or proceeding shall be maintained in any

---

[7] CTA Case Nos. 10236, 10271, 10294 and 10359, dated February 5, 2024; CTA *EB* No. 2608 dated July 11, 2023 (affirming the Court in Division's Decision in CTA Case No. 9811).

> 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." (*Emphasis supplied*)

A reading of the foregoing provisions indicate that the reckoning period of filing a claim for refund of input VAT on importation is the date of its payment with the Bureau of Customs and not on its monthly filing and payment, as claimed by petitioner. There is a distinction between a claim for refund of input VAT paid on importation and a refund of excess/unutilized input VAT under Section 112 of the 1997 NIRC, as amended, in so far as prescriptive period is concerned.

We therefore uphold, the conclusion of the Court as regards the issue on the timeliness of the filing of petitioner's administrative and judicial claims for refund.

The other argument of petitioner with regard to the disallowance of the amount pertaining to common purchases on the VAT paid on importation, is likewise without merit. The tax exemption on the input VAT paid on importation is anchored on its direct attributability to the exempt sales of petitioner, *i.e.*, gaming and casino operations, pursuant to Section 13 of PD No. 1869, as amended. Quoting the Court's Decision in the case involving the same parties,[8] "only those purchases or importation **directly related** and attributable to petitioner's VAT-exempt gaming and casino operations can be the subject of a claim for refund."

---

[8] CTA Case Nos. 10029 and 10052 dated September 7, 2021.

Ruling on Respondent's Motion for Partial Reconsideration

The Court agrees with petitioner that the arguments and issues raised by respondent in his *Motion for Partial Reconsideration* are a mere rehash that have already been addressed and resolved in the assailed Amended Decision and that this Court finds no compelling reason to reverse or modify the same.

WHEREFORE, premises considered, petitioner's *Motion for Partial Reconsideration [of Amended Decision dated February 21, 2024]* and respondent's *Motion for Partial Reconsideration (Re: Decision dated 5 February 2024)* are **DENIED** for lack of merit.

Accordingly, the Amended Decision of the Court in the above-captioned case dated February 21, 2024, is hereby **AFFIRMED**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(with Separate Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

(I reiterate my Dissenting Opinion)
MARIAN IVY F. REYES-FAJARDO
Associate 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: **DEL ROSARIO,** P.J., *Chairperson,* **MANAHAN,** and, **REYES-FAJARDO,** JJ.
- versus -	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: AUG 0 5 2024; 4:20PM

x- -x

SEPARATE CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur in the *ponencia* in denying petitioner's *Motion for Reconsideration [of Amended Decision dated February 21, 2024]* for lack of merit.

I note that petitioner invoked, as basis for its refund claim, **Sections 204(C) and 229** of the National Internal Revenue Code (NIRC) of 1997, as amended, regarding claims for refund of erroneously or illegally collected tax.[1] It is **not** anchored on **Section 112**, involving claims for refund of unutilized input tax attributable to zero-rated sales. As expounded hereunder, petitioner's refund claim of its erroneously paid "input tax" should still be denied, except for (1) those paid on the importation of goods other than capital goods for which petitioner is directly liable, the refund of which were already granted in the Amended Decision dated February 21, 2024,[2] and in addition, (2) those withheld and paid on services rendered by non-resident foreign (NRF) suppliers, subject to substantiation requirements.

---

[1] Petitioner's Memorandum, Docket – CTA Case No. 10099, Vol. II, pp. 796-831; Petition for Review (PFR), Docket - CTA Case No. 10099, Vol. I, pp. 18-19 and 23-24; PFR, Docket – CTA Case No. 10176, Vol. I, pp. 15-16 and 19-21.
[2] Docket – CTA Case No. 10099, Vol. II, pp. 903-915.

The Supreme Court has declared, in *Malayan Insurance Company, Inc. vs. St. Francis Square Realty Corporation, et seq.*,[3] that "in the case of a non-VAT purchaser[,] [the] VAT forms part of cost of the purchase price. The input tax passed on to the final consumers x x x thus becomes part of their acquisition cost of the asset or operating expense."

Considering that petitioner, a licensee of the Philippine Amusement and Gaming Corporation (PAGCOR), is exempt from payment of VAT in accordance with Section 13(2)(b) of the PAGCOR Charter, it is thus considered a non-VAT purchaser, and any input tax passed on to it by its local suppliers only forms part of the cost of the goods or services purchased.

The analogous case of *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue*[4] is illustrative. Applied here, the erroneous shifting of VAT to petitioner, which otherwise should have been subjected to zero percent (0%) VAT, cannot be a subject of a refund claim, but petitioner's recourse should be against the suppliers who ought not have passed on the VAT. Petitioner's recourse then is to seek reimbursement from its local suppliers and not from the government.

With respect to the input VAT on services rendered by non-residents, I submit that like the input VAT on importation of goods, the VAT withheld and paid on services rendered by non-resident foreign (NRF) suppliers may be refunded.

The VAT withheld and paid on services rendered by NRF suppliers is passed on to the resident withholding agent. Thus, the resident withholding agent is the one liable for VAT. Section 4.114-2 of Revenue Regulations No. 16-2005[5] states that:

> "**VAT withheld and paid for the non-resident recipient** (remitted using BIR Form No. 1600), **which VAT is passed on to the resident withholding agent by the non-resident recipient of the income**, may be claimed as input tax by said VAT-registered withholding agent upon filing his own VAT Return, subject to the rule on allocation of input tax among taxable sales, zero-rated sales and exempt sales. The duly filed BIR Form No. 1600 is the proof or documentary substantiation for the claimed input tax or input VAT."

---

[3] G.R. Nos. 198916-17 & 198920-21, July 23, 2018 (Resolution).
[4] G.R. No. 190506, June 13, 2016.
[5] Consolidated Value-Added Tax Regulations of 2005, September 1, 2005.

ON

The afore-cited provision confirms that the VAT, which may be refunded pursuant to Section 112 of the NIRC of 1997, as amended, is actually passed on to the resident taxpayer. Under the same afore-cited provision, a duly filed BIR Form No. 1600 is sufficient proof to substantiate input VAT on services rendered by NRF suppliers. These, however, apply only to refund claims based on Section 112 of the NIRC of 1997, as amended.

I submit that for cases filed pursuant to Section 229, such as the present case, BIR Form No. 1600 is not sufficient to establish entitlement to VAT refund. It is incumbent upon petitioner to prove that it was erroneously passed on with VAT by its NRF suppliers, which fact cannot be established solely by the submitted BIR Form No. 1600.

If the VAT was borne by the NRF supplier (i.e., the VAT was not passed on to the resident buyer, and was simply withheld on the sale proceeds), there is no erroneous payment of VAT which may be refunded. Allowing the resident buyer to claim a refund of VAT that was borne by the NRF supplier will result in unjust enrichment.

In this case, petitioner submitted only (1) **Exhibit "P-280"** or "Summary of Input Taxes on Purchases of Services Rendered of Services Rendered by Non-Residents Supported by Monthly Remittance Return of Value-Added Tax and Other Percentage Taxes Withheld (BIR Form No. 1600) in the Name of the Petitioner for the 4th quarter of TY 2017"; and, (2) **Exhibits "P-280-1" to "P-280-3"** or "BIR Form No. 1600 with eFPS Payment Details".[6]

Without submitting documents such as billing statements, service contracts or agreements, or other documents that demonstrate the passing on of VAT to petitioner, the Court cannot verify whether the VAT, although withheld and remitted by petitioner, was borne by the latter, and thus, should be refunded to it.

ALL TOLD, I *VOTE* to **DENY** petitioner's Motion for Reconsideration for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice

---

[6] *See* Petitioner's Formal Offer of Evidence, Docket – CTA Case No. 10099, Vol. II, pp. 691-692; *See* Resolution dated April 19, 2022 admitting such exhibits, Docket – CTA Case No. 10099, Vol. II, pp. 774-778.