REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PERCEPTION GAMING, INC.,
Petitioner,

- versus -

BUREAU OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8449

Members:

DEL ROSARIO, *Chairperson,*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

FEB 09 2016 ; 4:20p.m.

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RESOLUTION

MINDARO-GRULLA, *J.*:

For resolution are the following:

1. petitioner's **Motion for Partial Reconsideration (Re:Decision dated August 26, 2015)** filed on September 16, 2015, without respondent's comment despite notice as per Records Verification dated November 9, 2015; and

2. respondent's **Motion for Reconsideration (of the Decision dated 26 August 2015)** filed through registered mail on September 15, 2015 and received by the Court on September 24, 2015, with petitioner's **Comment** filed on October 26, 2015.

Both parties move for the reconsideration of the Court's Decision[1] dated August 26, 2015, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** the reduced amount of **₱353,961.50** to petitioner, representing erroneously paid output VAT for the first quarter of CY 2010.
>
> **SO ORDERED**."[2]

Petitioner's Motion for Partial Reconsideration

In its Motion, petitioner seeks the reconsideration of the assailed Decision insofar as it disallowed the entire amount of excess and unutilized input VAT and a portion of the erroneously paid output VAT. The disallowance of these amounts were premised on the following:

a. Based on the Supreme Court's ruling in *Team Energy Corporation (formerly, Mirant Pagbilao Corporation) vs. Commissioner of Internal Revenue*[3] *(Team Energy case* for brevity), this Court lacked jurisdiction over petitioner's judicial claim for refund for having been filed before the expiration of the 120-day period under Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended, and

b. From the total output taxes claimed for refund amounting to ₱549,114.69, petitioner is only entitled to recover the actual VAT payments for the first (1^{st}) quarter of calendar year (CY) 2010 in the amount of ₱353,961.50.

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[1] Docket, pp. 621-655.
[2] Docket, p. 654.
[3] G.R. No. 197760, January 13, 2014.

Petitioner submits that it is entitled to the refund of erroneously paid output VAT and excess input VAT for the 1st quarter of CY 2010 in the combined amount of ₱744,267.88. It contends that it is entitled to the refund of the excess and unutilized input taxes attributable to zero-rated sales for the 1st quarter of CY 2010 based on the following grounds:

1. The language and legislative history of Sections 112(C) and 229 of the Tax Code indubitably show that a taxpayer may still appeal to this Court 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;[4] and

2. The ruling in the *Team Energy case* should be applied prospectively.[5]

Likewise, petitioner argues that it is entitled to the refund of the full amount of erroneously paid output taxes for the 1st quarter of CY 2010. It avers that since the present case involves peculiar circumstances, the method for computing a taxpayer's VAT liability should be modified in order to accommodate its statutory right to recover both erroneously paid output taxes and excess input taxes. Petitioner contends that since its input taxes were properly refundable, the Court should not have credited these input taxes against its output taxes and that the entire amount of output taxes should be refunded to it.

Petitioner's Motion for Partial Reconsideration is bereft of merit.

Petitioner insists that the two-year prescriptive period under Section 229 of the NIRC of 1997, as amended, is applicable to claims for input VAT refund in order to fill the gap in Section 112(C) of the said Code.

However, this view has no legal basis. The Supreme Court, in the case of *Taganito Mining Corporation vs. Commissioner of Internal Revenue*[6], has previously made a pronouncement as to the inapplicability of Section 229 to claims for excess input VAT, citing

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[4] Docket, p. 657.
[5] Docket, p. 663.
[6] G.R. No. 198076, November 19, 2014.

the cases of *Commissioner of Internal Revenue vs. San Roque Power* Corporation[7] *(San Roque Power case* for brevity) and *The Commissioner of Internal Revenue vs. Visayas Geothermal Power Company, Inc.*[8] *(Visayas Geothermal case* for brevity). In the *Visayas Geothermal case*, the Supreme Court held that:

> "xxx A simple reading of Section 229 reveals that it only pertains to taxes erroneously or illegally collected:
>
> > 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 claims therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. [Emphases supplied]
>
> The applicable provision of the NIRC is undoubtedly Section 112, which deals specifically with creditable input tax: *ℓ*

[7] G.R. No. 187485, 196113, and 197156, February 12, 2013.
[8] G.R. No. 181276, November 11, 2013.

SEC. 112. Refunds or Tax Credits of Input Tax. –

(A) Zero-rated or Effectively Zero-rated Sales. – **any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, <u>within two (2) years after the close of the taxable quarter when the sales were made</u>, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales**, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

x x x x

(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, <u>within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period</u>, appeal the decision or the unacted claim with the Court of Tax Appeals.** [Emphases supplied]

The Court, in earlier cases, had the opportunity to decide which provision of the NIRC was applicable to claims for refund or tax credit for creditable input VAT. In the case of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.)*, it was held that Section 229 of the NIRC, which provides for a two-year period, reckoned from the date of payment of the tax or penalty, for the filing of a claim of refund or tax credit, is only pertinent to the recovery of taxes erroneously or illegally assessed or collected; and that the relevant provision of the NIRC for claiming a refund or a tax credit for the unutilized creditable input VAT is Section 112(A):

xxx xxx xxx

This ruling was later reiterated in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*, where this Court upheld the ruling in *Mirant* that the appropriate provision for determining the prescriptive period for claiming a refund or a tax credit for unutilized input VAT is Section 112(A), and not Section 229, of the NIRC.

Finally, the recent pronouncement of the Court *En Banc* should put an end to any question as to whether

Section 229 may apply to claims for refund of unutilized input VAT. In the case of *Commissioner of Internal Revenue v. San Roque Power Corporation*, this Court categorically stated that the 'input VAT is not 'excessively' collected as understood under Section 229 because at the time the input VAT is collected the amount paid is correct and proper.'

As such, it is now clear and indisputable that it is Section 112, and not 229, of the Tax Code which is applicable to all cases involving an application for the issuance of a tax credit certificate or refund of unutilized input VAT."

Reiterating the ruling in the *Team Energy case*[9], which cited the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[10] *(Aichi case* for brevity), the 120+30 day period in Section 112(C) of the NIRC of 1997 is mandatory, and its non-observance is fatal to the filing of a judicial claim with the Court of Tax Appeals (CTA). Therefore, the premature filing of petitioner's claim for refund or tax credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA.

As to petitioner's argument that the doctrine in *Team Energy case* should be applied prospectively, the same is bereft of merit. The doctrine therein is merely a reiteration of the ruling of the Supreme Court in the case of *Commissioner of Internal Revenue vs. San Roque Power Corporation*[11], wherein the High Court clarified that the mandatory and jurisdictional nature of the 120+30 day rule does not apply on claims for refund that were prematurely filed during the interim period from the issuance of BIR Ruling No. DA-489-03 on December 10, 2003 to October 6, 2010 when the *Aichi case* doctrine was adopted. The exemption was premised on the fact that prior to the promulgation of the *Aichi case* decision, there was an existing interpretation laid down in BIR Ruling No. DA-489-03 where the BIR expressly ruled that the taxpayer need not wait for the expiration of the 120-day period before it could seek judicial relief with the CTA.

Moreover, petitioner's reliance on the cases of *Nichimen Corporation, Philippine Branch vs. Commissioner of Internal*

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[9]G.R. No. 197760, January 13, 2014.
[10]G.R. No. 184823, October 6, 2010.
[11] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

Revenue[12], *Bobcock-Hitachi (Phils.) Inc. vs. The Commissioner of Internal Revenue*[13], *AMI Philippines, Inc. vs. Commissioner of Internal Revenue*[14], and *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*[15] is misplaced. It must be noted that these cases were promulgated by this Court prior to the effectivity of the NIRC of 1997.

In the *Visayas Geothermal case*[16], the Supreme Court explicitly stated that:

> "xxx Following *San Roque*, **the 120+30 day period is mandatory and jurisdictional from January 1, 1998 (the effectivity of the 1997 Tax Code)**. However, from December 10, 2003 (the date BIR Ruling No. DA 489-03 was issued) until October 6, 2010 (the promulgation of *Aichi*), judicial claims need not follow the 120+30 day period. Thereafter, *Aichi* shall be the controlling rule for all claims filed with the CTA and the 120+30 day period must be observed." *(Emphasis supplied)*

Considering that petitioner filed the judicial claim on March 30, 2012, such claim does not fall within the exception cited above, hence, the "120+30 day period" rule applies.

Moreover, in the assailed Decision, this Court partially granted petitioner's claim for refund of erroneously paid output tax in the reduced amount of ₱353,961.50.

Petitioner, however, maintains that this Court erred in reducing the amount of output taxes allowed to be recovered in this case. Petitioner claims that it is entitled to the refund of the full amount of erroneously paid output VAT for the 1st quarter of CY 2010 amounting to ₱549,114.69.

Revenue Regulations No. 16-2005 provides for the method for computing a taxpayer's VAT liability, in this manner: *ℓ*

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[12] CTA Case No. 4431, February 13, 1995.
[13] CTA Case No. 4623, November 10, 1995.
[14] CTA Case Nos. 5187 and 5199, October 12, 1997.
[15] CTA Case No. 5296, October 2, 1997.
[16] Supra.

"SECTION 4.110-6. *Determination of the Output Tax and VAT Payable and Computation of VAT Payable or Excess Tax Credits.* – xxx 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.

xxx xxx xxx

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.

SECTION 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.**

Illustration:

For a given taxable quarter ABC Corp. has output VAT of 100 and input VAT of 80. Since output tax exceeds the input tax for such taxable quarter, all of the input tax may be utilized to offset against the output tax. Thus, the net VAT payable is 100 minus 80 = 20." *(Emphasis supplied)*

Records indicate that petitioner herein computed its VAT payable for the 1st quarter in accordance with the foregoing provisions, as shown below:

	Gross Sales	**Output Tax**	**Input Tax**	**VAT Payment**	**Exhibit**
January	₱ 1,315,509.08	₱ 157,861.09	₱ 69,919.47	₱ 87,941.62	"E", "E-1"
February	1,477,842.80	177,341.14	76,410.67	100,930.47	"F", "G", "G-1"
March	1,782,603.87	213,912.46	48,823.05	165,089.41	"H", "H-1"
	₱ 4,575,955.75	**₱ 549,114.69**	**₱ 195,153.19**	**₱ 353,961.50**	

Under Section 229 of the NIRC of 1997, the recovery of any national internal revenue tax extends only to that erroneously paid or remitted to the BIR. In this case, petitioner paid only a total amount of ₱353,961.50 for the subject quarter. In arriving at such amount, petitioner applied the input tax of ₱195,153.19 against its output tax of ₱549,114.69. Such application reduces petitioner's VAT liability. Thus, it is but proper that petitioner be refunded only of the amount it remitted.

Respondent's Motion for Reconsideration

In her Motion, respondent assails the Court's partial grant of petitioner's claim for refund, arguing that petitioner's lease of gaming equipment and rendition of related technical services are subject to twelve percent (12%) VAT. In support of her contention, respondent asserts as follows:

a. Petitioner cannot invoke the tax-exemption privilege of entities authorized by the PAGCOR to operate bingo-gaming venues (the PAGCOR-authorized Bingo Operators); and

b. Since petitioner leased gaming equipment and rendered services to PAGCOR-authorized Bingo Operators and not to PAGCOR itself, it is not covered by the tax-exemption provision of the PAGCOR Charter.

Petitioner in its Comment points out that the arguments raised by respondent in her Motion for Reconsideration deserve scant consideration from the Court, for the following reasons:

1. In applying for the refund of erroneously paid output VAT, petitioner did not invoke the tax-exemption privilege of the PAGCOR-authorized Bingo Operators but rather the provision in the PAGCOR Charter which confers indirect tax-exemption to suppliers of PAGCOR and its operators; and

2. Petitioner, being a provider of essential facilities and technical services to the PAGCOR-authorized Bingo Operators, is exempt from VAT under the PAGCOR Charter.[17]

After careful evaluation of the parties' arguments, the Court finds no merit in respondent's motion. In fact, a perusal of respondent's arguments shows that they are a mere rehash of the special and affirmative defenses raised in her Answer[18]. The same have already been passed upon extensively by the Court in the subject Decision.

As already addressed in the assailed Decision, petitioner's claim for refund of erroneously paid output VAT is based on Section 13(2) of the PAGCOR Charter. A plain reading of the said Section provides that PAGCOR, its authorized game operators, and other entities providing facilities and rendering services to PAGCOR and these operators shall be exempt from all kinds of taxes whether national or local.

In *The Commissioner of Internal Revenue vs. Acesite (Philippines) Hotel Corporation*[19] (*Acesite case* for brevity), the Supreme Court ruled that by virtue of Section 13(2) of the PAGCOR Charter, PAGCOR is given a blanket exemption to taxes with no distinction on whether the taxes are direct or indirect. Thus, PAGCOR is exempt from VAT. More importantly, the High Court in the *Acesite case* held that Operators, being contractually bound to PAGCOR in relation to casino operations, are likewise exempt from VAT, to wit:

> "Petitioner contends that the above tax exemption refers only to PAGCOR's direct tax liability and not to indirect taxes, like the VAT.
>
> We disagree.
>
> 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

[17] Docket, p. 682.
[18] Docket, pp. 62-68.
[19] G.R. No. 147295, February 16, 2007.

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.

xxx xxx xxx

VAT exemption extends to Acesite

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] [5] of R.A. 8424), xxx."

Verily, Section 13(2)(b) of the PAGCOR Charter unequivocally confers on entities, such as petitioner, that furnish facilities and render technical services to Operators an exemption from VAT. Indisputably, petitioner is entitled to the refund of the VAT it erroneously paid.

WHEREFORE, premises considered, petitioner's **Motion for Partial Reconsideration** and respondent's **Motion for Reconsideration** are **DENIED** for lack of merit.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice