Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

PERCEPTION GAMING, INC., Petitioner,	**CTA EB No. 1315** (CTA Case No. 8509)
-versus-	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	

x---x

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 1356** (CTA CASE NO. 8509)
-versus-	Present: DEL ROSARIO, P.J., CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, JJ.
PERCEPTION GAMING, INC., Respondent.	Promulgated: JUL 07 2017 4:02 p.m.

x---x

DECISION

CASANOVA, J.:

Before this Court are consolidated Petitions for Review separately filed by Perception Gaming, Inc., ("PGI") on June 15, 2015, docketed as CTA EB No. 1315[1], and by the Commissioner of Internal Revenue ("CIR"), on September 28, 2015, docketed as CTA EB No. 1356[2]. Both petitions seek the reversal and setting aside of the Amended Decision[3] ("Assailed Amended Decision") dated May 11, 2015 rendered by the Court of Tax Appeals Third Division ("Court in Division") in CTA Case No. 8509. CIR's Petition also assails the Resolution[4] dated August 18, 2015 of the Court in Division, which denied his Motion for Reconsideration (to the Amended Decision promulgated on May 11, 2015)[5].

The respective dispositive portions of the assailed Amended Decision and Resolution are quoted hereunder:

Assailed Amended Decision:

> "**WHEREFORE**, the 'Motion for Reconsideration' is hereby **PARTIALLY GRANTED**. Accordingly, respondent [CIR] is hereby **ORDERED** to refund or issue a tax credit certificate in favor of petitioner [PGI] in the reduced amount of PhP984,259.99, representing erroneously paid VAT Payable for the 2nd to 4th quarters of CY 2010 and the 1st to 4th quarters of CY 2011.
>
> **SO ORDERED.**"

Assailed Resolution:

> "**WHEREFORE**, the 'Motion for Reconsideration (to the Amended Decision promulgated on May 11, 2015),' is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

PGI is a domestic corporation duly organized and existing under and by virtue of Philippine laws, with principal place of business at the 24th Floor, 6750 [Building] Ayala Avenue, Makati City.[6]

On the other hand, CIR is the duly appointed Commissioner of the Bureau of Internal Revenue, with office address at the BIR National Office Building, Agham Road, Diliman Quezon City.[7]

---

[1] En Banc Rollo (CTA EB No. 1315), pp. 7-43.
[2] En Banc Rollo (CTA EB No. 1356,), pp. 5-11.
[3] En Banc Rollo, (CTA EB No. 1315), pp. 61-73.
[4] En Banc Rollo, (CTA EB No. 1356), pp. 27-30.
[5] Division Docket (Vol. III), pp. 1496-1499.
[6] Par. 2, I. The Parties, Petition for Review, En Banc Rollo (CTA EB No. 1315), p. 7.

The facts of the case, as narrated by the Court in Division, in its Decision dated November 12, 2014, are as follows:

"4.1. Petitioner [PGI] was incorporated on December 8, 2006, the primary purpose of which is to, among others, lease goods and commodities, including but not limited to casino gaming products, machines, equipment, software and technology.

4.2. Specifically, Petitioner is engaged in the business of supplying and leasing out gaming machines to entities authorized by the Philippine Amusement and Gaming Corporation (PAGCOR) to operate gaming centers ('PAGCOR-Authorized Bingo Operators').

4.3. Petitioner is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer in accordance with Section 236 of National Internal Revenue Code of 1997 (the 'Tax Code'), with Taxpayer Identification No. 006-582-145-000.

4.4. On the following dates, Petitioner filed with the BIR its Quarterly VAT Returns for the 2nd to 4th quarters of CY 2010 and 1st to 4th quarters of CY 2011:

Document	Date of Filing	eFPS Filing Reference No.
Original Quarterly VAT Return for the 2nd Quarter of CY 2010	July 20, 2010	101000003947728
Original Quarterly VAT Return for the 3rd Quarter of CY 2010	October 26, 2010	101100004425954
Original Quarterly VAT Return for the 4th Quarter of CY 2010	January 25, 2011	101100004707984
Original Quarterly VAT Return for the 1st Quarter of CY 2011	July 25, 2011	101100004966565
Original Quarterly VAT Return for the 2nd Quarter of CY 2011	October 19, 2011	101100005215874
Original Quarterly VAT Return for the 3rd Quarter of CY 2011	January 20, 2012	101200005526961
Original Quarterly	March 2, 2012	101200005685502

[7] Par. 5, The Parties, Petition for Review, En Banc Rollo (CTA EB No. 1356), p. 6.

VAT Return for the 4th Quarter of CY 2011		

4.5 Based on the VAT Returns for the period covering the 2nd to 4th quarter of CY 2010 and 1st to 4th quarter of CY 2011, Petitioner's sales, output VAT, purchases and input VAT are summarized below:

Period	Effectively Zero Rated Sales (₱)	Output VAT ₱	Purchases ₱	Input VAT ₱
2nd Quarter CY 2010	5,409,553.92	649,146.47	1,310,617.42	157,274.09
3rd Quarter CY 2010	7,167,210.18	860,065.22	1,954,571.61	234,548.59
4th Quarter CY 2010	7,820,736.42	938,488.37	1,338,920.77	160,670.49
1st Quarter CY 2011	8,058,429.24	967,011.51	1,346,753.04	161,610.36
2nd Quarter CY 2011	8,868,456.85	1,042,374.82	1,199,714.25	143,965.71
3rd Quarter CY 2011	8,191,657.48	982,998.90	1,059,008.17	127,080.98
4th Quarter CY 2011	9,762,050.39	1,171,446.05	12,277,799.83	1,473,335.98
TOTAL	**55,096,094.48**	**6,611,531.34**	**20,487,386.09**	**2,458,486.20**

4.6. For the 2nd to 4th quarter of CY 2010 and 1st to 4th quarters of CY 2011, Petitioner subjected its gross receipts from the sales of services to both PAGCOR and PAGCOR-Authorized Bingo Operators to 12% output VAT in the aggregate amount of P6,590,780.65. Petitioner shouldered and paid such output tax. Petitioner also incurred input VAT in the total amount of P2,458,486.20.

4.7. On June 27, 2012, Petitioner filed with the BIR-Revenue Region (RR) No. 8 an Application for Tax Credit/Refund (BIR Form No. 1914) of its output VAT and input VAT for the 2nd to 4th quarter of CY 2010 and 1st to 4th quarters of CY 2011 in the amount of P9,049,266.85, together with the relevant documents.

4.8. To date, Respondent [CIR] has yet to act on Petitioner's administrative claim for refund of erroneously paid output VAT and unutilized input VAT for the 2nd to 4th quarter of CY 2010 and 1st to 4th quarters of CY 2011. Due to Respondent's inaction on Petitioner's administrative claim for refund, Petitioner was constrained to file a Petition for Review with this Honorable Court on June 28, 2012.'

On September 10, 2012, respondent filed her Answer, interposing the following Special and Affirmative Defenses:

'**SPECIAL AND AFFIRMATIVE DEFENSES**

4. Respondent reiterates and repleads the preceding paragraphs of the answer as part of her Special and Affirmative Defenses.

5. Petitioner's claim for refund is still subject to investigation by the Bureau of Internal Revenue.

6. Petitioner failed to demonstrate that the tax, which is the Subject of this case, was erroneously or illegally collected.

7. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not refundable.

8. It is incumbent upon the Petitioner to show that it has complied with the provision of Section 204(C) in relation to Section 229 of the 1997 Tax Code, as amended.

9. In an action for tax credit or refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge the said burden is fatal to the claim *(Emmanuel & Zenaida Aguilar v. Commissioner, CA-GR No. Sp. 16432, March 30, 1990 cited in Abad, Law of Basic Taxation in the Philippines, let Edition, p. 206).*

10. Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and as such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121).*

11. It is an established principle that refunds and tax credits are in the nature of tax exemptions, hence, strictly construed against the taxpayer. The taxpayer claiming for tax refund or credit has the burden of proving that he is entitled for such refund or credit by providing evidence of compliance of certain conditions of the law under which the privilege of exemption is granted. In a refund process, the taxpayer is bound to comply not only with substantiation requirements but also with the procedural due process to prove its entitlement to the refund. The more critical of these rules are the 2-year prescriptive period and the proper observance of the 120+30 day rule within which to file the refund claim.

12. In the case of ***Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.,*** G.R. No. 184823 dated October 6, 2010, the Supreme Court held:

> 'However, notwithstanding the timely filing of the administrative claim, we are constrained to deny respondent's claim for tax refund/credit for having been filed in violation of Section 112(D) of the NIRC, which provides that:
>
> 'SEC. 112. Refunds or Tax Credits of Input Tax. —
>
> xxx
>
> '(D) Period within which Refund or Tax Credit of Input Taxes shall be made. In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes **within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.**
>
> 'In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to

act on the application within the period prescribed above, **the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the enacted claim with the Court of Tax Appeals.** (Emphasis supplied.)

'Section 112(D) of the NIRC clearly provides that the CIR has '120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit],' within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application or tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.

'In this case, the administrative and the judicial claims were simultaneously filed on September 30, 2004. Obviously, respondent did not wait for the decision of the CIR or the lapse of the 120-day period. For this reason, so find the filing of the judicial claim with the CTA premature.

'Respondent's assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two year prescriptive period has no legal basis.

'There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that 'any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two years** after the close of the taxable quarter when the sales were made, **apply for the issuance of a tax credit certificate or refund** of creditable input tax due or paid attributable to such sales.' The phrase 'within two (2) years . . . apply for the issuance of a tax credit certificate or refund' refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has '120 days from the submission of complete documents in support of the application filed in accordance with Subsections (A) and (B)' within which to decide on the claim.

'In fact, applying the two-year period to judicial claims would render nugatory Section 112(D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112(D) of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. As we see it then, the 120-day period is Crucial in filing an appeal with the CTA.

xxxx

'In fine, the premature filing of respondent's claim for respondent's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA.'

13. The **Aichi** case is squarely applicable in the instant petition. In this case, the administrative claim for refund was filed on June 27, 2012 and the judicial claim was filed before the Court of Tax Appeals on June 28, 2012. By doing so, the petitioner did not wait for the decision of the respondent or the lapse of the 120-day period. For this reason, the filing of the

judicial claim with the Honorable Court is premature. The non-observance of the 120-day period is fatal to the filing of a judicial claim. The premature filing of petitioner's claim for refund/credit of Input VAT before the Honorable Court warrants a dismissal inasmuch as no jurisdiction was acquired by the Honorable Court.

14. Further, It should be noted that VAT is an indirect tax payable by the seller and not by the purchaser of goods. However, being an indirect tax, it can be shifted or passed on to the buyer/purchaser, transferee or lessees of the goods, properties or services. Once shifted to the buyer/customer as an addition to the cost of goods or services sold, it is no longer a tax but an additional cost which the buyer/customer has to pay in order to obtain the goods or services.

15. In the present case, petitioner's leased of gaming equipment to 'PAGCOR Operators' are subject to 12% VAT which can be passed on to 'PAGCOR Operators' as additional cost of the gaming equipment being leased by the latter because VAT, being an indirect tax may be shifted or passed on to the buyer of goods, services or lease of properties (PAGCOR Operators), pursuant to Section 105 of the Tax Code.

16. In the case of PAGCOR vs. BIR, GR No. 172087, it was held that:

> '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.'

17. The pronouncement of the Highest Magistrate in holding that PAGCOR is exempt from indirect taxes by granting tax exempt status to persons dealing with PAGCOR in casino operations, which are the PAGCOR Operators in the present case. The unmistakable conclusion is that PAGCOR is not liable for VAT and neither the PAGCOR Operators as the

latter are effectively subject to zero percent (0%) rate under Section 108 (B) (3) of the 1997 Tax Code, as amended. While the 'PAGCOR Operators' are exempt from taxes, its exemption only covers taxes for which it is directly liable. The exemption does not cover the VAT passed on by petitioner. The shifting of the VAT to the PAGCOR Operators which are tax-exempt entities does not make them the person directly liable and therefore, the PAGCOR Operators cannot invoke their tax exemption privilege to avoid the passing on or shifting of the VAT.

Moreover, the Supreme Court undoubtedly extends the tax exemption only to those persons or entities directly contracting with PAGCOR in casino operations such as PAGCOR Operators and not to those who are directly contracting with PAGCOR Operators. In this case, Petitioner is an entity not dealing or contracting directly with PAGCOR but with the PAGCOR Operators. Hence, PAGCOR's exemption does not extend to Petitioner. Thus, petitioners leased of gaming equipment to PAGCOR Operators are subject to 12% VAT under Section 108 of the Tax Code. Accordingly, petitioner cannot claim refund/credit of its VAT payment.'

On October 29, 2012, the parties filed their Joint Stipulation of Facts and Issues ("JSPI"), and a Pre-Trial Order was issued by the Court on November 16, 2012.

On July 5, 2013, petitioner filed its Formal Offer of Evidence, which was resolved by the Court on August 27, 2013.

On September 11, 2013, petitioner filed a Motion for Reconsideration over the Resolution promulgated on August 27, 2013, which was resolved on October 8, 2013.

On December 20, 2013, petitioner filed its Memorandum through registered mail, while respondent filed her Manifestation (in lieu of Submission of Memorandum) through registered mail on December 17, 2013. Thus, on January 3, 2014, the Court promulgated a Resolution submitting the case for Decision."

On November 12, 2014, the Court in Division rendered its Decision denying PGI's Petition for Review for lack of jurisdiction.

Thus, PGI filed a Motion for Reconsideration (Re: Decision Dated November 12, 2014)[8] on November 28, 2014, which was partially granted by the Court in Division in its Amended Decision promulgated on May 11, 2015. In this assailed Amended Decision, the CIR was ordered to refund or issue a tax credit certificate (TCC) in favor of PGI the amount of ₱984,259.99, representing erroneously paid VAT payable for the 2nd to 4th quarters of CY 2010 and the 1st to 4th quarters of CY 2011.

By such reason, CIR filed his Motion for Reconsideration (to the Amended Decision promulgated on May 11, 2015)[9] on May 25, 2015, which was denied for lack of merit in a Resolution[10] promulgated on August 18, 2015.

Thereafter, within the extension of time requested by both parties, PGI and CIR filed their respective Petitions for Review on June 15, 2015 and September 28, 2015.

Considering that the instant Petitions are appeals from the May 11, 2015 Amended Decision rendered by the CTA Third Division in CTA Case No. 8509, the Court En Banc consolidated on October 13, 2015, CTA EB No. 1356 with CTA EB No. 1315.[11]

In a Resolution[12] dated November 5, 2015, the Court noted the failure of the CIR to file his comment to the Petition for Review in CTA EB No. 1315 and gave due course to the Petition for Review in CTA EB No. 1356. It also required PGI to file its comment to CIR's Petition within ten (10) days from receipt thereof. PGI complied to the same on December 29, 2015.[13]

On June 16, 2016, the Court En Banc resolved[14] to submit the case for decision, taking into consideration PGI's Memorandum[15], filed on

[8] Division Docket (Vol. III), pp. 1449-1473.
[9] Division Docket (Vol. III), pp. 1496-1499.
[10] Division Docket (Vol. III), pp. 1528-1531.
[11] Per Minute Resolution, CTA EB No. 1315, CTA En Banc Rollo, p. 104.
[12] En Banc Rollo (CTA EB No. 1315), pp. 107-108.
[13] En Banc Rollo (CTA EB No. 1315), pp. 117-129.
[14] Resolution dated June 16, 2016, En Banc Rollo (CTA EB No. 1315), pp. 180-181.
[15] En Banc Rollo (CTA EB No. 1315), pp. 146-175.

April 1, 2016, and Records Verification Report[16] dated May 31, 2016, stating that CIR failed to file her Memorandum.

Hence, this Decision.

At the outset, it bears emphasis that PGI's claim for refund in the amount of ₱9,049,266.85 comprised of two distinct classes of VAT, namely:

a. PGI's **erroneously paid output VAT** on gross receipts from its effectively zero-rated sale of services to Philippine Gaming Corporation (PAGCOR) and PAGCOR-Authorized Bingo Operators for the 2nd to 4th quarters of CY 2010 and 1st to 4th quarters of CY 2011 amounting to **₱6,590,780.65**.

b. PGI's **excess and unutilized input VAT attributable to its effectively zero-rated sale of services** for the 2nd to 4th quarters of CY 2010 and 1st to 4th quarters of CY 2011 amounting to **₱2,458,486.20**.

In the assailed Amended Decision, the Court in Division partially granted PGI's claim for refund of erroneously paid output VAT in the reduced amount of ₱984,259.99, but denied in full its claim for refund of excess and unutilized input VAT.

In granting the amount of ₱984,259.99, the Court in Division, relying on Section 13(2) of Presidential Decree No. 1869, as amended by Republic Act No. 9487 (PAGCOR Charter), held that PGI's lease of gaming machines and rendition of related technical services to PAGCOR and to entities authorized by PAGCOR to operate gaming centers (PAGCOR-Authorized Operators) are subject to zero percent (0%) VAT, pursuant to Section 108(B)(3) of the 1997 NIRC, as amended. Thus, the amount of ₱984,259.99, which was duly supported with official receipts, constitutes erroneously paid output VAT that is refundable under Sections 204(C) and 229 of the 1997 NIRC, as amended.

On the other hand, the Court in Division denied in full PGI's claim for refund of excess and unutilized input VAT in the amount of ₱2,458,486.20 due to its failure to observe the mandatory 120+30 day period for the filing of a judicial claim as prescribed under Section 112(C) of the 1997 NIRC, as amended.

[16]En Banc Rollo (CTA EB No. 1315), p. 178.

Thus, in CTA EB No. 1356, CIR argues that PGI cannot invoke the tax exemption privilege of the PAGCOR-Authorized Operators since the tax exemption was extended only to those persons or entities directly contracting with PAGCOR in casino operations, such as PAGCOR Operators, and not to those directly contracting with PAGCOR Operators, as in the case of PGI.

On the other hand, in CTA EB No. 1315, PGI submits that the Court in Division erred in ruling that it was only entitled to the refund of ₱984,259.99, representing its erroneously paid output VAT, on the following grounds:[17]

1. PGI's total output tax amounting to ₱6,590,780.65 is duly substantiated;

2. The Court in Division should have granted PGI's claim for refund of erroneously paid output VAT in the amount of ₱6,590,780.65.

3. The language and legislative history of Sections 112(C) and 229, Tax Code indubitably show that a taxpayer may still appeal to the Court in Division even before the expiration of the 120-day period, as long as the judicial claim for refund is filed within the two-year prescriptive period; and

4. The statutory interpretations introduced in *San Roque* should be applied prospectively.

We deny both Petitions for Review.

CTA EB No. 1356

CIR mainly argues that the tax exemption given to PAGCOR cannot extend to PGI since the latter is an entity not dealing or contracting directly with PAGCOR, but with the PAGCOR-authorized Bingo Operators. Thus, PGI's lease of gaming equipment to PAGCOR Operators should be subject to 12% VAT under Section 108 of the 1997 NIRC, as amended.

We do not agree.

[17] Petition for Review, En Banc Rollo (CTA EB Case No. 1315), p.12.

The Court in Division already resolved this matter in the assailed Amended Decision, to which We fully agree—

"Section 13 (2) of the PAGCOR Charter provides that tax exemptions granted to PAGCOR, **'shall inure'** to its authorized game operators ('Operators'), and other entities providing facilities and rendering services to PAGCOR and Operators. The Court quotes:

'Section 13. Exemptions. —

xxx xxx xxx

(2) Income and other taxes. — (a) 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</u>; 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: <u>The exemptions herein granted for earnings derived from the operations conducted under the franchise</u> specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, <u>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.</u>

The fee or remuneration of foreign entertainers contracted by the Corporation or operator in pursuance of this provision shall be free of any tax.' (Emphases ours)

From the above-quoted Section of the PAGCOR Charter, three (3) entities shall enjoy exemption from taxes, viz.:

1. The Corporation, or PAGCOR;

2. 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 the PAGCOR Charter; and

3. 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.

It is thus apparent from the foregoing enumeration that the tax-exempt status of PAGCOR extends to other entities with whom PAGCOR or Operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under the former's Charter."[18]

Considering that PAGCOR, its authorized Bingo Operators and other entities providing facilities and rendering services to PAGCOR and authorized Bingo Operators, are exempt from VAT under the PAGCOR Charter, it follows that the services rendered to PAGCOR or its authorized Bingo Operators are effectively subject to zero percent (0%) VAT in accordance with Section 108(B)(3) of the NIRC of 1997, thus:

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

xxx xxx xxx

[18] Pages 3-4, Amended Decision dated May 11, 2015, Annex "B" to the Petition for Review, En Banc Rollo (CTA EB No. 1315), pp. 63-64.

(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."

Upon close scrutiny of the records, PGI duly established the following:

1. that, it is a VAT-registered taxpayer[19] engaged in the business of, among others, distributing, selling, leasing, importing, exporting, exchanging, mortgaging, purchasing, acquiring goods and commodities, including but not limited to casino gaming products, machines, equipment, software and technology and provision of technical services;[20]

2. that, it is a duly registered supplier/distributor/manufacturer/contractor of gaming equipment, services and paraphernalia of PAGCOR;[21]

3. that, relative to the Lease and Technical Support Agreements and Memoranda of Agreements[22] executed by PGI with various PAGCOR-Authorized Bingo Operators[23], PGI undertook to supply the latter with Electronic Bingo gaming machines on a lease basis and provided technical assistance to ensure efficient functioning of the gaming machines; and,

4. that, PGI derived its income for the subject period of claim mainly from the collection of its percentage share in the Net Win[24] of the gaming machines leased to these PAGCOR-Authorized Bingo Operators. In addition, PGI collected from

---

[19] Exhibit "PP".
[20] Exhibit "OO".
[21] Exhibits "HH-1" to "HH-3"; Exhibit "LLL" as summarized in Exhibit "FFF".
[22] Exhibits "CC" to "JJ".
[23] Exhibit "MMM".
[24] Computed as follows:
Net Win = Total amount wagered (Bets) – Total cash prize pay-out (excluding funds allotted for jackpot prize)

the said Bingo Operators, accumulated jackpot prize pool and payment for gaming tickets.[25]

Thus, PGI's lease of gaming machines and rendition of technical services to PAGCOR and PAGCOR-Authorized Bingo Operators qualify for VAT zero-rating under Section 108(B)(3) of the 1997 NIRC.

In view thereof, the Court in Division ruled that PGI is entitled to a refund of the output VAT erroneously paid on its lease of gaming machines and rendition of technical services to PAGCOR and its Authorized Bingo Operators, pursuant to Sections 204(C)[26] and 229[27] of the NIRC of 1997, as amended. Accordingly, out of the total claimed erroneously paid output VAT of ₱6,590,780.65, only the amount of ₱984,259.66 is refundable. In arriving at such amount, the Court considered only a portion of PGI's declared gross receipts, which were duly supported by official receipts. Moreover, the Court observed that the declared input taxes of PGI were deducted against its output taxes.

CTA EB No. 1315

PGI maintains that it is entitled to the refund of the full amount of ₱6,590,780.65. It avers that its case is peculiar since it seeks to refund both its output taxes and input taxes attributable to its zero-rated sales

[25] Exhibit "FFF", Par. 2.11, Findings and Observations, II.2, p. 6 and Exhibit "OOO".

[26] "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –

x x x x x x x x x

"(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."

[27] "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." (Emphasis supplied) for the 2nd to 4th quarters of CY 2010 and 1st to 4th quarters of CY 2011. Thus, it submits that the computation outlined in Revenue Regulations (RR) No. 16-05 should be modified in order to grant its alleged statutory right to recover both erroneously paid output taxes and input taxes. Pertinent portions of the said regulations are hereby provided for ready reference:

> "SEC. 4.110-6. *Determination of the Output Tax and VAT Payable and Computation of VAT Payable or Excess Tax Credits.*- x x x For sellers of services, the output tax is computed by multiplying the gross receipts as defined in these Regulations by the regular rate of VAT.
>
> x x x x
>
> **There shall be allowed as a deduction from the output tax the amount of input tax** deductible as determined under Sec. 4.110-1 to 4.110-5 of these Regulations **to arrive at VAT payable** on the monthly VAT declaration and the quarterly VAT returns, subject to the limitations set forth in Section 4.110-7.
>
> SEC. 4.110-7. *VAT Payable (Excess Output)or Excess Input Tax.*
>
> (a) **If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person."**

Lastly, PGI alleges that its output VAT was erroneously paid because under the PAGCOR Charter, it should not have been made to pay the 12% VAT on its sales for the period from 2nd quarter of CY 2010 to 4th Quarter of CY 2011. Consequently, its input taxes should not have been applied against its output tax amounting ₱6,590,780.65. By such reason, the entire amount of output tax should be refunded to it.

We deny PGI's Petition on account of its failure to file a Motion for Reconsideration of the Amended Decision.

Section 18 of Republic Act No. 1125[28], as amended, by Republic Act No. 9282[29], explicitly provides:

[28] AN ACT CREATING THE COURT OF TAX APPEALS.
[29] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP,

> "**Section 11.** Section 18 of the same Act is hereby amended as follows:
>
>> SEC. 18. Appeal to the Court of Tax Appeals En Banc. - No civil proceeding involving matter arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.
>>
>> "A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA en banc."

In relation thereto, Section 1, Rule 8 of the Revised Rules of the CTA[30] states:

> "SECTION 1. *Review of cases in the Court en banc.* – In cases falling under the exclusive appellate jurisdiction of the Court en banc, the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division."

It can, thus, be inferred from the foregoing that no petition for review assailing a resolution or decision of a Division of the Court may be entertained by the Court *En Banc* unless preceded by a motion for reconsideration or new trial, as the case may be, with the Division.

The same holds true in the case of an Amended Decision as explained in the recent case of *Asiatrust Development Bank, Inc. vs. Commissioner of Internal Revenue*[31], to wit:

> "Thus, in order for the CTA *En Banc* to take cognizance of an appeal *via* a petition for review, a timely

AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

[30] A.M. No. 05-11-07-CTA, November 22, 2005

[31] G.R. Nos. 201530 and 201680-81, April 19, 2017.

motion for reconsideration or new trial must first be filed with the CTA Division that issued the assailed decision or resolution. Failure to do so is a ground for the dismissal of the appeal as the word 'must' indicates that the filing of a prior motion is mandatory, and not merely directory.

The same is true in the case of an amended decision. Section 3, Rule 14 of the same rules defines an amended decision as '[a]ny action modifying or reversing a decision of the Court en banc or in Division.' As explained in *CE Luzon Geothermal Power Company, Inc. vs. Commissioner of Internal Revenue*, an amended decision is a different decision, and thus, is a proper subject of a motion for reconsideration.

In this case, the CIR's failure to move for a reconsideration of the Amended Decision of the CTA Division is a ground for the dismissal of its Petition for Review before the CTA *En Banc*. Thus, the CTA *En Banc* did not err in denying the CIR's appeal on procedural grounds.

Due to this procedural lapse, the Amended Decision has attained finality insofar as the CIR is concerned. The CIR, therefore, may no longer question the merits of the case before this Court. Accordingly, there is no reason for the Court to discuss the other issues raised by the CIR.

As the Court has often held, procedural rules exist to be followed, not to be trifled with, and thus, may be relaxed only for the most persuasive reasons."

As the Supreme Court has ruled on the foregoing matter, the Court En Banc has no recourse but to respect and apply the same. The Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is. It is the final arbiter of any justiceable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[32]

Considering that no Motion for Reconsideration was filed by PGI in CTA Case No. 8509 to assail the aforesaid Amended Decision of the CTA Third Division, the Amended Decision promulgated on May 11, 2015, therefore, has attained finality and can no longer be opened for review or modification in so far as the PGI is concerned.

---

[32] Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc., G.R. No. 150947, July 15, 2003, citing the case of GSIS vs. Court of Appeals, 334 Phil. 163.

Litigants must bear in mind that procedural rules should always be treated with utmost respect and due regard since these are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice.[33] Thus, compliance with the procedural rules is the general rule, and abandonment thereof should only be done in the most exceptional circumstances[34] which, unfortunately, are not attendant in the instant case.

With the above conclusion, the Court En Banc has no recourse but to dismiss PGI's Petition on procedural grounds.

WHEREFORE, premises considered, the consolidated Petitions for Review are **DENIED**. The assailed May 11, 2015 Amended Decision and August 18, 2015 Resolution of the CTA Third Division in CTA Case No. 8509 are **AFFIRMED**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ON LEAVE
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

---

[33] Mindanao Savings and Loan Association, Inc. vs. Vicenta Vda. De Flores, et al., G.R. No. 142022, September 7, 2005.
[34] Erlinda Pilapil, et al. vs. Heirs of Maximino R. Briones, G.R. No. 150175, February 5, 2007.

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice