REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MELCO RESORTS LEISURE (PHP) CORPORATION,
Petitioner,

CTA Case No. 10029

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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MELCO RESORTS LEISURE (PHP) CORPORATION,
Petitioner,

CTA Case No. 10052

Members:

- versus -

CASTAÑEDA, JR., *Chairperson, and*
BACORRO-VILLENA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 07 2021 4:00 p.m.

x--x

DECISION

BACORRO-VILLENA, J.:

At bar are consolidated cases arising from two (2) separate Petitions for Review filed by Melco Resorts Leisure (PHP) Corporation

(petitioner/Melco) pursuant to Rule 8, Section 3(a)[1], in relation to Rule 4, Section 3(a)(2)[2] of the Revised Rules of the Court of Tax Appeals[3] **(RRCTA)**.

The Petition for Review[4] for CTA Case No. 10029 was filed on 20 February 2019 while the Petition for Review[5] for CTA Case No. 10052 was filed on 01 April 2019. Both petitions seek the recovery of the supposed Value-Added Tax **(VAT)** erroneously and illegally paid for purchases attributable to revenues from gaming operations in the amounts of ₱45,499,623.59 and ₱47,260,792.90 relative to the first (1st) and second (2nd) quarters of taxable year **(TY)** 2017, respectively.

Petitioner is a domestic corporation organized and existing under the laws of the Philippines with principal address at Asean [Avenue] corner Roxas Boulevard, Barangay Tambo, Parañaque City 1701, Philippines.[6]

Respondent is the duly appointed Commissioner of Internal Revenue **(respondent/CIR)**, who holds office at the Bureau of Internal Revenue **(BIR)** National Office Building located at BIR Road, Diliman, Quezon City.[7]

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1 **Sec. 3.** *Who may appeal; period to file petition.* – (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

2 **Sec. 3.** *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

...

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: ...

3 A.M. No. 05-11-07-CTA dated 22 November 2005.

4 Division Docket (CTA Case No. 10029), Volume I, pp. 10-30.

5 Division Docket (CTA Case No. 10052), pp. 12-32.

6 Consolidated Joint Stipulation of Facts [with Submission of Issues] (CJFSI), Division Docket (CTA Case No. 10029), Volume I, p. 258.

7 Id.

FACTS OF THE CASE

Petitioner is registered with the Securities and Exchange Commission (**SEC**) under Company Registration No. CS201215883 to develop and operate 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. Petitioner was formerly known as "MCE Leisure (Philippines) Corporation" prior to the change in its corporate name to "Melco Resorts Leisure (PHP) Corporation" effective 30 May 2017.[8]

Petitioner is also registered with the BIR as a VAT taxpayer, among others, with Taxpayer Identification Number (**TIN**) 008-362-871-00000.[9]

On 28 January 2013, the Philippine Amusement and Gaming Corporation (**PAGCOR**) issued a Provisional License[10] to petitioner, together with its co-licensees.

Subsequently, PAGCOR issued the regular Gaming License dated 29 April 2015[11] to petitioner and its co-licensees for the operation of City of Dreams Manila with a validity period until 11 July 2033. PAGCOR then issued an (Amended) Gaming License dated 08 August 2017[12] to reflect petitioner's amended corporate name but still bearing the same validity as the original Gaming License. The three (2) licenses (Provisional License, regular Gaming License and [Amended] Gaming License) expressly state that petitioner and its co-licensees are "entitled to the customs duties and tax exemptions specified under Title IV Section 13[13] of the PAGCOR Charter (as amended)."

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8 Exhibit "P-2", id., Volume II, pp. 559-572.
9 Exhibit "P-6", id., p. 576.
10 Exhibit "P-3", id., p. 573.
11 Exhibit "P-4", id., p. 574.
12 Exhibit "P-5", id., p. 575.
13 SEC. 13. Exemptions. —

(1) Customs duties, taxes and other imposts on importations. — All importations of equipment, vehicles, automobiles, boats, ships, barges, aircraft and such other gambling paraphernalia, including accessories or related facilities, for the sole and exclusive use of the casinos, the proper and efficient management and administration thereof, and such other clubs, recreation or amusement places to be established under and by virtue of this Franchise shall be exempt from the

Petitioner claims that its suppliers passed on the VAT on its purchases of capital goods, domestic purchases of goods (other than capital goods) and services, importation of goods (other than capital goods), and purchases of services rendered by nonresidents, which are attributable or allocable to its gaming operations. Petitioner declared and reported the said purchases with passed-on input VAT in its Monthly Value-Added Tax Declaration (BIR Form No. 2550-M) for January[14], February[15], April[16] and May[17] of TY 2017 and Quarterly Value-Added Tax Return (BIR Form No. 2550-Q) covering the 1st[18] and 2nd[19] quarters of TY 2017.

For the 1st and 2nd quarters of TY 2017, petitioner also reported the following revenues:

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payment of all kinds of customs duties, taxes and other imposts, including all kinds of fees, levies, or charges of any kind or nature, whether National or Local.

Vessels and/or accessory ferry boats imported or to be imported by any corporation having existing contractual arrangements with the Corporation, for the sole and exclusive use of the casino or to be used to service the operations and requirements of the casino, shall likewise be totally exempt from the payment of all customs duties, taxes and other imposts, including all kinds of fees, levies, assessments or charges of any kind or nature, whether National or Local.

(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.

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14 Exhibit "P-8", Division Docket (CTA Case No. 10029), Volume II, pp. 587-588.
15 Exhibit "P-9", id., pp. 589-590.
16 Exhibit "P-18", id., pp. 615-616.
17 Exhibit "P-19", id., pp. 617-618.
18 Exhibits "P-10" to "P-13", id., pp. 591-598.
19 Exhibits "P-20" to "P-23", id., pp. 619-626.

Activity	1st Quarter	
VATable sales		₱1,347,095,521.59[20]
Zero-rated sales		3,467,569.73[21]
Exempt sales (Gaming)	₱8,801,872,270.97	
(Non-gaming)	9,891,379.66	8,811,763,650.63[22]
Total Sales		**₱10,162,326,741.95**[23]

Activity	2nd Quarter	
VATable sales		₱1,379,344,944.65[24]
Zero-rated sales		5,448,869.45[25]
Exempt sales (Gaming)	₱10,631,410,476.31	
(Non-gaming)	14,624,102.23	10,646,034,578.50[26]
Total Sales		**₱12,030,828,392.64**[27]

Likewise, petitioner reported an input VAT amounting to ₱111,718,979.29[28] and ₱118,942,851.71[29] on its purchases for the 1st and 2nd quarters of TY 2017, respectively. According to petitioner, out of the said figures, the amounts of ₱45,499,623.59 and ₱47,260,792.90 are attributable or allocable to VAT exempt sales representing revenues from gaming operations.

On 23 November 2018 and 20 February 2019, petitioner filed with the Large Taxpayer Service (**LTS**) of the BIR administrative claims for refund or tax credit[30] of erroneously and illegally paid VAT on purchases attributable or allocable to its revenues from gaming operations for the 1st and 2nd quarters of TY 2017 in the amounts of ₱45,499,623.59 and ₱47,260,792.90, respectively.

As the statutory period of two (2) years within which to file a judicial action is about to prescribe and claiming inaction on

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20 Line 15A, Exhibits "P-10", "P-11", "P-12" and "P-13", id., pp. 591, 593, 595 and 597.
21 Line 17, id.
22 Line 18, id.
23 Line 19A, id.
24 Line 15A, Exhibits "P-20", "P-21", "P-22" and "P-23", id., pp. 619, 621, 623 and 625.
25 Line 17, id.
26 Line 18, id.
27 Line 19A, id.
28 Sum of Lines 21B, 21D, 21F, 21H, 21J, 21L and 21O, Exhibits P-10", "P-11", "P-12" and "P-13", id., pp. 591, 593, 595 and 597.
29 Sum of Lines 21B, 21D, 21F, 21H, 21J, 21L and 21O, Exhibits "P-22" and "P-23", id., pp. 623 and 625. Prior to the amendment of its 2nd quarter VAT return for TY 2017, petitioner reported a total input VAT of ₱117,901,094.84. (See Sum of Lines 21B, 21D, 21F, 21H, 21J, 21L and 21O, Exhibits "P-20" and "P-21", id., pp. 619 and 621).
30 Exhibits "P-14" and "P-15", id., pp. 599-611; Exhibits "P-24" and "P-25", id., pp. 627-639.

respondent's part, petitioner filed with this Court the instant Petitions for Review on 20 February 2019[31] and on 01 April 2019[32], respectively.

PROCEEDINGS BEFORE THE SECOND DIVISION

In his Answer[33] to petitioner's petition for review in CTA Case No. 10029, respondent argued that petitioner, being a mere licensee of PAGCOR, is not entitled to the tax exemption under Presidential Decree (**PD**) No. 1869, as amended. Respondent also claims that even on the assumption that petitioner is exempt from payment of VAT, it could still not claim refund from respondent.

Respondent further avers that petitioner is not exempt from payment of VAT on its alleged purchases of capital goods, domestic purchases of goods (other than capital goods) and services, importation of goods (other than capital goods) and purchase of services.

According to respondent, the tax exemption granted under Section 13(2)(b)[34] of PD 1869, as amended, shall inure only to those entities who provide necessary services to PAGCOR in connection with the latter's operation of casinos. Respondent claims that this is clear when the law stated that "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)". As such, this tax exemption does not inure to the benefit of entities who are mere licensees of PAGCOR's franchise. Stated otherwise, the exemption is granted only to PAGCOR when the same

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[31] Supra at note 4.
[32] Supra at note 5.
[33] Division Docket (CTA Case No. 10029), Volume I, pp. 79-90.
[34] SEC. 13. Exemptions. —

...

(2) Income and other taxes. —

...

(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.

operates the casino by itself, and extends to entities who provide necessary services to PAGCOR, in relation to its gaming operations.

Respondent further contends that, at the time PD 1869 was enacted in 1983 and where the terms "corporation and operator" appeared instead of "Franchisee" and Franchise Holder", the gaming industry was under PAGCOR's monopoly. There were no franchisees, licensees or operators of the gaming industry other than PAGCOR who was given the exclusive franchise to operate as such. With this, respondent insists that petitioner's claiming of exemption under Section 13(2)(b) of PD 1869, as amended, is without basis (especially when at the time of its enactment, an entity like petitioner was unheard of). According to respondent, the inevitable conclusion is that it was never the intention of the law to expand the tax exemption granted to PAGCOR to licensees of its franchise.

Citing cases[35] decided by this Court as well as the Supreme Court case of *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue*[36] (**Coral Bay**), respondent also posits that a person engaged in zero-rated or effectively zero-rated sales is not entitled to the refund of input VAT or the VAT passed-on to it by its suppliers. In such cases, no output VAT should be shifted to or passed on to such person and conversely, no input VAT shall be paid by them. If input VAT is paid despite of the zero-rating of purchases, the proper recourse is not a claim for refund against the government but a reimbursement against the seller who shifted to them the input VAT.

Lastly, respondent argues that claims for refund are construed strictly against the claimant for the same partake of the nature of exception from taxation. As such, they are looked upon with disfavor.

On the other hand, in his Answer[37] in CTA Case No. 10052, respondent contends that petitioner's claim for refund cannot be given due course because its gaming revenues (as well as other income) are

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[35] *Hedcor, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 8875, 11 July 2017 and *Maibarara Geothermal Inc. v. Commissioner of Internal Revenue*, CTA Case Nos. 8871, 8937, 8999 and 9042, 02 August 2017.

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

[37] Division Docket (CTA Case No. 10052), pp. 81-89.

subject to 12% VAT; thus it is not entitled to the refund of its input VAT.

Respondent adds that in the 2014 case of *Philippine Amusement and Gaming Corporation (PAGCOR) v. The Bureau of Internal Revenue, et al.*[38] (**2014 PAGCOR**), the Supreme Court did not rule on the issue of whether or not the tax privilege inures to the benefit of third parties with whom PAGCOR has a contractual relationship. For respondent, Republic Act (**RA**) No. 9337[39] has, in fact, withdrawn PAGCOR's tax exemption privilege.

With respect to the case of *Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue*[40] (**Bloomberry**) that petitioner invoked, respondent contends that the same is conclusive only as between the parties involved therein, the case being an action *in personam*. Moreover, if petitioner truly believed that it is exempt from both direct and indirect VAT as a PAGCOR licensee, it should not have allowed its suppliers to pass on to it the output VAT for its purchases. Thus, petitioner is still not entitled to claim for refund citing *Coral Bay*[41], where the Supreme Court ruled that the "proper recourse was not against the Government but against the seller who had shifted to it the output VAT".

Additionally, respondent claims that petitioner's actual payment of input taxes for its purchases [despite its belief that it is exempt from VAT under Section 13(2)(b) of PD 1869, as amended] is never considered "erroneous" or "illegal". Such payment is considered "voluntary". In any case, the input taxes claimed for refund are attributable or allocable to VAT exempt gaming revenues.

Lastly, respondent avers the oft-cited doctrine that in an action for refund, the burden of proof is on the taxpayer who claims the exemption and he must justify his claim by the clearest grant under the constitutional or statutory law and cannot be permitted by vague implications.

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38 G.R. No. 215427, 10 December 2014.

39 AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

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

41 Supra at note 36.

On 05 July 2019, petitioner sought the consolidation[42] of CTA Case No. 10052 with CTA Case No. 10029 which the Court granted on 18 July 2019.[43]

On 07 August 2019, the parties then submitted their Consolidated Joint Stipulation of Facts [with Submission of Issues].[44] Thereafter, the Court issued the Pre-Trial Order dated 13 August 2019.[45]

On 14 August 2019, petitioner presented its first witness, Shirley B. Sanchez (**Sanchez**), who testified, through her Amended Judicial Affidavit[46], that: (1) she is petitioner's Tax Manager; (2) on 28 January 2013, PAGCOR issued a Provisional License[47] to petitioner, with its co-licensees, for the operation of casinos located in the Bagong Nayong Pilipino Manila Bay Entertainment City, Parañaque City; (3) on 29 April 2015, PAGCOR issued a Gaming License[48] to petitioner for the operation of a casino located along Asean Avenue and Roxas Boulevard, Tambo, Parañaque City with the brand name of City of Dreams; (4) on 08 August 2017, PAGCOR issued an (Amended) Gaming License[49]; (5) the provisional and regular Gaming License issued to petitioner stated that the "LICENSEE is entitled to the custom duties and tax exemptions specified under Title IV Section 13[50] of the PAGCOR Charter (as amended)"; (6) petitioner registered its computerized accounting system[51] (**CAS**) with the BIR; (7) petitioner reported its gaming revenues as VAT-exempt sales in its Monthly Value-Added Tax Declaration (BIR Form No. 2550-M) for January, February, April and May 2017 as well as its Quarterly Value-Added Tax Return (BIR Form No. 2550-Q) for the 1st and 2nd quarters of 2017; (8) the total input VAT attributable or allocable to gaming operations amounts to ₱92,760,416.49 (the subject of the instant consolidated

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42 See Motion for Consolidation with Motion for Postponement [of Pre-Trial Conference Set on July 18, 2019 at 1:30 P.M.], Division Docket (CTA Case No. 10052), pp. 92-97 and Motion for Consolidation with Motion for Postponement [of Presentation of Witness and Commissioning of Independent Certified Public Accountant], Division Docket (CTA Case No. 10029), Volume I, pp. 237-242.

43 See Order dated 18 July 2019, Division Docket (CTA Case No. 10052), pp. 126-127.

44 Division Docket (CTA Case No. 10029), Volume I, pp. 258-277.

45 Id., pp. 431-439.

46 Exhibit "P-36", id., pp. 315-327.

47 Supra at note 10.

48 Supra at note 11.

49 Supra at note 12.

50 Supra at note 13.

51 Exhibit "P-7", Division Docket (CTA Case No. 10029), Volume II, pp. 579-586.

cases) are composed of (**i**) VAT paid on purchases directly related or attributable to petitioner's exempt gaming operations, and (**ii**) VAT allocated to exempt sales by applying the sales ratio to common purchases; (9) the amount of ₱92,760,416.49 was not applied against any output tax due for the 1st and 2nd quarters of TY 2017; (10) petitioner filed two (2) separate administrative claims for refund on 23 November 2018[52] and 20 February 2019[53] with the LTS of the BIR; and, (11) since respondent failed to act on petitioner's administrative claims and the two-year prescriptive period to file a judicial action was about to lapse, petitioner filed the instant case with this Court.

On cross-examination, Sanchez testified that: (1) petitioner is exempt from paying direct and indirect VAT by virtue of the gaming license issued by PAGCOR; and, (2) petitioner voluntarily paid the VAT. Petitioner did not conduct any re-direct examination.

On 28 October 2019, Madonna Mia S. Dayego (**Dayego**) was commissioned as the Independent Certified Public Accountant (**ICPA**).[54] Later on, petitioner also presented its second witness, Rafael B. Taladtad, Jr. (**Taladtad**), who also testified by way of his Amended Judicial Affidavit[55] that: (1) he is petitioner's Senior Manager of the Casino Control and Compliance beginning April 2018 but he previously occupied the position of Gaming Audit Manager; (2) as Gaming Audit Manager, his duties and responsibilities included payment of license fees to and liaising with PAGCOR relative to gaming activities; (3) petitioner remitted the 5% franchise tax to PAGCOR, which, in turn, remitted the same to the BIR on behalf of petitioner; (4) as proof of its remittance of the 5% franchise tax, petitioner obtained from PAGCOR a Statement of Franchise Tax Remittances for the TY 2017[56], which certified that petitioner remitted franchise taxes in the total amount of ₱440,093,614.29 and ₱531,570,523.67 for the 1st and 2nd quarters of TY 2017; (5) PAGCOR also issued a Certification[57] stating that the license fees remitted for TY 2017 amounting to ₱7,724,514,701.36 is inclusive of the 5% franchise tax; (6) as proof that PAGCOR filed the Returns of Percentage Tax Payable Under Special Laws, PAGCOR provided petitioner with certified true copies of the

52 Exhibits "P-14" and "P-15", id., pp. 599-611.
53 Exhibits "P-24" and "P-25", id., pp. 627-639.
54 See Order dated 28 October 2019, id., p. 473.
55 Exhibit "P-37", id., Volume I, pp. 281-289.
56 Exhibit "P-26", id., Volume II, p. 640.
57 Exhibit "P-27", id., p. 641.

said BIR Forms No. 2553[58]; (7) upon petitioner's request for further proof of it its actual payment to the BIR of the franchise tax due for the 1st and 2nd quarters of TY 2017, PAGCOR provided petitioner with certified true copies of the following:

1. Filing Reference No. 321700019716356[59] generated through the BIR's Electronic Filing and Payment System (**eFPS**) as to the filing of BIR Form No. 2553 for the 31 March 2017 tax period indicating the tax due in the return of ₱2,069,195,294.80;

2. eFPS Payment Form[60], as proof of remittance, with the same reference number;

3. BIR Payment Confirmation[61] with the same reference number;

4. Filing Reference No. 321700020842395[62] generated through the BIR's eFPS as to the filing of BIR Form No. 2553 for the 30 June 2017 tax period indicating the tax due in the return of ₱2,213,438,696.42;

5. eFPS Payment Form[63], as proof of remittance, with the same reference number; and,

6. BIR Payment Confirmation[64] with the same reference number.

Respondent did not conduct any cross-examination.[65]

On 09 December 2019, petitioner presented its third witness, ICPA Dayego, who likewise testified by way of her Judicial Affidavit[66] that: (1) she examined and verified the documentary evidence of

58 Exhibits "P-28" and "P-29", id., pp. 642-647.
59 Exhibit "P-30", id., p. 648.
60 Exhibit "P-30-1", id., p. 649.
61 Exhibit "P-30-2", id., p. 650.
62 Exhibit "P-31", id., p. 651.
63 Exhibit "P-31-1", id., p. 652.
64 Exhibit "P-31-2", id., p. 653.
65 TSN of 29 October 2019, pp. 7-8.
66 Exhibit "P-38", Division Docket (CTA Case No. 10029), Volume II, pp. 479-486.

petitioner relating to its claim for refund; (2) she ascertained the nature of petitioner's claim, performed walkthrough procedures and examined its updated Permit to Use Computerized Accounting System; (3) she validated petitioner's revenue/sales classified as VAT-exempt (gaming), VAT-exempt (non-gaming), VATable and zero-rated as well the input taxes, including its classification as to gaming, non-gaming, or common, and the allocation of input tax arising from common transactions to gaming, non-gaming, VATable and zero-rated sales; (4) she prepared a Report[67] which she submitted to the Court on 27 November 2019 containing her findings and summary of the documents she examined; and, (5) she recommends that, out of the total amount of ₱92,760,416.48, petitioner is entitled to the refund or issuance of TCC of ₱54,780,132.82, representing erroneously and illegally paid input VAT attributable and allocable to petitioner's revenue from gaming operations.

On cross-examination, ICPA Dayego testified that: (1) the additional amount of ₱345,605.02 was a result of petitioner's erroneous computation in its Petition for Review, which showed a lower amount claimed; and, (2) there is a separate [account] for input tax, which is the creditable withholding tax (**CWT**).

Petitioner did not conduct any re-direct examination.

Later, ICPA Dayego reiterated that her overall recommendation (as regards the amount to be refunded) is ₱54,780,132.82 or less than the total amount claimed of ₱92,760,416.49.

On 16 December 2019, petitioner filed its Formal Offer of Evidence[68] (**FOE**) without respondent's comment.[69] On 28 January 2020, the Court issued a Resolution[70] admitting all of petitioner's documentary evidence, *except* Exhibits "P-207-25"[71], "P-207-26"[72], "P-207-27"[73] and "P-221".[74]

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[67] Exhibit "P-39".

[68] Division Docket (CTA Case No. 10029), Volume II, pp. 489-546.

[69] *Per* Records Verification dated 07 January 2020, id., p. 663.

[70] Id., pp. 677-679.

[71] Statement of Franchise Tax Remittances for CY 2017, Division Docket (CTA Case No. 10029), Volume II, pp. 689-690.

[72] Return of Percentage Tax Payable Under Special Laws (BIR Form No. 2553) for the First Quarter of TY 2017, id., pp. 691-693.

[73] Return of Percentage Tax Payable Under Special Laws (BIR Form No. 2553) for the Second Quarter of TY 2017, id., pp. 694-696.

On 29 January 2020, respondent presented his lone witness, Revenue Officer (**RO**) Setie Naira B. Deron (**Deron**), who declared in her Judicial Affidavit[75] that: (1) she is assigned at the Regular Large Taxpayer Audit Division III holding the position of RO II; (2) she conducted the audit and investigation of petitioner's claim for VAT refund for the 2nd quarter of TY 2017; (3) for that purpose, a Tax Verification Notice[76] was issued authorizing the investigation and evaluation of petitioner's claim; (4) she found that petitioner is not entitled to the claim and her findings are exhaustively discussed in her Memorandum Report dated 24 June 2019[77]; (5) and, the documents she mentioned are part of the BIR Records.[78]

Petitioner did not conduct any cross-examination.[79]

On 19 February 2020, respondent filed his FOE[80], with petitioner's Comment[81] filed on 26 February 2020. On 11 June 2020, the Court resolved to admit all of respondent's exhibits and at the same time, granted petitioner's Motion for Reconsideration[82] (**MR**) on its denied exhibits.[83]

On 21 July 2020, petitioner filed its Memorandum[84] while respondent posted his own on 17 July 2021.[85] The Court then submitted the cases for decision on 07 September 2020.[86]

74 SUMMARY OF COMPARISON OF SCHEDULE OF INPUT TAXES TRACED WITH TRANSACTION SUMMARY (TS) - LEDGER ACCOUNT – VAT FOR THE FIRST (1Q) AND SECOND (2Q) QUARTERS OF TAXABLE YEAR (TY) 2017, CD.

75 Exhibit "R-3", Division Docket (CTA Case No. 10029), Volume II, pp. 668-671.

76 BIR Records, p. 244.

77 Exhibit "R-2", Division Docket (CTA Case No. 10029), Volume II, pp. 704-706.

78 Exhibit "R-3", id., p. 670.

79 TSN of 29 January 2020, p. 11.

80 Division Docket (CTA Case No. 10029), Volume II, pp. 700-703.

81 Id., pp. 707-710.

82 Id., pp. 683-688.

83 See Resolution dated 11 June 2020, id., pp. 719-722.

84 Id., pp. 730-766; Attached to petitioner's Motion to Admit Memorandum for Petitioner, id., pp. 725-729. See Resolution dated 07 September 2020 granting petitioner Motion to Admit Memorandum for Petitioner and accordingly admitting the Memorandum for Petitioner.

85 Received by the Court on 28 July 2020, id., pp. 767-777.

86 See Resolution dated 07 September 2020, id., p. 779.

ISSUE

After considering the parties' pre-trial briefs, the Court deems the following to be encompassing of all the issue raised by the parties for resolution –

> WHETHER PETITIONER MELCO RESORTS LEISURE (PHP) CORPORATION IS ENTITLED TO A REFUND OR TAX CREDIT OF ERRONEOUSLY OR ILLEGALLY PAID VALUE-ADDED TAX (VAT) ON PURCHASES OF GOODS AND SERVICES, WHICH ARE ATTRIBUTABLE OR ALLOCABLE TO REVENUES FROM GAMING OPERATIONS FOR THE FIRST (1^{ST}) AND SECOND (2^{ND}) QUARTERS OF TAXABLE YEAR 2017 IN THE AMOUNTS OF ₱45,499,623.59 AND ₱47,260,792.90, RESPECTIVELY, OR IN THE AGGREGATE AMOUNT OF ₱92,760,416,49.[87]

RULING OF THE COURT

After a thorough consideration of the parties' arguments *vis-à-vis* the pertinent laws and jurisprudence, the Court finds partial merit in the instant Petitions for Review.

The Court essays the reasons for its conclusion below, *in seriatim*.

PETITIONER IS NOT ENTITLED TO THE REFUND OF THE PASSED-ON VALUE-ADDED TAX (VAT) ON ITS LOCAL PURCHASES.

Petitioner's input VAT for the 1^{st} and 2^{nd} Quarters VAT Returns for TY 2017 are summarized below:

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[87] Respondent's proposed issue and deemed as subsumed in the resolution of the main issue is WHETHER PETITIONER IS ENTITLED TO A TAX CREDIT OR REFUND OF VAT FOR THE 1^{ST} AND 2^{ND} QURATERS OF TAXABLE YEAR 2017 IN THE AMOUNT OF ₱45,499,623.59 AND ₱47,260,792.90, RESPECTIVELY, OR IN THE AGGREGATE AMOUNT OF ₱92,760,416,49.

Input Taxes	First Quarter 2017 per Amended Quarterly VAT Return[88]	Second Quarter 2017 per Amended Quarterly VAT Return[89]	Total
Local purchases of capital goods exceeding ₱1 million	₱972,283.37	₱690,720.37	₱1,663,003.74
Local purchases of goods other than capital goods	29,137,971.97	27,722,387.39	56,860,359.36
Importation	1,333,268.00	1,656,916.00	2,990,184.00
Local purchases of services	77,637,260.72	81,587,374.63	159,224,635.35
Purchases of services rendered by non-residents	2,638,195.23	7,285,453.32	9,923,648.55
	₱111,718,979.29	**₱118,942,851.71**	**₱230,661,831.00**

Petitioner argues that, even if it is not considered as the statutory taxpayer under the law, it is allowed to claim a tax refund or to the issuance of tax credit certificate (**TCC**) for the input VAT paid on its local purchases attributable to its gaming revenues. According to petitioner, PD 1869, as amended, clearly grants it an exemption from both direct and indirect taxes.

For his part, respondent maintains that a person engaged in zero-rated or effectively zero-rated sales is not entitled to the refund of input VAT passed-on to it by its suppliers as the proper recourse is not to claim for refund against the government but to seek reimbursement against the seller who shifted the input VAT.

We agree with respondent.

In *Coral Bay*[90], the Supreme Court ruled that the proper party to seek the tax refund or credit should be the suppliers and the claimant's proper recourse is not against the government but against the seller who had shifted the output VAT to it. We quote:

> ...
>
> ...[T]he purchases of goods and services by the petitioner that were destined for consumption within the ECOZONE should be free of VAT; hence, no input VAT should then be paid on such purchases, rendering the petitioner not entitled to claim a tax refund or credit.

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88 Exhibit "P-13", Division Docket (CTA Case No.10029), Volume II, pp. 597-598.
89 Exhibit "P-23", id., pp. 625-626.
90 Supra at note 36; Citations omitted and emphasis supplied.

> Verily, if the petitioner had paid the input VAT, the CTA was correct in holding that the petitioner's proper recourse was not against the Government but against the seller who had shifted to it the output VAT following RMC No. 42-03, which provides:
>
>> In case the supplier alleges that it reported such sale as a taxable sale, the substantiation of remittance of the output taxes of the seller (input taxes of the exporter-buyer) can only be established upon the thorough audit of the suppliers' VAT returns and corresponding books and records. It is, therefore, imperative that the processing office recommends to the concerned BIR Office the audit of the records of the seller.
>>
>> In the meantime, the claim for input tax credit by the exporter-buyer should be denied without prejudice to the claimant's right to seek reimbursement of the VAT paid, if any, from its supplier.
>
> We should also take into consideration the nature of VAT as an indirect tax. Although the seller is statutorily liable for the payment of VAT, the amount of the tax is allowed to be shifted or passed on to the buyer. **However, reporting and remittance of the VAT paid to the BIR remained to be the seller/supplier's obligation. Hence, the proper party to seek the tax refund or credit should be the suppliers, not the petitioner.**
>
> ...

Applying the foregoing to the instant cases, the proper party to seek the tax refund or credit is not petitioner but its suppliers. In fact, to allow petitioner a refund of input VAT on its domestic purchases of goods and services (where there is no right to demand it against the government) would unduly enrich petitioner at the expense of the government. It bears noting that petitioner, as an indirect taxpayer, was not able to establish the **nexus between its payments to its local suppliers of the input VAT and the erroneous remittance thereof to the government**, which is one of the essential requisites of the relief sought by petitioner under Section 229[91] of the National Internal Revenue Code (**NIRC**) of 1997, as amended.

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[91] **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;

Moreover, petitioner's reliance on the case of *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*[92] (**PAL**) to exempt the instant case from the general rule is untenable. In *PAL*, the Supreme Court categorically ruled that, in general, only the statutory taxpayer has the legal personality to file a claim for refund **except for taxpayers that are clearly and unequivocally conferred with indirect tax exemption by a special law**, to wit:

> ...
>
> In this relation, Section 204(c) of the NIRC states that it is the statutory taxpayer which has the legal personality to file a claim for refund. Accordingly, in cases involving excise tax exemptions on petroleum products under Section 135 of the NIRC, the Court has consistently held that it is the statutory taxpayer who is entitled to claim a tax refund based thereon and not the party who merely bears its economic burden.
>
> For instance, in the *Silkair* case, Silkair (Singapore) Pte. Ltd. (Silkair Singapore) filed a claim for tax refund based on Section 135(b) of the NIRC as well as Article 4(2) of the Air Transport Agreement between the Government of the Republic of the Philippines and the Government of the Republic of Singapore. The Court denied Silkair Singapore's refund claim since the tax exemptions under both provisions were conferred on the statutory taxpayer, and not the party who merely bears its economic burden. As such, it was the Petron Corporation (the statutory taxpayer in that case) which was entitled to invoke the applicable tax exemptions and not Silkair Singapore which merely shouldered the economic burden of the tax. As explained in *Silkair*:
>
>> **The proper party to question, or seek a refund of, an indirect tax is the statutory taxpayer, the person on whom the tax is imposed by law and who paid the same even if he shifts the burden thereof to another**. Section 130(A)(2) of the NIRC provides that "[u]nless otherwise specifically allowed, the return shall be filed and the excise tax paid by the manufacturer or producer before removal of domestic

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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.

92 G.R. No. 198759, 01 July 2013; Citations omitted, emphasis, italics and underscoring in the original text and supplied.

> products from place of production." Thus, Petron Corporation, not Silkair, is the statutory taxpayer which is entitled to claim a refund based on Section 135 of the NIRC of 1997 and Article 4(2) of the Air Transport Agreement between RP and Singapore.
>
> Even if Petron Corporation passed on to Silkair the burden of the tax, the additional amount billed to Silkair for jet fuel is not a tax but part of the price which Silkair had to pay as a purchaser.

However, the abovementioned rule should not apply to instances where the law clearly grants the party to which the economic burden of the tax is shifted an exemption from both direct and indirect taxes. In which case, the latter must be allowed to claim a tax refund even if it is not considered as the statutory taxpayer under the law. Precisely, this is the peculiar circumstance which differentiates the *Maceda* case from *Silkair*.

To elucidate, in *Maceda*, the Court upheld the National Power Corporation's (NPC) claim for a tax refund since its own charter specifically granted it an exemption from both direct and indirect taxes, *viz*:

> x x x [T]he Court rules and declares that the oil companies which supply bunker fuel oil to NPC have to pay the taxes imposed upon said bunker fuel oil sold to NPC. By the very nature of indirect taxation, the economic burden of such taxation is expected to be passed on through the channels of commerce to the user or consumer of the goods sold. **<u>Because, however, the NPC has been exempted from both direct and indirect taxation</u>**, **<u>the NPC must be held exempted from absorbing the economic burden of indirect taxation</u>**. This means, on the one hand, that the oil companies which wish to sell to NPC absorb all or part of the economic burden of the taxes previously paid to BIR, which they could shift to NPC if NPC did not enjoy exemption from indirect taxes. This means also, on the other hand, that the NPC may refuse to pay the part of the "normal" purchase price of bunker fuel oil which represents all or part of the taxes previously paid by the oil companies to BIR. **If NPC nonetheless purchases such oil from the oil companies — because to do so may be more convenient and ultimately less costly for NPC than NPC itself importing and hauling and storing the oil from overseas — <u>NPC is entitled to be reimbursed by the BIR for that part of the buying</u>**

> **price of NPC which verifiably represents the tax already paid by the oil company-vendor to the BIR**.

Notably, the Court even discussed the *Maceda* ruling in *Silkair*, highlighting the relevance of the exemptions in NPC's charter to its claim for tax refund:

> Silkair nevertheless argues that it is exempt from indirect taxes because the Air Transport Agreement between RP and Singapore grants exemption "from the same customs duties, inspection fees and other duties or taxes imposed in the territory of the first Contracting Party." **It invokes *Maceda v. Macaraig, Jr.* which upheld the claim for tax credit or refund by the National Power Corporation (NPC) on the ground that the NPC is exempt even from the payment of indirect taxes.**
>
> Silkair's argument does not persuade. In *Commissioner of Internal Revenue v. Philippine Long Distance Telephone Company*, this Court clarified the ruling in *Maceda v. Macaraig, Jr.*, *viz*:
>
> > It may be so that in *Maceda vs. Macaraig, Jr.*, the Court held that an exemption from "*all taxes*" granted to the National Power Corporation (NPC) under its charter includes both direct and indirect taxes. But far from providing PLDT comfort, *Maceda* in fact supports the case of herein petitioner, the correct lesson of *Maceda* being that an exemption from "all taxes" excludes indirect taxes, **unless the exempting statute, like NPC's charter, is so couched as to include indirect tax from the exemption**. Wrote the Court:
> >
> > > x x x However, the amendment under Republic Act No. 6395 enumerated the details covered by the exemption. Subsequently, P.D. 380, made even more specific the details of the exemption of NPC to cover, among others, ***both direct and indirect taxes*** on all petroleum products used in its operation. Presidential Decree No. 938 [NPC's amended charter] amended the tax

> exemption by simplifying the same law in general terms. It succinctly exempts NPC from "all forms of taxes, duties[,] fees..."
>
> The use of the phrase "all forms" of taxes demonstrates the intention of the law to give NPC all the tax exemptions it has been enjoying before...
>
> xxxx
>
> It is evident from the provisions of P.D. No. 938 that its purpose is to maintain the tax exemption of NPC from ***all forms*** of taxes including indirect taxes as provided under R.A. No. 6395 and P.D. 380 if it is to attain its goals.

> The exemption granted under Section 135(b) of the NIRC of 1997 and Article 4(2) of the Air Transport Agreement between RP and Singapore cannot, without a clear showing of legislative intent, be construed as including indirect taxes. Statutes granting tax exemptions must be construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority, and if an exemption is found to exist, it must not be enlarged by construction.

Based on these rulings, it may be observed that the propriety of a tax refund claim is hinged on the kind of exemption which forms its basis. If the law confers an exemption from both direct or indirect taxes, a claimant is entitled to a tax refund even if it only bears the economic burden of the applicable tax. On the other hand, if the exemption conferred only applies to direct taxes, then the statutory taxpayer is regarded as the proper party to file the refund claim.

In this case, PAL's franchise grants it an exemption from both direct and indirect taxes on its purchase of petroleum products. Section 13 thereof reads:

> SEC. 13. In consideration of the franchise and rights hereby granted, the grantee [PAL] shall pay to the Philippine Government during the life of this franchise whichever of subsections (a) and (b) hereunder will result in a lower tax:

(a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or

(b) A franchise tax of two per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or nontransport operations; provided, that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax.

The tax paid by the grantee under either of the above alternatives shall be **in lieu of all other taxes**, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description, imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future, **including but not limited** to the following:

1. All taxes, duties, charges, royalties, or fees due on local purchases by the grantee of aviation gas, fuel, and oil, whether refined or in crude form, and whether such taxes, duties, charges, royalties, or fees are **directly due from or imposable upon the purchaser or the seller, producer, manufacturer, or importer of said petroleum products but are billed or passed on the grantee either as part of the price or cost thereof or by mutual agreement or other arrangement**; provided, that all such purchases by, sales or deliveries of aviation gas, fuel, and oil to the grantee shall be for exclusive use in its transport and nontransport operations and other activities incidental thereto;

2. All taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations by the grantee of aircraft, engines, equipment, machinery, spare parts, accessories, commissary and catering supplies, aviation gas, fuel, and oil, whether refined or in crude form and other articles, supplies, or materials; provided, that such articles or supplies or materials are imported for the use of the grantee in its transport and transport operations and other activities incidental thereto and

> are not locally available in reasonable quantity, quality, or price[.]
>
> x x x x
>
> Based on the above-cited provision, PAL's payment of either the basic corporate income tax or franchise tax, whichever is lower, shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges, except only real property tax. The phrase "in lieu of all other taxes" includes but is not limited to taxes that are "directly due from or imposable upon the purchaser or the seller, producer, manufacturer, or importer of said petroleum products but are billed or passed on the grantee either as part of the price or cost thereof or by mutual agreement or other arrangement." *In other words, in view of PAL's payment of either the basic corporate income tax or franchise tax, whichever is lower, PAL is exempt from paying: (a) taxes directly due from or imposable upon it as the purchaser of the subject petroleum products; and (b) the cost of the taxes billed or passed on to it by the seller, producer, manufacturer, or importer of the said products either as part of the purchase price or by mutual agreement or other arrangement.* Therefore, given the foregoing direct and indirect tax exemptions under its franchise, and applying the principles as above-discussed, PAL is endowed with the legal standing to file the subject tax refund claim, notwithstanding the fact that it is not the statutory taxpayer as contemplated by law.
>
> ...

As elucidated above, the only time that the non-statutory taxpayer is given the right to claim a tax refund or credit (even if it only bears the economic burden of the applicable tax) is when the law confers upon it an exemption from both direct or indirect taxes.

However, in the case at bar, the provision relied upon in PD 1869, as amended, which states that "...exemption 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" could hardly be considered as an unmistakable grant of indirect tax exemption in petitioner's favor, so as to make it similarly situated as PAL.

In fact, even in the other cases that petitioner cited, the same are bereft of any clear and unequivocal grant of indirect tax exemption insofar as its transactions with its suppliers are concerned.

In *The Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation*[93] as cited in *Philippine Amusement and Gaming Corporation (PAGCOR) v. The Bureau of Internal Revenue (BIR), et al.*[94] (**2011 PAGCOR**), the Supreme Court merely affirmed that the transactions between PAGCOR and Acesite (Philippines) Hotel Corporation (**Acesite**), as local supplier of service to PAGCOR, were effectively zero-rated, to wit:

> ...
> 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. <u>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)</u>, which provides:
>
>> 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 . . . ; 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%) rated. —
>>
>> x x x x
>>
>> (3) **Services rendered to persons or entities whose exemption under special laws or**

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[93] G.R. No. 147295, 16 February 2007; Citations omitted, emphasis and underscoring supplied.
[94] G.R. No. 172087, 15 March 2011.

> international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero (0%) rate[.]
>
> The rationale for the exemption from indirect taxes provided for in P.D. 1869 and the extension of such exemption to entities or individuals dealing with PAGCOR in casino operations are best elucidated from the 1987 case of Commissioner of Internal Revenue v. John Gotamco & Sons, Inc., where the absolute tax exemption of the World Health Organization (WHO) upon an international agreement was upheld. We held in said case that the exemption of contractee WHO should be implemented to mean that the entity or person exempt is the contractor itself who constructed the building owned by contractee WHO, and such does not violate the rule that tax exemptions are personal because the manifest intention of the agreement is to exempt the contractor so that no contractor's tax may be shifted to the contractee WHO. <u>Thus, the proviso in P.D. 1869, extending the exemption to entities or individuals dealing with PAGCOR in casino operations, is clearly to proscribe any indirect tax, like VAT, that may be shifted to PAGCOR</u>.
>
> ...

Thus, a closer reading of the above case reveals that the Supreme Court merely characterized Acesite's sale of services to PAGCOR as effectively zero-rated. However, nowhere therein gave PAGCOR's licensees a clear and unequivocal grant of indirect tax exemption with respect to the latter's purchases from its own suppliers. In other words, the Supreme Court merely passed upon in *PAL* the proper tax treatment of PAGCOR's licensees' sale of services to PAGCOR, without conferring upon the former the same indirect tax exemption as regards its purchases from its own suppliers.

Even in *Bloomberry*[95], the Supreme Court merely declared that like PAGCOR, its contractees and licensees remain exempted from the payment of corporate income tax and other taxes since the law is clear that said exemption inures to their benefit, to wit:

> ...
>
> Section 13 of PD No. 1869 evidently states that payment of the 5% franchise tax by PAGCOR and its *contractees and licensees* exempts them from payment of any other taxes, including corporate income tax, quoted hereunder for ready reference:

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[95] Supra at note 40; Citation omitted, emphasis, italics and underscoring in the original text.

Sec. 13. Exemptions. -

x x x x

(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, <u>except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the Corporation from its operation</u> 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, <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>

As previously recognized, the above-quoted provision providing for the said exemption was neither amended nor repealed by any subsequent laws (*i.e.* Section 1 of R.A. No. 9337 which amended Section 27(C) of the NIRC of 1997); thus, it is still in effect. Guided by the doctrinal teachings in resolving the case at bench, it is without a doubt that, like PAGCOR, its *contractees and licensees* remain exempted from the payment of corporate income tax and other taxes since the law is clear that said exemption inures to their benefit.

> We adhere to the cardinal rule in statutory construction that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. As has been our consistent ruling, where the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application.
>
> As the PAGCOR Charter states in unequivocal terms that exemptions 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 PAGCOR or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise, so it must be that all *contractees and licensees* of PAGCOR, upon payment of the 5% franchise tax, shall likewise be exempted from all other taxes, including corporate income tax realized from the operation of casinos.
>
> For the same reasons that made us conclude in the 10 December 2014 Decision of the Court sitting En Banc in G.R. No. 215427 that PAGCOR is subject to corporate income tax for "other related services", we find it logical that its *contractees and licensees* shall likewise pay corporate income tax for income derived from such "related services."
>
> ...

Thus, in the absence of clear and unequivocal grant of indirect tax exemption in favor of petitioner in relation to its transactions with its suppliers, the general rule as exemplified in *Coral Bay* and *Silkair (Singapore) Pte, Ltd. v. Commissioner of Internal Revenue*[96] applies to it.

As such, the proper party to question or seek a refund of the passed-on input VAT on its local purchases are still its suppliers upon whom the law imposes the tax and who paid and remitted the same to the government even if they shifted the burden thereof to petitioner. Corollary, petitioner's sole recourse would be to demand reimbursement from its local suppliers for the VAT it paid on its purchases.

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[96] G.R. No. 173594, 06 February 2008.

As held in *The City of Iloilo, et al. v. SMART Communications, Inc.* [97] (**SMART**):

> ...
>
> A tax exemption cannot arise from vague inference... Tax exemptions must be clear and unequivocal. A taxpayer claiming a tax exemption must point to a specific provision of law conferring on the taxpayer, in clear and plain terms, exemption from a common burden. Any doubt whether a tax exemption exists is resolved against the taxpayer.
>
> ...

In view of the above disquisitions, the Court holds that petitioner, not being the statutory taxpayer, does not have the personality to claim the refund of the passed-on VAT on its local purchases.

PETITIONER IS ENTITLED TO THE REFUND OF VALUE-ADDED TAX (VAT) ON IMPORTATION AND SERVICES RENDERED BY NON-RESIDENTS.

While petitioner is not the statutory taxpayer for its local purchases of goods and services (hence not the proper party to seek refund from the government), it is the statutory taxpayer *as regards its importations and purchase of services rendered by non-residents* as petitioner is the one mandated to pay and remit the VAT to the government, through payment to the Bureau of Customs (**BOC**), in case of importations, or by filing BIR Form No. 1600 (Monthly Remittance Return of VAT and Other Percentage Taxes Withheld) with the BIR with respect to services rendered by non-residents. Hence, *Coral Bay*[98] is inapplicable insofar as petitioner's importations and services rendered by non-residents directly related to its gaming license are concerned.

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[97] G.R. No. 167260, 27 February 2009 citing *Digital Telecommunications, Inc. v. City Government of Batangas, et al.*, G.R. No. 156040, 11 December 2008.

[98] Supra at note 36.

Furthermore, since PAGCOR's exemption inures to its benefit, petitioner should have not paid the related input VAT imposed on its importations and services rendered by non-residents that are directly related to the operation of its gaming license as provided under Section 13 of PD 1869, as amended.

It is worth noting that petitioner, in determining the amount to be claimed for refund, allocated its common expenses between its VATable revenues from hotel operations and its VAT-exempt revenues from casino operations. *However*, such method cannot be permitted in the instant case. Anent thereto, Section 13 of PD 1869, as amended, provides that only "... importations of equipment ... for the **sole and exclusive use of the casinos**,... shall be exempt from the payment of all kinds of customs duties, taxes and other imposts" and "... [t]he exemption herein granted... shall inure to the benefit of and extend to corporation(s)... with whom the Corporation or operator has any contractual relationship in connection **with the operations of the casino(s)**... and to those receiving compensation or other remuneration from the Corporation or operator as a result of **essential facilities furnished**...". Clearly, only those purchases or importations directly related and attributable to petitioner's VAT-exempt gaming and casino operations can be the subject of the claim for refund.

Proceeding to the determination of petitioner's entitlement to refund, Sections 204(c) and 229 of the NIRC of 1997, as amended, provide:

> ...
> **Sec. 204.** *Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes. – ...*
>
> ...
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority... **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.
> ...

> **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.[99]
>
> ...

It is well-settled that the following requirements must be complied with in order to prove a claim for refund of taxes erroneously paid or illegally collected pursuant to the said provisions:

(1) That the taxpayer should **file a written claim for refund or tax credit with the BIR Commissioner within two (2) years from the date of payment of the tax or penalty**, non-compliance with which the latter is precluded from exercising his authority thereon;[100]

(2) That, **if denied or not acted upon within said period, the petition for refund be filed with the CTA within 30 days from receipt of the denial AND within said two (2)-year period from the date of payment of the tax or penalty regardless of any supervening cause**, otherwise, the claim for refund shall have prescribed;[101]

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[99] Emphasis supplied.

[100] See *Commissioner of Internal Revenue v. Victorias Milling Co., Inc., et al.*, G.R. No. L-24108, 03 January 1968.

[101] See *Allison J. Gibbs, et al. v. Collector of Internal Revenue, et al.*, G.R. No. L-13453, 29 February 1960.

(3) The claim for refund must be a **categorical demand for reimbursement**;[102] and,

(4) There must be proof of payment of the erroneously or illegally collected taxes.[103]

With respect to the *first*, *second*, and *third requisites*, petitioner's administrative and judicial claims for refund of erroneously paid VAT on importation for the 1st quarter of TY 2017 and on services rendered by non-residents (directly attributable and related to its gaming license) for the month of February 2017 were timely filed, as shown by the table below:

QUARTER	WHEN PAID or REMITTED	LAST DAY OF THE 2-YEAR PRESCRIPTIVE PERIOD	WHEN ADMINISTRATIVE CLAIM WAS FILED	WHEN PETITION FOR REVIEW WAS FILED
VAT on importation directly related to its gaming license[104]				
First quarter	03/13/2017[105]	03/13/2019	11/23/2018[106]	02/20/2019[107]
VAT on services rendered by non-residents directly related to its gaming license[108]				
First quarter - January	02/10/2017[109]	02/10/2019	11/23/2018[110]	02/20/2019[111]
First quarter - February	03/10/2017[112]	03/10/2019	11/23/2018[113]	02/20/2019[114]

On the other hand, the claim for refund or credit on the VAT paid on services rendered by non-residents for the month of January 2017 (directly attributable and related to its gaming license) had already *prescribed* considering that the two-year prescriptive period ended on 10 February 2019 (from its filing on 10 February 2017) while

102 See Santiago M. *Bermejo v. The Collector of Internal Revenue*, G.R. No. L-3029. July 25, 1950.
103 See *Emmanuel & Zenaida Aguilar v. Commissioner of Internal Revenue*, CA-G.R. SP-16432, 30 March 1990.
104 Exhibit "P-239".
105 Receipt date *per* Summary of Settlement of Duties and Taxes (SSDT), Exhibit "P-239-2".
106 Exhibit "P-15", Division Docket (CTA Case No.10029), Volume II, pp. 600-611.
107 Petition for Review, id., Volume I, p. 10.
108 Exhibits "P-251-1".
109 Date filed per BIR Form No. 1600, Exhibit "P-251-1".
110 Supra at note 106.
111 Supra at note 107.
112 Date filed per BIR Form No. 1600, Exhibit "P-251-2".
113 Supra at note 106.
114 Supra at note 107.

the Petition for Review[115] covering the same period was filed only on 20 February 2019.[116]

As to the *fourth requisite*, the ICPA finds the following input VAT on importations and services rendered by non-residents that are directly attributable to petitioner's gaming license as valid and substantiated:[117]

Particulars	**Input VAT**		
	First Quarter	**Second Quarter**	**Total**
Importation of goods other than capital goods:			
Directly attributable to exempt sales (gaming purchases)	₱9,737.00	-	₱9,737.00
Services rendered by non-residents:			
Directly attributable to exempt sales (gaming purchases)	621,537.95	-	621,537.95
Total amount of valid input taxes	**₱631,274.95**	-	**₱631,274.95**

However, further verification of petitioner's documents and schedules reveals that no proof of payment of BIR Form No. 1600, representing the input VAT on services rendered by non-residents, was presented or adduced as evidence. By themselves, electronically filed returns are not enough to show that taxes, indeed, were erroneously or illegally paid to or collected by the government.

As the Supreme Court held in *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*[118], the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven, *viz*:

> ...
>
> On a final note, the Court reiterates its consistent ruling that actions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, **but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven. The burden**

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[115] For CTA Case No. 10029.

[116] Supra at note 4.

[117] Exhibit "P-39", ICPA Report, Table 23, p. 23.

[118] G.R. No. 222428, 19 February 2018 citing *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, 18 February 2008; Citations omitted and emphasis supplied.

> **is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit.** Since taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed.
>
> ...

The Court affirms that petitioner should not have been subjected to VAT on its purchases of goods and services considering that the tax exemption privileges of PAGCOR is extended to it pursuant to Section 13 of PD 1869, as amended, and as held in *2011 PAGCOR.*[119] However, in the absence of a clear and unequivocal grant of indirect tax exemption insofar as its transactions with its own suppliers are concerned, what applies to it is the general rule that only the statutory taxpayer may apply for claim for refund under Section 229 of the NIRC of 1997, as amended.

In sum, petitioner is only entitled to the refund of VAT on its importation of goods other than capital goods.

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 Thirty-Seven Pesos (**₱9,737.00**), representing its erroneous payment of input VAT on importation directly attributable to its gaming operations.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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119 Supra at note 94.

I CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice