Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

GRAND PLAZA HOTEL CORPORATION,
Respondent.

CTA EB CASE NO. 786
(CTA Case No. 7794)

Present:
ACOSTA, P.J.,
CASTAÑEDA, JR.
BAUTISTA
UY
CASANOVA
PALANCA-ENRIQUEZ
FABON-VICTORINO
MINDARO-GRULLA
COTANGCO-MANALASTAS, JJ.

Promulgated:
JUL 27 2012 ... 9:00 a.m.

x--x

D E C I S I O N

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *En Banc* under Rule 4, Section 2(a)(1), in relation to Rule 8, Section 4(b) of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA)[1], as

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[1] Sec. 2. *Cases within the jurisdiction of the Court en banc.*- The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies- Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;

xxx xxx xxx

Sec. 4. *Where to appeal; mode of appeal.*-
(a) xxx.

amended, of the Decision[2] dated February 18, 2011, rendered by the Third Division[3] of this Court in CTA Case No. 7794, and its Resolution[4] dated May 17, 2011.

Petitioner Commissioner of Internal Revenue (CIR) assailed both the aforesaid Decision and Resolution, the dispositive portions of which, respectively, read as follows:

Decision dated February 18, 2011:

> *"WHEREFORE, premises considered, the instant Petition for Review and Supplemental Petition for Review are hereby **GRANTED**. Accordingly, the assessment issued against petitioner for deficiency value-added tax in the amount of P228,943,589.15 for taxable years 1996 to 2002 is hereby **CANCELLED**..*
>
> *SO ORDERED."*

Resolution dated May 17, 2011:

> *"WHEREFORE, premises considered, respondent's Motion for Reconsideration is hereby **DENIED** for lack of merit.*
>
> *SO ORDERED."*

The instant case involves the assessment of CIR against Grand Plaza Hotel Corporation (referred herein as "GPHC") for deficiency

(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.
(c) xxx.

[2] En Banc Docket, pp. 24-48.
[3] Composed of Associate Justice Lovell R. Bautista, Associate Justice Olga Palanca-Enriquez and Associate Justice Amelia R. Cotangco-Manalastas.
[4] En Banc Docket, pp. 49-52.

Value Added Tax (VAT) for its transaction with the Philippine Amusement and Gaming Corporation (PAGCOR). GPHC claims that the transactions involve VAT at zero percent (0%) rate and that PAGCOR is a tax-exempt entity under special laws. Thus, PAGCOR being exempt from VAT, GPHC concludes that it extends to its transaction thereto. CIR claims otherwise, she resolutely maintains that as early January 1, 1996 upon the effectivity of Republic Act (RA) No. 7716[5] , PAGCOR's franchise was repealed and thus subject to VAT; RA 7716 neither repeals PAGCOR's franchise nor removes its tax exemption.

The pertinent facts as narrated by this Court's Division are as follows:

> *"xxx Grand Plaza Hotel Corporation[6] (herein referred as "GPHC") is a corporation duly organised and existing under and by virtue of the Philippine laws, with principal office located at 10th Floor, The Heritage Hotel, EDSA Extension corner Roxas Boulevard, Pasay City.*
>
> *xxx Commissioner of the Bureau of Internal Revenue(CIR)[7], who is vested with authority to implement national internal revenue laws. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.*
>
> *On December 11, 2006, a Preliminary Assessment Notice (PAN) dated November 28, 2006 was received by GPHC indicating*

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[5] An Act Restructuring The Value Added Tax (Vat) System, Widening Its Tax Based And Enhancing Its Administration And For These Purposes Amending And Repealing The Relevant Provisions Of The National Internal Revenue Code, As Amended, And For Other Purposes.
[6] Grand Plaza Hotel Corporation was the petitioner while the Commissioner of Internal Revenue(CIR) was respondent in the Third Division. Before the Court en banc, Grand Plaza Hotel Corporation (referred herein as "*GPHC*") is the respondent while the Commissioner of Internal Revenue (CIR) is the petitioner.
[7] Ibid.

its alleged liability for deficiency VAT for taxable year 2002 amounting to P228,943,589.15, inclusive of interest. This deficiency VAT arose from the Corporation's transaction with the Philippine Amusement and Gaming Corporation (PAGCOR).

The Details of Discrepancy attached to the PAN showed that GPHC erroneously recorded its transactions with PAGCOR, amounting to P194,122,294.84, as exempt sales when the transaction should have been subject to VAT. CIR averred that PAGCOR's Charter had been effectively amended by Republic Act (RA) No. 7716 or the E-VAT law on January 1, 1996 and by Section 108 of the National Internal Revenue Code(NIRC) of 1997. CIR likewise alleged that the Corporation is liable for output tax on previous years'(covering the period from 1996 to 2001)transactions with PAGCOR totalling P108,714,740.83, since PAGCOR is subject to VAT beginning January 1, 1996.

On December 27, 2006, GPHC, through its external auditors Fernandez Santos & Lopez, filed its letter-reply to the PAN. In its letter-reply, GPHC maintained that PAGCOR refuses to PAY the VAT on its transactions with GPHC, citing Section 13(2)(a) of Presidential Decree(PD) No. 1869 (hereinafter referred to as the "PAGCOR Charter")which exempts it from all kinds of taxes, levies, fees or assessment of any kind, nature or description levied, established or collected by any municipal, provincial or national government authority. GPHC also averred that PAGCOR is relying on Section 108(B)(3) of the Tax Code, which imposes VAT at zero percent(0%) on services rendered to tax-exempt entities under special laws, such as PAGCOR. Finally, the Corporation asserted that the assessment for alleged deficiency VAT for its previous years (1996 to 2001) transactions with PAGCOR is already barred by prescription.

On December 29, 2006, GPHC received a Formal Letter of Demand (FLD) dated December 27, 2006 for VAT Assessment No. VT-02-000213, essentially repeating the findings in the PAN. Attached to the FLD were the details of the tax deficiency assessment.

On January 26, 2007, GPHC, through its external auditors Fernandez Santos & Lopez, filed its letter-protest. In the said letter-protest, GPHC reiterated its arguments in its December 27, 2006 letter-reply to the PAN.

On May 14, 2008, GPHC received the Final Decision on Disputed Assessment (FDDA) dated February 28, 2008, finding the Corporation liable for deficiency VAT amounting to P228,943,589.15, inclusive of interest. CIR cited the following as basis of his decision:

> *"1. PAGCOR transactions (P194,122,294.84) – per verification, this amount regarded as exempt sales, when in fact it was transaction between you and PAGCOR. VAT Ruling No. 029-03 dated June 20, 2003 explicitly confirms that the 10% VAT on transactions with PAGCOR can be passed on to the entity. PAGCOR's charter has been amended by RA7716(EVAT Law) effective January 1, 1996 and under Section 108 of the 1997 Tax Code.*
>
> *2. Output tax from previous years PAGCOR transactions (P108,714,740.83)- as ruled upon in the above ruling, PAGCOR transaction is already subject to VAT beginning January 1, 1996. The basic VAT due from previous years was lifted from the account A/R PAGCOR Tax."*

As a consequence, GPHC filed the instant Petition for Review and Supplemental Petition for Review on June 11, 2008 and October 20, 2008, respectively.

For his part, CIR filed his Answer on August 1, 2008 and Supplemental Answer on January 29, 2009, xxx:

xxx xxx xxx.

On February 16, 2009, the parties submitted their Joint Stipulation of Facts and Issues, which was approved in a Resolution promulgated on February 23, 2009. In the same Resolution, the Pre- trial Conference was terminated.

During trial, a Motion for Preliminary Hearing for the Limited Purpose of Resolving the Legal Issues was filed by the Corporation on February 25, 2009, praying for this Court to allow the conduct of a preliminary hearing in order for the parties to adduce evidence solely on the two legal issues, namely: (a) whether or not the Petition for Review was filed within the prescriptive period as required by law; and (b) whether or not transactions between GPHC and PAGCOR for the taxable year 2002 is subject to ten percent (10%) VAT rate. The said Motion was granted in a Resolution dated April 13, 2009.

GPHC presented and offered in evidence Exhibits "A" to "M" for the limited purpose of resolving the legal issues. The said exhibits were thereafter admitted in a Resolution dated September 4, 2009.

On the other hand, during the hearing held on November 26, 2009, CIR manifested that he will not present any evidence since the same pertains only to legal issues. Both parties also manifested their intention to file their respective Memorandum.

> *Hence, this Court granted the parties thirty (30) days from November 26, 2009, within which to file their Memoranda.*
>
> *The Memorandum for the Corporation was filed on January 25, 2010. On the same date, CIR's Memorandum was filed through registered mail. Thus, on February 23, 2010, the case was submitted for decision of this Court."*

On February 18, 2011, this Court's Division rendered a Decision granting the Corporation's petition and cancelling the CIR's assessment of the deficiency value-added tax in the amount of P228,943,589.15 for the taxable years 1996 to 2002. The CIR filed a Motion for Reconsideration on the ground that the PAGCOR is a franchise holder which was explicitly made subject to VAT by Republic Act 7716 and that the Acesite case is not controlling, but to no avail. It was denied in a Resolution[8] dated May 17, 2011.

Thus, the CIR filed a Petition for Review[9] before this Court *En Banc*, assailing the Decision and Resolution of this Court in Division and rehashed the arguments previously raised in this Court's Division.

The CIR assigned these errors, as follows:

1. The Honorable Third Division failed to consider the fact that PAGCOR is a franchise holder and except for a few stated exemptions, all franchises were explicitly made subject to VAT by R.A. 7716 (EVAT law) and the NIRC of 1997; and

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[8] Supra Note 4.
[9] Ibid., pp. 7-51.

2. The decisions in the cases of Commissioner of Internal Revenue vs. Acesite Hotel Corporation and PAGCOR vs. CIR, G.R. No. 172087, March 15, 2011 are not controlling."[10]

The CIR argues that PAGCOR, a holder of a franchise under Presidential Decree 1869[11], was subjected to 10% VAT on sale or exchange of services by virtue of RA 7716 which amended Section 102 of the Old Tax Code. Accordingly, the CIR claims that RA 7716, which was later amended by R.A. 8241[12] and by the 1997 National Internal Revenue Code (NIRC), states that all LEGISLATIVE FRANCHISES become subject to the 10% VAT on sale or exchange of services, except only those franchise grantees of radio and television and broadcasting whose annual gross receipts of the preceding year does not exceed ten million pesos and which did not opt for VAT registration and electric, gas and water utilities. Thus, the services of the casino operation, being not included among the exceptions and that PAGCOR is included in services of "all other franchisee grantee", would be subject to VAT. Stated differently, the CIR argues that RA 7716 removed the

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[10] Ibid., p. 14.
[11] Consolidating And Amending Presidential Decree Nos. 1067-A, 1067-B, 1067-C, 1399 And 1632, Relative To The Franchise And Powers Of The Philippine Amusement And Gaming Corporation (PAGCOR)
[12] An Act Amending Republic Act No, 7716, Otherwise Known As The Expanded Value-Added Tax Law And Other Pertinent Provisions Of The National Internal Revenue Code As Amended.

exemption granted to PAGCOR with regard to VAT on sale or exchange of services is concerned.

On the other hand, GPHC in its comment[13] reiterates that the issues and arguments raised by the CIR were merely rehashed. It maintains that based on the doctrine of *stare decisis,* the same were settled in the cases of CIR vs. Acesite Hotel Corporation[14] and PAGCOR vs. CIR [15].

In a Resolution[16] dated September 1, 2011, this Court resolved to give due course to the petition. GPHC submitted its memorandum while the CIR did not submit her memorandum. Thereafter, the instant case was submitted for resolution.

On February 24, 2012, GPHC filed a "Motion for Early Resolution", praying that the petition be dismissed outright for the CIR's failure to file her memorandum. GPHC's motion is moot. The petition was already given due course and the same was already submitted for decision; hence, the case will be resolved on its merits.

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[13] En Banc Docket, pp. 59-83.
[14] G.R. No. 147295, February 16, 2007.
[15] G.R. No. 172087, March 15, 2011
[16] En Banc Docket, pp. 85-86.

Pertinently, Section 3 of RA 7716[17]- which took effect on January 1, 1996, provides as follows:

> *"Sec. 3. Section 102 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:*
>
> > ***"Sec. 102. Value-added tax on sale of services and use or lease of properties. — (a) Rate and base of tax. — There shall be levied, assessed and collected, a value-added tax equivalent to 10% of gross receipts derived from the sale or exchange of services, including the use or lease of properties.***
> >
> > *"The phrase 'sale or exchange of services' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including xxx services of franchise grantees of telephone and telegraph, radio and **television broadcasting and all other franchise grantees except those under Section 117 of this Code** xxx. (Emphasis supplied)*

By reason of the above-quoted provision, the CIR claims that PAGCOR, a franchise grantee, is included in the "all other franchise grantees" and not included among the exceptions under Section 117 (now 119 of the NIRC as amended).

Suffice it to say that the above-quoted provision, specifically, the catch all phrase **"... and all other franchise grantees except those under Section 117 (now Section 119) of this Code"** was retained and adopted

[17]An Act Restructuring The Value Added Tax (Vat) System, Widening Its Tax Based And Enhancing Its Administration And For These Purposes Amending And Repealing The Relevant Provisions Of The National Internal Revenue Code, As Amended, And For Other Purposes.

by the legislature when it amended the Tax Code in RA 8241[18], RA 8424[19] otherwise known as "Tax Reform Act of 1997" and RA 9337[20].

EO 273	RA 7716	RA 8241	RA 8424	RA 9337
"Sec. 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% percent of gross receipt derived by any person engaged in the sale of services. The phrase 'sale of services' means of performance of all kinds of services for others for a fee, renumeration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of personal property; lessors or distributors of cinematographic films; persons engaged in milling, processing , manufacturing or repacking goods for others; and similar services, regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties: *xxx*.	"Sec. 102. Value-added tax on sale of services and use or lease of properties. — (a) Rate and base of tax. — There shall be levied, assessed and collected, a value-added tax equivalent to 10% of gross receipts derived from the sale or exchange of services, including the use or lease of properties. "The phrase 'sale or exchange of services' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including xxx services of xxx **all other franchise grantees except those under Section 117 of this Code** xxx.	"Sec.102. Value-added tax on sale of services and use or lease of properties. — (a) Rate and base of tax. — There shall be levied assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties. "The phrase 'sale or exchange of services' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including xxx services of xxx of franchise grantees **all other franchise grantees except those under Section 117 of this Code**; xxx.	Section 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* - (A) *Rate and Base of Tax.* - There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties. The phrase 'sale or exchange of services' means the performance of all kinds or services in the Philippines for others for a fee, remuneration or consideration, including those; xxx services of xxx all other **franchise grantees except those under Section 119 of this Code**; xxx.	Section 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* - A) *Rate and Base of Tax.* - There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties: xxx xxx xxx. "The phrase **'sale or exchange of services'** means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those xxx services of xxx **all other franchise grantees except those under Section 119 of this Code and** xxx.

[18] An Act Amending Republic Act No, 7716, Otherwise Known As The Expanded Value-Added Tax Law And Other Pertinent Provisions Of The National Internal Revenue Code As Amended.
[19] An Act Amending The National Internal Revenue Code, As Amended, And For Other Purposes.
[20] 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.

However, despite the retention of the phase **"and all other franchise grantees"** in services subject to VAT, still, the legislature intended neither to amend the charter of PAGCOR nor did it intend to subject PAGCOR's sale or exchange of services to VAT. While said phrase was inexistent at the adoption of the VAT system under Executive Order (EO) No. 273[21], the phrase **"and all other franchise grantees",** which is heavily relied upon by the CIR allegedly subjecting PAGCOR to VAT, must be read in conjunction with the provisions relating to "Transactions Subject to Zero Rate" [22] and "Exempt Transactions"[23]. In the case of Fort Bonifacio Development Corporation vs. CIR[24], the Supreme Court instructively held that:

> *"A law must not be read in truncated parts; its provisions must be read in relation to the whole law. It is the cardinal rule in statutory construction that a statute's clauses and phrases must not be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole. Every part of the statute must be interpreted with reference to the context, i.e., that every part of the statute must be considered together with other parts of the statute and kept subservient to the general intent of the whole enactment.*
>
> *In construing a statute, courts have to take the thought conveyed by the statute as a whole; construe the constituent parts together; ascertain the legislative intent from the whole act; consider each and every provision thereof in the light of the general purpose of the statute; and endeavor to make every part effective, harmonious and sensible."*

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[21] Adopting A Value-Added Tax, Amending For This Purpose Certain Provisions Of The National Internal Revenue Code, And For Other Purposes.
[22] Section 102 (B) of the 1977 NIRC now Section 108 (B) of the 1997 NIRC.
[23] Section 103 of the 1977 NIRC now Section 109 of the 1997 NIRC.
[24] G.R. No. 158885 & 170680, October 2, 2009

In RA 7716, "Services rendered to persons or entities whose exemption under special laws" are transaction subject to zero rate[25] and "Transactions which are exempt under special laws" except those specifically specified are exempt from VAT[26]. The provisions pertaining to transaction subject to zero rate and exempt transactions were practically consistent with EO 273, RA 7716, RA 8241, RA 8424 and RA 9337, to wit:

EO 273	RA 7716	RA 8241	RA 8424	RA 9337
Sec. 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% percent of gross receipt derived by any person engaged in the sale of services. xxx. Provided, That the following services performed in the Philippines by VAT-registered persons shall be subject to 0%. or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero rate.	Sec.102. Value-added tax on sale of services and use or lease of properties.— (a) Rate and base of tax.—xxx. **(b)** Transactions subject to zero-rate. — The following services performed in the Philippines by VAT-registered persons shall be subject to 0%: (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.	Sec.102. Value-added tax on sale of services and use or lease of properties. — (a) Rate and base of tax.—xxx. **(b)** Transactions subject to zero percent (0%) rate. — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate; (3) Services rendered to persons or entities whose exemption under laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;	Section 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* - (A) *Rate and Base of Tax.* – (B) *Transactions Subject to Zero Percent (0%) Rate* - The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate. (3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;	Section 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* - (A) *Rate and Base of Tax.* - (B) *Transactions Subject to Zero Percent (0%) Rate.* - The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate: (3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;
Sec. 103. Exempt transactions. — The following shall be exempt from the value-added tax: xxx. (u) Transactions which are exempt under special laws or	Sec. 103. Exempt transactions. — The following shall be exempt from the value-added tax: (q) Transactions which are exempt under special laws,	Sec. 103. Exempt Transactions. — The following shall be exempt from the value-added tax: (q) Transactions which are exempt under international	Section 109. *Exempt Transactions.* - The following shall be exempt from the value-added tax: (q) Transactions which are exempt under international	SEC. 109. *Exempt Transactions.* - (1) Subject to the provisions of subsection (2) hereof, the following transactions shall be exempt from the

[25] Section 102 (b) of the 1977 NIRC.
[26] Section 103 (q) of the 1977 NIRC.

international agreements to which the Philippines is a signatory;	**except** those granted under Presidential Decree Nos. 66, 529, 972, 1491, and 1950, and non-electric cooperatives under Republic Act No. 6938, or international agreements to which the Philippines is a signatory;	agreements to which the Philippines is a signatory **or under special laws, except those** under Presidential Decree Nos. 66, 529, and 1590;	agreements to which the Philippines is a signatory or under special laws, **except those under** Presidential Decree Nos. 66, 529 and 1590;	value-added tax: **(K) Transactions which are** exempt under international agreements to which the Philippines is a signatory **or under special laws, except** those under Presidential Decree No. 529;

Based on the foregoing, while it appears that services of "all other franchise grantees" are subject to VAT, however, those transactions which are exempt by special laws to be exempt from VAT being included in the Exempt transactions shall be exempt from VAT and those services rendered to persons or entities whose exemption under special laws is subject to zero percent (0%) rate. Had the legislature intentionally intend to repeal the franchise of PAGCOR and remove its exemption from VAT, it could have done so but it did not. In the case of PAL vs. the Secretary of Finance and CIR[27], the Supreme Court held that:

> *"Among the provisions of the NIRC amended is § 103, which originally read:*
>
> > *§ 103. Exempt transactions. — The following shall be exempt from the value-added tax:*
> >
> > *. . . .*
> >
> > *(q) Transactions which are exempt under special laws or international agreements to which the Philippines is a signatory. Among the transactions exempted from the VAT were those of PAL because it was exempted under its franchise (P.D. No. 1590) from the payment of all "other taxes . . . now or in the near future," in*

[27] G.R. No. 115852 August 25, 1994

> *consideration of the payment by it either of the corporate income tax or a franchise tax of 2%*

As a result of its amendment by Republic Act No. 7716, § 103 of the NIRC now provides:

> *§ 103. Exempt transactions. — The following shall be exempt from the value-added tax:*
> *. . . .*
> *(q) Transactions which are exempt under special laws, except those granted under Presidential Decree Nos. 66, 529, 972, 1491, 1590. . . .*

The effect of the amendment is to remove the exemption granted to PAL, as far as the VAT is concerned.

xxx xxx xxx.

xxx, in the case at bar, Republic Act No. 7716 expressly amends PAL's franchise (P.D. No. 1590) by specifically excepting from the grant of exemptions from the VAT PAL's exemption under P.D. No. 1590. This is within the power of Congress to do under Art. XII, § 11 of the Constitution, which provides that the grant of a franchise for the operation of a public utility is subject to amendment, alteration or repeal by Congress when the common good so requires.

Moreover, in the case of Enato Diaz and Aurora Ma. F. Timbol vs. The Secretary of Finance and the Commissioner of Internal Revenue[28], the Supreme Court held that services of all other franchise grantees are subject to VAT, unless some provision of law especially excludes it, to wit:

"xxx. VAT is levied, assessed, and collected, according to Section 108, on the gross receipts derived from the sale or exchange of services as well as from the use or lease of properties. The third paragraph of Section 108 defines "sale or exchange of services" as follows:

> *The phrase 'sale or exchange of services' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real*

[28] G.R. No. 193007, July 19, 2011.

> *estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, resthouses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land relative to their transport of goods or cargoes; common carriers by air and sea relative to their transport of passengers, goods or cargoes from one place in the Philippines to another place in the Philippines; sales of electricity by generation companies, transmission, and distribution companies; services of franchise grantees of electric utilities, telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 119 of this Code and non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. (Underscoring supplied)*

It is plain from the above that the law imposes VAT on "all kinds of services" rendered in the Philippines for a fee, including those specified in the list. The enumeration of affected services is not exclusive. By qualifying "services" with the words "all kinds," Congress has given the term "services" an all-encompassing meaning. The listing of specific services are intended to illustrate how pervasive and broad is the VAT's reach rather than establish concrete limits to its application. Thus, every activity that can be imagined as a form of "service" rendered for a fee should be deemed included unless some provision of law especially excludes it.

xxx xxx xxx.

xxx.Section 108(A) of the Code clearly states that services of all other franchise grantees are subject to VAT, except as may be provided under Section 119 of the Code. Tollway operators are not among the franchise grantees subject to franchise tax under the latter provision. Neither are their services among the VAT-exempt transactions under Section 109 of the Code.

If the legislative intent was to exempt tollway operations from VAT, as petitioners so strongly allege, then it would have been well for the law to clearly say so. Tax exemptions must be justified by clear statutory grant and based on language in the law too plain to be mistaken. But as the law is written, no such exemption obtains for tollway operators. The Court is thus duty-bound to simply apply the law as it is found."

PAGCOR, a holder of a franchise under Presidential Decree 1869, is included in the phrase "all other franchise grantees". However, PAGCOR's transaction is exempt from VAT, being included in the Exempt transactions and services rendered to persons or entities whose exemption under special laws like PAGCOR is subject to zero percent (0%) rate. In the instant case, transactions or services rendered by GPHC to PAGCOR are not subject to 10% VAT but rather to zero percent 0% rate. Furthermore, in the case of PAGCOR vs. The Bureau of Internal Revenue, et al.[29]citing the case of CIR vs. Acesite Hotel Corporation[30], the Supreme Court categorically held that PAGCOR is exempt from VAT, and services of persons or entities dealing with PAGCOR are subject to zero percent (0%) rate, to wit;

As pointed out by the OSG, R.A. No. 9337 itself exempts petitioner from VAT pursuant to Section 7 (k) thereof, which reads:

Sec. 7. Section 109 of the same Code, as amended, is hereby further amended to read as follows:

Section 109. Exempt Transactions. - (1) Subject to the provisions of Subsection (2) hereof, the

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[29] G. R,. No 172087, March 15, 2011
[30] G.R. No. 147295, February 16, 2007.

> *following transactions shall be exempt from the value-added tax:*
>
> *x x x x*
>
> *(k) Transactions which are exempt under international agreements to which the Philippines is a signatory or under special laws, except Presidential Decree No. 529.*

Petitioner is exempt from the payment of VAT, because PAGCOR's charter, P.D. No. 1869, is a special law that grants petitioner exemption from taxes.

Moreover, the exemption of PAGCOR from VAT is supported by Section 6 of R.A. No. 9337, which retained Section 108 (B) (3) of R.A. No. 8424, thus:

> *[R.A. No. 9337], SEC. 6. Section 108 of the same Code (R.A. No. 8424), as amended, is hereby further amended to read as follows:*
>
> *SEC. 108. Value-Added Tax on Sale of Services and Use or Lease of Properties. —*
>
> *(A) Rate and Base of Tax. — There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties: x x x*
>
> *x x x x*
>
> ***(B)** Transactions Subject to Zero Percent (0%) **Rate.** — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate;*
>
> *x x x x*
>
> *(3) **Services** rendered to persons or entities **whose exemption** under **special laws** or international agreements to which the Philippines is a signatory effectively **subjects** the supply of such **services** to zero percent (0%) **rate**;*
>
> *x x x x*

As pointed out by petitioner, although R.A. No. 9337 introduced amendments to Section 108 of R.A. No. 8424 by imposing VAT on other services not previously covered, it did not amend the portion of Section 108 (B) (3) that subjects to zero percent rate services performed by VAT-registered persons 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 0% rate.*

Petitioner's exemption from VAT under Section 108 (B) (3) of R.A. No. 8424 has been thoroughly and extensively discussed in Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation.xxx.

xxx xxx xxx.

Although the basis of the exemption of PAGCOR and Acesite from VAT in the case of The Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation was Section 102 (b) of the 1977 Tax Code, as amended, which section was retained as Section 108 (B) (3) in R.A. No. 8424, it is still applicable to this case, since the provision relied upon has been retained in R.A. No. 9337.

Accordingly, the exemption of PAGCOR from VAT and that transactions or services rendered by person or entity like GPHC to PAGCOR is subject to zero percent rate, is settled. Thus, this Court's Division cancelled CIR's assessment subjecting GPHC transactions with PAGCOR to 10% VAT. As correctly held by this Court's Division:

"As previously mentioned, the assailed assessment issued by respondent involves petitioner's transactions with PAGCOR from 1996 to 2002. Petitioner's services to PAGCOR relate to services rendered to an entity whose exemption under special law, which is PAGCOR's Charter, effectively would subject the supply of such services to zero percent (0%) rate. Such zero percent rate is categorically provided under Section 108(B)(3) of the National Internal Code of 1997, xxx:

xxx xxx xxx.

Indeed, the rate of VAT applicable to petitioner's transaction with PAGCOR, as an exempt entity, should be zero percent. Consequently, the assailed assessment subjecting petitioner's transactions with PAGCOR to 10% VAT should be cancelled.

xxx xxx xxx.

Anent the averment of respondent that the Acesite case is not applicable, this Court is not persuaded.

xxx xxx xxx.

> *While it may be true that the Acesite case interpreted the provision of the Tax Code of 1977, it does not mean that the Supreme Court in the said case totally disregarded the provisions under RA 7716 and the NIRC of 1997 relating to the exemption of PAGCOR and the resultant zero-rated sales transactions of Acesite. In fact, the High Court in the said Decision quoted a portion of the Decision of the Court of Appeals, citing Section 108(B)(3) of RA No. 8424 as basis for its ruling that transactions between PAGCOR and Acesite is effectively subject to zero percent rate."*

Consistent with the pronouncement of the Supreme Court in the cases of CIR vs. Acesite Hotel Corporation[31] and PAGCOR vs. CIR [32], that services rendered to PAGCOR would be subject to zero percent (0%) rate and that PAGCOR is exempt from VAT, CIR's petition has no leg to stand and must necessarily fail.

WHEREFORE premises considered, the petition is **DENIED**. The Decision of the Third Division of this Court in CTA Case No. 7794, promulgated on February 18, 2011 and its Resolution, promulgated on May 17, 2011, are hereby **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

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

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[31] G.R. No. 147295, February 16, 2007.
[32] G.R. No. 172087, March 15, 2011

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation among the members of the Court En Banc before the case was assigned to the writer of the opinion of the Court En Banc.

ERNESTO D. ACOSTA
Presiding Justice