REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

MELCO RESORTS LEISURE (PHP) CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9811

Members:

DEL ROSARIO, *P.J.,Chairperson,*
MANAHAN, and
REYES-FAJARDO, *JJ.*

Promulgated:
APR 06 2022 11:45 am

x- x

RESOLUTION

MANAHAN, *J.*:

For this Court's resolution is petitioner's *Motion for Reconsideration [of Decision dated October 28, 2021]* filed on December 1, 2021 with respondent's *Opposition (Re: Motion for Reconsideration of the Decision promulgated 28 October 2021)* posted on January 10, 2022 and which was received by the Court on February 23, 2022.

Petitioner prays for the reversal of the Court's Decision dated October 28, 2021, the dispositive portion of which reads as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review filed by Melco Resorts Leisure (PHP) Corporation, is **DENIED** for lack of merit."
>
> **SO ORDERED."** om

Petitioner submits that the instant judicial claim for refund or issuance of a tax credit certificate (TCC) is anchored on the provisions of Presidential Decree (PD) No. 1869, otherwise known as the Philippine Amusement and Gaming Corporation (PAGCOR) Charter, which allegedly exempts the latter from the payment of both direct and indirect taxes on the condition that a five percent (5%) franchise tax is paid pursuant to the "in lieu of all taxes" provision found in said Charter.

As a PAGCOR licensee, petitioner avers that the input value-added tax (VAT) passed on by its suppliers should be refunded in its favor considering that it is exempt from the "indirect" VAT under Section 13 (2) (b), in relation to Section 13(2) (a) of PD No. 1869. Petitioner emphasizes that for as long as the revenues are established to be arising from gaming operations, the same shall be exempt from all kinds of taxes of whatever nature, including direct and indirect VAT. Seen in this light, petitioner urges the Court to reconsider its denial of the claim for refund and instead grant the entire amount claimed representing erroneously paid input VAT on its purchases of capital goods, domestic purchases of goods other than capital goods and services for the first quarter of taxable year (TY) 2016. Petitioner additionally contends that the principle of *solutio indebiti* can be applied with equal force to the Government where the latter has the obligation to restore to the taxpayer, the taxes it erroneously paid.

In his *Opposition (Re: Motion for Reconsideration of the Decision promulgated 28 October 2021)*, respondent merely echoed the ruling of the Court in the assailed Decision particularly the portion where the Court made a distinction between a claim for tax exemption and a claim for tax refund of input VAT which has certain distinct requirements, more particularly that the sales transactions of petitioner should be considered zero-rated for the tax refund to prosper. Respondent further asserts that petitioner failed to prove that it is entitled to the refund sought citing the oft-repeated doctrine that tax refunds like tax exemptions, are strictly construed against the taxpayer.

RULING OF THE COURT

We shall first resolve the timeliness of the filing of petitioner's *Motion for Reconsideration* with the Court.

On October 28, 2021, the Court issued a Decision in the above-captioned case, denying petitioner's claim for refund of alleged erroneously paid input VAT. A copy of the Decision was received by the petitioner on November 11, 2021. 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 respondent's receipt of the decision, petitioner had until November 26, 2021 to file its Motion for Reconsideration. Records show that it filed its Motion for Reconsideration via a private courier (LBC Express) with tracking number 149728543867 which was received by the latter on November 26, 2021, hence the instant motion was timely filed.

We now proceed to the rule on the merits of petitioner's Motion for Reconsideration.

The records show that petitioner presented two theories as bases for its claim for refund, i.e., that as a PAGCOR licensee, it is entitled to the refund or tax credit of its excess or unutilized input VAT attributable to its revenues from its gaming operations which it alleges to be zero-rated sales under the 1997 National Internal Revenue Code (NIRC), as amended. In the alternative, petitioner maintains that 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.

After taking a second hard look at the arguments raised by petitioner in its motion for reconsideration, we find no compelling reason to reverse or modify our original stance embodied in the assailed Decision which denied petitioner's claim for refund of input VAT.

There is no dispute that petitioner's claim for refund involves alleged excess input VAT attributable to its purchases of capital goods, domestic purchases of goods (other than capital goods) and purchases of services rendered by non-residents which were passed on by its suppliers. In the Petition for Review filed on April 12, 2018,[1] petitioner specifically prayed for the refund or tax credit of Php81,119,005.84 representing "excess and unutilized 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 which are attributable to zero-rated sales for the 1st quarter of taxable year 2016."

The report of the Independent Certified Public Accountant (ICPA) presented as Exhibit "P-248" was the result of the study made on the documents such as invoices and receipts to ascertain the amount of unutilized input VAT that may be the subject of a refund or tax credit. 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. The assailed Decision quoted the ruling of the Supreme Court in the case of *Luzon Hydro-Corp vs. CIR*,[2] and we again 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**

---

[1] Court Docket, pp. 10-32

[2] G.R. No. 188260, November 13, 2013. *OM*

> **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. We quote the relevant portions of the assailed Decision, thus:

> "Section 112 (A) (quoted earlier) and (B) of the 1997 NIRC, as amended, in relation to Section 110 (B) of the same code, provides that the option of refund or tax credit of excess/unutilized input VAT is allowed in two instances: a) when it is attributable to zero-rated or effectively zero-rated sales[3] and/or (b) when the business or the corporation has been dissolved, i.e., cessation from business. In quoting Sections 110 (B) and 112 of the 1997 NIRC, as amended, the Supreme Court, in the case of *Coca-Cola Bottlers Philippines, Inc. vs. CIR,*[4] affirmed that the option of refund or issuance of a tax credit certificate is available to a VAT-registered taxpayer if such input taxes are attributable to zero-rated or effectively zero-rated sales, and we quote:
>
> A plain and simple reading of the afore-quoted provision reveals that if and when the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. **It is only when the sales of a VAT-registered person are zero-rated or effectively zero-rated that he may have the option of applying for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales."** (emphasis supplied).

---

[3] Section 112 (A) of the 1997 NIRC, as amended.
[4] G.R. No, 222428, February 19, 2018.

> Since petitioner has not been dissolved nor in the process of dissolution at the time the instant claim for refund was filed with the BIR, we shall focus on the issue of whether or not the sales made by petitioner during the taxable period involved, can be categorized as zero-rated or effectively zero-rated sales."

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 to engage in casino gaming activities.[5] 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.

The alternative theory of indirect tax exemption proferred by petitioner arising from its status as a PAGCOR licensee, cancels out the possibility of claiming the alleged excess input VAT because input VAT attributable to an exempt transaction is neither creditable nor refundable. The assailed Decision aptly distinguished between VAT exemption and VAT zero-rating as it applies to the privileges accorded to PAGCOR in its franchise, and we quote:

> "Thus, since PD No. 1869 is a special law, the treatment under Section 109 (l) (K) of the 1997 NIRC, as amended, of PAGCOR's sales is one of **VAT exemption and not one of VAT zero-rating.** Parenthetically, an exempt transaction is defined as one involving goods or services, which by their nature, are specifically listed in and expressly exempted from the VAT, under the 1997 NIRC, as amended, without regard to the tax status of the party in the transaction. **To be sure. PAGCOR's tax privilege on its sales is a VAT exempt transaction."** (emphases supplied)

Being exempted from VAT, the input taxes that may have been passed on to it by its suppliers cannot be the subject of a claim for refund.

WHEREFORE, in light of the foregoing considerations, the *Motion for Reconsideration [of Decision dated October 28, 2021]* filed by Melco Resorts Leisure (PHP) Corporation, is **DENIED** for lack of merit.

---

[5] Exhibit "P-3", Petitioner's Amended Articles of Incorporation dated February 2, 2016, Court Docket, pp. 529-540.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(With Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

MELCO RESORTS LEISURE (PHP) CORPORATION, Petitioner,	**CTA CASE NO. 9811**
	Members:
- versus -	**DEL ROSARIO,** *P.J., Chairperson,* **MANAHAN,** *and* **REYES-FAJARDO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: APR 06 2022 11:45 a.m.

x - x

CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying petitioner's **Motion for Reconsideration [of Decision dated October 28, 2021]** for lack of merit.

In addition, a perusal of the records shows that petitioner's Motion for Reconsideration was belatedly filed. Petitioner received the assailed Decision on November 11, 2021. Pursuant to Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals,[1] it had fifteen (15) days from receipt of said Decision or until November 26, 2021 within which to file its Motion for Reconsideration. Petitioner delivered its Motion for Reconsideration to LBC Express, a private courier, on November 26, 2021 and it was received by the Court only on December 1, 2021.

The established rule is that the date of delivery of pleadings to a private letter-forwarding agency is not to be considered as the date of

[1] 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. He shall file a motion for reconsideration or new trial within fifteen days from the date he received notice of the decision, resolution or order of the Court in question.

filing thereof in court; in such cases, the date of actual receipt of the court, and not the date of delivery to the private carrier, is deemed the date of the filing of that pleading.[2]

While Section 3, Rule 13 of the 2019 Amendments to the 1997 Rules of Civil Procedure authorizes filing through an **accredited courier**, this mode should not be confused with filing through a non-accredited private courier.

Accredited couriers are courier service providers that have been accredited by the Supreme Court through the Office of the Court Administrator.[3] Since LBC Express is not an accredited courier service provider, the actual receipt of the Court of petitioner's Motion for Reconsideration on December 1, 2021, and not its delivery to LBC Express on November 26, 2021, remains the date of the filing of its Motion for Reconsideration consistent with *Exequiel Sigre et al. vs. Provincial Government of Zamboanga Del Sur, represented by Antonio H. Cerilles*.[4] Evidently, petitioner's Motion for Reconsideration was belatedly filed and the Court may not take cognizance thereof.

All told, I VOTE for the Court to DENY the petitioner's **Motion for Reconsideration [of Decision dated October 28, 2021]** for lack of merit and for being belatedly filed.

ROMAN G. DEL ROSARIO
Presiding Justice

---

[2] Resolution, *Exequiel Sigre et al. vs. Provincial Government of Zamboanga Del Sur, represented by Antonio H. Cerilles*, G.R. No. 241362, February 3, 2020.
[3] Supreme Court Administrative Order No. 242-A-2020 (Guidelines on the Accreditation of Courier Service Providers) dated September 1, 2020.
[4] Resolution, G.R. No. 241362, February 3, 2020.