REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ACESITE (PHILIPPINES) HOTEL CORPORATION
Petitioner,

- versus -

THE HONORABLE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 5449

Promulgated:

JAN 28 1999

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DECISION

This is a judicial claim for the refund of ₱14,405,560.03, allegedly representing expanded value-added taxes ("EVAT", for brevity) for the period January to June, 1996, which Petitioner[1] paid to Respondent's Bureau from its earnings on lease rentals and various hotel services and charges with the Philippine Gaming Corporation ("PAGCOR", for short).

Facts show that Petitioner tried to recover the aforestated amount of EVAT from PAGCOR on the belief that pursuant to Republic Act No. 7716 and Revenue Regulations No. 7-95, it may, as lessor, shift or pass on to the lessee, PAGCOR, the said amount it has paid. PAGCOR,

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1 Petitioner is a duly organized private domestic corporation and is the owner and operator of the Holiday Inn Manila Pavilion Hotel, with address at United Nations Avenue corner Orosa Street, Manila.

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however, refused on the ground that by virtue of its payment of franchise tax as provided in Section 13 (2, a) of Presidential Decree No. 1869, it is exempted from the payment of all kinds of taxes.

After being convinced that indeed PAGCOR is exempted from the payment of EVAT, Petitioner believed that it is entitled to a refund of the amount of EVAT it had "advanced" for PAGCOR. (Petition, p. 3) Thus, on September 23, 1996, it filed a written claim for refund with Respondent's Bureau. The details of the refundable amount are shown as follows:

Month	Date Filed/Paid	Total Amount Remitted	10% EVAT on Total Sales to PAGCOR	10% EVAT on Advance Rent of PAGCOR
January	2-26-96	₱ 1,159,307.99	₱ 475,546.28	
February	3-22-96	2,357,368.60	1,185,286.28	
March	4-22-96	2,923,891.30	1,840,516.63	
March (Amended Return)	6-05-96	893,843.61		
April	5-27-96	7,927,313.92		₱ 7,927,313.92
April	5-24-96	2,524,720.48	1,357,427.81	
April (Add'l. Payment)	5-27-96	932,332.99		
May	6-25-96	4,016,956.80	1,308,318.21	
June	7-22-96	4,621,955.44	311,150.90	
		₱27,357,691.13	₱6,478,246.11	₱ 7,927,313.92

Total Amount Claimed (₱6,478,246.11 + ₱7,927,313.92) ₱14,405,560.03

With the inaction of the Respondent on its claim for refund, Petitioner was constrained to file the instant Petition before this Court on December 18, 1996, allegedly in order to stop the running of the

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prescriptive period of two years within which to file a claim for refund from date of payment as provided in Section 230 of the Tax Code. Hence, this appeal.

At bar, Petitioner restates its stance *a quo*. Respondent, on the other hand, contends in her Answer, among others, that herein Petition does not state a cause of action, there being no allegation that the tax sought to be refunded was actually paid and remitted to the Bureau of Internal Revenue in accordance with the Tax Code; that Petitioner has failed to establish that the tax subject of its claim was erroneously or illegally collected; and that a claim for refund is strictly construed against the claimant and cannot be allowed unless proven explicitly and categorically.

Records reveal that Petitioner formally offered its evidence while Respondent deemed it proper not to submit any evidence due to his observation that this case dwells only on a purely legal issue.

In its memorandum, Petitioner contended, among others, that it paid to Respondent's Bureau the amount of EVAT equivalent to 10% of its "gross income from PAGCOR"; that under pertinent law, it may as seller/lessor, shift or pass on said EVAT payments to PAGCOR, the buyer/lessee; and that it accordingly shifted or passed on to PAGCOR the EVAT due on its gross income by billing

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PAGCOR therefor, but the latter allegedly "deducted" such EVAT from its payments.

Respondent deemed the preceding contentions as devoid of merit. He asserted in his memorandum that on the basis of the Supreme Court's decision in **Philippine Acetylene Co. vs. Commissioner of Internal Revenue, 20 SCRA 1036,** an indirect tax may be shifted to the buyer of goods and once shifted, it is no longer a tax but an additional cost which the purchaser has to pay to obtain the goods. In effect, Respondent is raising the argument that the VAT, being an indirect tax, could have been shifted to PAGCOR in the form of an additional cost of the lease of petitioner's property and since the VAT would no longer be a tax, PAGCOR could no longer invoke its tax-exempt status in order to avoid shifting of the VAT.

Dissatisfied with Respondent's preceding statements which it labelled as baseless and fallacious, Petitioner submitted a reply memorandum wherein it clarified that Respondent ignored the presence of clear and strong evidence to the effect that it "shifted the EVAT to PAGCOR". Such evidence, it claimed, is established by the payment summaries prepared by PAGCOR (Exhibit M, item no. 3), which were duly verified and certified by Sycip, Gorres, Velayo & Co. ("SGV", for short), showing the non-payment or withholding of the 10% VAT.

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Likewise, Petitioner assailed Respondent's view that herein amount of EVAT should have been shifted to PAGCOR as an added rental or cost. It contended that under Section 99 of the Tax Code, EVAT may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services and that to sustain Respondent would render said section nugatory.

From the aforementioned arguments of the parties, the following issues confront Us, to wit:

1. Whether or not EVAT may be shifted or passed on to a tax-exempt entity such as PAGCOR; and,

2. Whether or not Petitioner is entitled to its claim for refund based on the evidence on record.

As regards the first issue, Section 99 of the Tax Code, as amended, states in no uncertain terms that the amount of VAT, being an indirect tax, may be passed on or shifted by the seller to the purchaser of goods or services, thus:

> **Sec. 99. Persons liable.** - Any person who, in the course of trade or business, sells, barters or exchanges goods, or properties, renders services, and any person who imports goods shall be liable to the value-added tax (VAT) imposed in Sections 100 to 102 of this Code.
>
> ***The value-added tax is an indirect tax and the amount of tax may be shifted or passed on the buyer, transferee or lessee of the goods, properties or services.*** This rule shall likewise apply to existing contracts of sale of

goods, properties or services at the time of the effectivity of this Act.

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(italics and emphasis supplied)

Such amount of the EVAT is determined by the imposition of either 10% or 0% rate on the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged; on the total value or landed cost plus excise tax, if any, in case of importation of goods; or, on the gross receipts derived from the sale or exchange of services, including the use or lease of properties. (Sections 100 - 102, Tax Code, as amended)

In this case, the applicable rate is 0% on the gross receipts derived by the Petitioner from the sale or exchange of services to PAGCOR, in accordance with Section 102 (b) (3) of the Tax Code, as amended, which states, thus:

Section 102 (b):

(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 rate.*** (italics and emphasis supplied)

Petitioner has presented convincing evidence showing PAGCOR as an entity with a special charter, namely, Presidential Decree No. 1869, which categorically makes it exempt from the payment of all taxes, after paying a

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5% franchise tax on its gross revenue or earnings (Exhibits I, J, K and L). Hence, by virtue of said Charter, the services rendered by the Petitioner to PAGCOR are effectively subject to zero rate.

Contrary to the above provisions of law, however, Petitioner mistakenly believed that its transactions with PAGCOR were subject to the 10% rate. Petitioner supports this observation by its alleged "advanced" payment of herein amount of EVAT in question to the Respondent's Bureau. It accordingly prays for the refund of said amount after failing to shift and collect the same from PAGCOR, inexplicably not knowing that the transactions involved are subject to zero rate.

We now therefore go into a brief discussion of the second issue on whether Petitioner is entitled to its claim for refund based on the evidence presented. We partially rule in its favor.

We can only grant the 10% EVAT on Petitioner's rental income from PAGCOR amounting to ₱7,927,313.92. Per Statement of Account 96-021, dated March 19, 1996 (Exhibit E), Petitioner's basic rental charges to PAGCOR for the period of April 10, 1996 to April 10, 1997 amounted to ₱79,273,139.18 of which 10% EVAT was paid to Respondent's Bureau on May 27, 1996 through a separate EVAT return (Exhibit D). Only ₱77,291,310.55 (net of 2.5% withholding tax) was paid by PAGCOR for said rental billing per Petitioner's Official Receipt Nos. 1742 & 1743 dated April 10, 1996 and April 11, 1996, respectively (Exhibits G and H).

As regards Petitioner's refund claim for the EVAT payments on its other sales to PAGCOR of ₱6,478,246.11, additional source documents need to be submitted to validate such particular portion of its claim, namely:

a) Monthly total sales summary for room occupancy, food, beverage, minibar and other charges (to be supported by sales invoices/statements of accounts, guests folios) in order to confirm the fact that the amount being refunded by Petitioner corresponds only to the sales from PAGCOR.

b) Monthly PAGCOR sales summary for room occupancy, food, beverage, minibar and other charges with a breakdown of the basic charges, service charges, local tax, discounts and the 10% EVAT per PAGCOR customers (to be suppported by sales invoices/statements of accounts, guests folios).

Based on the examination of the evidence on record, i.e., PAGCOR's payment summaries, Petitioner's official receipts and Statement of Accounts and Schedules 2-7 prepared by SGV (Exhibit M, inclusive), this Court could not determine whether PAGCOR has already paid Petitioner the 10% EVAT on hotel charges for food, beverage, minibar and other charges, except for room occupancy charges.

Moreover, the lack of the aforementioned source documents has prevented this Court from knowing altogether, inclusive of room occupancy charges, whether the sale of services by the Petitioner were specifically

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made to PAGCOR clients or whether the alleged EVAT payments from PAGCOR were indeed included in the payments made by the Petitioner as reflected in each of its monthly EVAT return.

In sum, there is a need to verify the alleged EVAT payments with the abovestated source documents which, unfortunately, Petitioner failed to submit before this Court. Such inadvertence proves fatal to herein portion of its claim.

Prescinding from the above, We note that Respondent's contention in citing the *Philippine Acetylene Company* case is inapplicable at bar. We simply observe that the Tax Code, as amended, clearly makes the particular transactions between Petitioner and PAGCOR as zero-rated. Thus, to adhere to Respondent's view that the amount of 10% EVAT cannot be refunded because it had already become a part of the purchase price paid by PAGCOR and not really as a tax is manifestly wrong because no matter how one looks at it, a 10% EVAT has been imposed on the transactions which the law only allows a zero-rate.

Besides, insofar as the rental portion of Petitioner's claim is concerned, it has been proven that PAGCOR has not made any payment of the 10% EVAT to the Petitioner. Hence, any discussion on the EVAT becoming a part of the cost is simply illogical and unavailing.

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Even if We assume, *ex gratia argumenti*, that the *Philippine Acetylene Company* case is relevant to herein case, the same has been modified and qualified in the subsequent case of **Maceda vs. Macaraig, Jr., 197 SCRA 771 at p. 779**, when the Supreme Court, sitting *en banc*, declared that the rule on strict construction of statutes granting tax exemptions does not apply in the case of exemptions in favor of a government political subdivision or instrumentality, such as PAGCOR in this case. Thus:

> Moreover, it is a recognized principle that the rule on strict interpretation does not apply in the case of exemptions in favor of a government political subdivision or instrumentality.
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> "The basis for applying the rule of strict construction to statutory provisions granting tax exemptions or deductions, even more obvious than with reference to the affirmative or levying provisions of tax statutes, is to minimize differential treatment and foster impartiality, fairness, and equality of treatment among tax payers.
>
> The reason for the rule does not apply in the case of exemptions running to the benefit of the government itself or its agencies. In such case the practical effect of an exemption is merely to reduce the amount of money that has to be handled by government in the course of its operations. For these reasons, provisions granting exemptions to government agencies may be construed liberally, in favor of non tax-liability of such agencies."
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> In the case of property owned by the state or a city or other public corporations, the express exemption should not be construed with the same degree of strictness that applies to exemptions contrary to the policy of the state, since as to such property "exemption is the rule and taxation the exception."

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WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, Respondent is hereby **ORDERED** to **REFUND** the amount of **P7,927,313.92** to the Petitioner immediately.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge

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