REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

MELCO RESORTS LEISURE (PHP) CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10029

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MELCO RESORTS LEISURE (PHP) CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10052

Members:

BACORRO-VILLENA, *Acting Chairperson*
CUI-DAVID, *JJ.*

Promulgated: JUL 19 2022 10:30 AM

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RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is petitioner Melco Resorts Leisure (PHP) Corporation's (**petitioner**'s/**MRLC**'s) "Omnibus Motion I. For Partial Reconsideration of the Decision dated September 7, 2021; and II. For Leave of Court to Reopen the Case for Presentation of

Additional Evidence"[1] (**Omnibus Motion**) filed on 21 October 2021, without comment[2] from respondent Commissioner of Internal Revenue (**respondent/CIR**). The Omnibus Motion assails the Court's Decision promulgated on 07 September 2021[3] (**assailed Decision**). The dispositive portion of which reads:

> ...
>
> **WHEREFORE**, in view of the foregoing, petitioner Melco Resorts Leisure (PHP) Corporation's Petitions for Review are hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO REFUND OR ISSUE TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of Nine Thousand Seven [Hundred] Thirty-Seven Pesos (**₱9,737.00**), representing its erroneous payment of input VAT on importation directly attributable to its gaming operations.
>
> **SO ORDERED.**
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> ...

In the said Omnibus Motion, petitioner implores the Court to chiefly anchor its re-examination and appreciation of the merits of the case on the intent of the legislature in granting indirect tax exemption to Philippine Amusement and Gaming Corporation's (**PAGCOR**'s) licensees under Section 13(2)(b), in relation to Section 13(2)(a)[4] of

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1 Division Docket, Volume II, pp. 861-886.

2 *Per* Records Verification dated 04 March 2022, id., p. 908.

3 Id., pp. 782-814.

4 **SEC. 13**. Exemptions. —

...

(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.

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

...

Presidential Decree (**PD**) No. 1869[5], as amended, otherwise known as the PAGCOR Charter.

Petitioner contends that similar to the rulings in *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*[6] (**PAL**) which cited the cases of *Ernesto M. Maceda v. Hon. Catalino Macaraig, Jr., et al.*[7] and *Commissioner of Internal Revenue* v. *Philippine Long Distance Telephone Company*[8], the said provisions in the PAGCOR Charter clearly and unequivocally grant its licensees exemption from indirect taxes, similar to that granted to PAGCOR itself.

Petitioner adds that by granting it a gaming license to conduct casino operations, it becomes similarly situated with PAGCOR such that petitioner is also exempt from any form of tax, fees or charges, which includes direct and indirect taxes. Also, as assignee of PAGCOR, petitioner claims that it is entitled to PAGCOR's rights.

Moreover, petitioner argues that *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue*[9] (**Coral Bay**) is not applicable and not even analogous to the instant case given the different factual milieu and the basis upon which it was decided. *Coral Bay* involves the refund of input taxes passed on by the local suppliers that are attributable to the zero-rated sales of a Philippine Economic Zone Authority (**PEZA**)-registered enterprise.

On the other hand, petitioner operates as a casino and gaming activities with gaming license issued by PAGCOR. The instant case involves the refund of input taxes passed on by petitioner's suppliers on purchases that are directly attributable or allocable to its value-added tax (**VAT**)-exempt sales.

Petitioner submits that to apply *Coral Bay* herein is unfair and totally repressive of its rights as it would require it to go after the

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[5] CONSOLIDATING AND AMENDING PRESIDENTIAL DECREE NOS. 1067-A, 1067-B, 1067-C, 1399 AND 1632, RELATIVE TO THE FRANCHISE AND POWERS OF THE PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR).

[6] G.R. No. 198759, 01 July 2013.

[7] G.R. No. 88291, 08 June 1993.

[8] G.R. No. 140230, 15 December 2005.

[9] G.R. No. 190506, 13 June 2016.

suppliers instead of the Government when the records would show that input taxes were passed on to and paid by petitioner.

Furthermore, under the principle of *solutio indebiti,* the Government has to restore to petitioner the sums representing erroneous payments of taxes. The said principle has been applied in *The Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation*[10] (**Acesite**).

Petitioner adds that the fact of payment of input tax passed on by suppliers to it as evidenced by a VAT-registered invoice or official receipt *per se*, is sufficient compliance with the requirement of erroneous payment or illegal collection of tax under Section 229[11] of the National Internal Revenue Code (**NIRC**) of 1997, as amended. As such, petitioner must be deemed to have already complied with the requirements of a claim for refund of taxes erroneously paid or illegally collected.

Petitioner likewise avers that its common purchases attributable to gaming operations should also be refunded. As petitioner incurs purchases necessary for both its hotel and casino operations, there is no other way under the law and revenue regulations, for petitioner to determine which part of the common purchases should be allocated to gaming operations. Following the procedure laid down in VAT refund cases allowing allocation (between zero-rated, subject to 12% VAT or exempt transactions if the input tax cannot be directly attributed to any of the said transactions), the allocation of common expenses between petitioner's revenues subject to VAT (from hotel operations) and VAT-exempt (from casino operations) should be allowed.

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10 G.R. No. 147295, 16 February 2007.

11 **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 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.

Apportioning the input taxes paid on purchases of goods and services between the VAT and non-VAT operations which cannot be attributed to either operation is the only reasonable way for petitioner to determine the portion of the common input taxes related to its casino operations.

According to petitioner, it cannot be denied that certain expenses are covered by one invoice or receipt only. Since such expenses necessarily contributes in the generation of gaming revenues, the same needs to be allocated in a reasonable manner in the absence of specific guidelines from the Bureau of Internal Revenue (**BIR**). In view thereof, petitioner is constrained to allocate its input taxes on common purchases in proportion to petitioner's hotel operations (subject to VAT) and its gaming operations (VAT-exempt). As it may not offset its output tax on hotel operations by the input taxes allocable to the VAT-exempt gaming operations, petitioner should be able to recover said portion of input taxes by way of refund.

Lastly and in support of its motion for leave of court to reopen the case for presentation of additional evidence, petitioner claims that upon verification of the documents submitted to the Independent Certified Public Accountant (**ICPA**), the Electronic Filing and Payment System (**eFPS**) Payment details were inadvertently not attached to the BIR Form No. 1600. Relative thereto, petitioner was also able to verify that the amount paid was ₱616,578.29 instead of ₱621,537.95.

Invoking the paramount interest of justice, petitioner entreats the sound discretion of the Court to reopen trial and allow the presentation of additional documents. Petitioner thus requested for a setting of commissioner's hearing and presentation of witness who will identify the documents to be marked.

We resolve.

After a thorough consideration of the points raised by petitioner, We find no merit in the Omnibus Motion.

The main contention of petitioner is that as a PAGCOR licensee, the indirect tax exemption privilege of PAGCOR extends to it.

In the assailed Decision, We ruled that since there is no clear and unequivocal grant of indirect tax exemption to petitioner (as PAGCOR licensee), the general rule that only the statutory taxpayer is allowed to claim the refund from the government should apply to it. Thus, petitioner's proper recourse was not against the Government but against its suppliers that shifted input tax to it.

The said ruling was made on the basis of *Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue*[12] (**Bloomberry**) where the Supreme Court ruled that like PAGCOR, its contractees and licensees are exempt from the payment of corporate income tax and other taxes as the PAGCOR's exemption inures to their benefit.

Since it inures to their benefit, petitioner's suppliers should not have passed on VAT to it as its purchases should be considered as transaction subject to zero percent (0%), pursuant to Section 106(A)(2)(c) and 108(B)(3) of the NIRC of 1997, as amended[13], to wit:

> ...
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> **SEC. 106.** *Value-Added Tax on Sale of Goods or Properties.* —
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> (A) *Rate and Base of Tax.* — There shall be levied, assessed and collected on every sale, barter or exchange of goods or 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: *Provided*, That the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%), after any of the following conditions has been satisfied:
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> ...
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> (2) *Zero-rated Sales* - The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
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> ...
>
> (c) Sales to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects such sales to zero rate.
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> ...

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12 G.R. No. 212530, 10 August 2016.

13 But prior to enactment of Republic Act No. 10963 otherwise known as the Tax Reform for Acceleration and Inclusion (TRAIN).

> **SEC. 108.** *Value-added Tax on Sale of Services and Use or Lease of Properties.* —
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> ...
>
> (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:
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> ...
>
> (3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate[.]
>
> ...

The same is consistent with the ruling in *Acesite*[14] where the Supreme Court ruled as follows:

> ...
> 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 the indirect tax. Such exemption falls within the former Section 102 (b) (3) of the 1977 Tax Code, as amended (now Sec. 108 [b] [3] of R.A. 8424), which provides:
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> Section 102. Value-added tax on sale of services – (a) Rate and base of tax – There shall be levied, assessed and collected, a value-added tax equivalent to 10% of gross receipts derived by any person engaged in the sale of services x x x; Provided, that the following services performed in the Philippines by VAT-registered persons shall be subject to 0%.
>
> x x x x
>
> (b) Transactions subject to zero percent (0%) rate. —
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> x x x x
>
> (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.
>
> ...

[14] Supra at note 10; Emphasis in the original text.

As PAGCOR's benefit inures to petitioner, its suppliers should not have passed on 12% VAT to it since such transaction should be subject to 0% VAT.

However, in a recent case decided by the Supreme Court, it becomes evident that PAGCOR's exemption extends only to entities or individuals with contractual relationship with it in connection with its casino operations but *not* to its licensees. As held in *Thunderbird Pilipinas Hotels and Resorts, Inc. v. Commissioner of Internal Revenue*[15]:

> ...
>
> Strictly construed, Section 13(2)(b) of Presidential Decree No. 1869 means that the Philippine Amusement and Gaming Corporation (PAGCOR)'s income tax exemptions only extend to entities or individuals in a contractual relationship with PAGCOR in connection with its casino operations. A PAGCOR licensee authorized to operate its own casino does not fall within the purview of Section 13(2)(b). Its income from its casino operations, therefore, is not tax-exempt.
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> ...
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> A more deliberate reading of Section 13(2)(b) of Presidential Decree No. 1869 and the amendments under Republic Act No. 9487 provides more formidable support for the conclusion in this case. The amendments merely pertained to giving PAGCOR the authority to issue licenses for casino operations. Had Congress also intended to extend the tax exemptions to PAGCOR licensees, it could have easily done so by expanding Section 13(2)(b) and adding words such as "licensees of PAGCOR" and the like. There must be a positive provision, not merely a vague implication, of the law creating that exemption.
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> Presidential Decree No. 1869 was issued to centralize the operation of casinos into one corporate entity, PAGCOR. ... ...
>
> Thus, when the tax exemptions were granted under Section 13 of Presidential Decree No. 1869, the legislature contemplated a scenario where the casino operations would be centralized under the sole and exclusive authority of PAGCOR.
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> Under Section 13(2)(a), PAGCOR was granted tax exemption on earnings derived from its casino operations. This tax exemption was, under Section 13(2)(b), also extended to entities that have a

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15 G.R. No. 211327, 11 November 2020 (uploaded in the Supreme Court website on 27 October 2021); Citations omitted, emphasis and italics in the original text and underscoring supplied.

contractual relationship with PAGCOR in connection with its operation of casinos.

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

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

As stated earlier, it is a settled rule that tax exemptions are strictly construed and must be couched in clear language. This Court has held that "if an exemption is found to exist, *it must not be enlarged by construction*, since the reasonable presumption is that the state has granted in express terms all it intended to grant at all[.]"

Again, the ruling in *Acesite* is more applicable.

There, this Court construed Section 13(2) of Presidential Decree No. 1869 to resolve the issue of "whether PAGCOR's tax exemption privilege includes the indirect tax of VAT to entitle Acesite to zero percent (0%) [value-added tax] rate." Upon examining Section 13(2), this Court ruled that PAGCOR is exempt from both direct taxes (under paragraph a) and indirect taxes (under paragraph b). It categorically explained that "*the proviso in [Presidential Decree No.] 1869, extending the exemption to entities or individuals dealing with PAGCOR in casino operations, is clearly to proscribe any indirect tax, like [value-added tax], that may be shifted to PAGCOR.*" Ultimately, the tax exemptions granted under Section 13 were primarily meant to favor only PAGCOR, and not any other entity.

Thus, following this Court's pronouncement in *Acesite*, we construe Section 13(2)(b) of Presidential Decree No. 1869 to mean that ***the tax exemption of PAGCOR extends only to those individuals or entities that have contracted with PAGCOR in connection with PAGCOR's casino operations. The exemption does not include private entities that were licensed to operate their own casinos.***

Here, petitioner was authorized and licensed by PAGCOR to construct and operate a casino complex, by virtue of the April 11, 2006 Memorandum of Agreement and the October 31, 2006 License. Petitioner does not fall within the purview of Section 13(2)(b).

> Therefore, revenues derived by petitioner from its casino operations are not exempt from income tax.
>
> ...

This is further clarified by the BIR's issuance of Revenue Memorandum Circular (**RMC**) No. 32-2022[16] which provides:

> ...
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> ... For VAT purposes, however, the ruling of the Court in *CIR v. Acesite (Philippines) Hotel Corporation*, as further clarified by the Court in the recent case of *Thunderbird Pilipinas Hotel & Resorts, Inc. v. CIR*, is instructive. There, the Court clarified that PAGCOR, pursuant to its Charter, is also exempt from indirect tax, like VAT, on its gaming operations. The tax exemption of PAGCOR extends only to those individuals or entities that have contracted with PAGCOR (PAGCOR Contractees and not Licensees) in connection with PAGCOR's gaming operations. This is to proscribe any indirect tax, like VAT, that may be shifted to PAGCOR.
>
> Thus, pursuant to *Acesite* and *Thunderbird* rulings, for PAGCOR Licensees, their revenues from gaming operations, involving sale of goods and/or services in the course of trade or business, are generally subject to VAT. In the event, however, that they have also contracted with PAGCOR in connection with the latter's gaming operations, then, the goods they provided and/or services performed to PAGCOR in relation to such gaming operations are subject to zero percent (0%) VAT pursuant to Sections 106 (A)(2)(b) and 108 (B)(3) of the NIRC of 1997, as amended.[17]
>
> ...

With the foregoing, petitioner, as a mere licensee, PAGCOR's exemption should not inure to its benefit and is generally subject to VAT. Consequently, petitioner is not entitled to the refund or issuance of tax credit certificate (**TCC**) being claimed as it cannot be said that the VAT passed on by petitioner's suppliers were erroneously or illegally collected.

Furthermore, We find no cogent reason to grant petitioner's motion for leave of court to reopen the case for presentation of additional evidence as petitioner failed to raise any compelling reason

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16 Clarifying the Tax Treatment of the Philippine Amusement and Gaming Corporation (PAGCOR), Its Licensees and Contractees.

17 Citations omitted.

that would justify the same. Petitioner's plea for the recall of its witness and presentation of additional evidence does not fall under exceptional circumstances, but are in fact considered as "forgotten evidence." In *Office of the Ombudsman, Represented by Hon. Simeon V. Marcelo v. Carmencita D. Coronel*[18], the Supreme Court ruled as follows:

> ...
>
> As it is, the additional evidence offered by Coronel amount to no more than "forgotten" evidence, the belated uncovering of which would not have justified a reconsideration of the case. Forgotten evidence refers to evidence already in existence or available before or during a trial; known to and obtainable by the party offering it; and could have been presented and offered in a seasonable manner, were it not for the sheer oversight or forgetfulness of the party or the counsel. Presentation of forgotten evidence is disallowed, because it results in a piecemeal presentation of evidence, a procedure that is not in accord with orderly justice and serves only to delay the proceedings. A contrary ruling may open the floodgates to an endless review of decisions, whether through a motion for reconsideration or for a new trial, in the guise of newly discovered evidence.
>
> ...

Furthermore, in *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*[19], the Supreme Court likewise ruled that:

> ...
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> Besides, litigation is not a "trial and error" proceeding. A party who moves for a new trial on the ground of mistake must show that ordinary prudence could not have guarded against it. A new trial is not a refuge for the obstinate. Ordinary prudence in these cases would have dictated the presentation of all available evidence that would have supported the claims for refund/credit of input VAT of petitioner corporation...
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> ...

WHEREFORE, in view of the foregoing, petitioner's "Omnibus Motion I. For Partial Reconsideration of the Decision dated September 7, 2021; and II. For Leave of Court to Reopen the Case for Presentation of Additional Evidence" filed on 21 October 2021 is hereby **DENIED** for lack of merit.

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[18] G.R. No. 164460, 27 June 2006; Citations omitted.

[19] G.R. Nos. 141104 & 148763, 08 June 2007; Citation omitted.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice