CTA Form No. 8

19-000291-0070

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NOS. 10099 & 10176

MELCO RESORTS LEISURE (PHP) CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF AMENDED DECISION

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. AYESHA HANIA B. GUILING-MATANOG
ATTY. MARVEEN B. DE LA PAZ
ATTY. NIKI BERYL B. DELA CRUZ
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
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Diliman, Quezon City

LAYUG CELICIOUS-SY AND VILLAPANDO
Unit 503, 5th Floor, The Linden Suites
37 San Miguel Avenue, Ortigas Center
1600 Pasig City

GREETINGS:

You are hereby notified by these presents that on **February 21, 2024,** an Amended Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **February 22, 2024.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

MELCO RESORTS LEISURE (PHP) CORPORATION,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case Nos. 10099 & 10176

Members:

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

Promulgated:
FEB 21 2024 3:40 p.m.

x- -x

AMENDED DECISION

MANAHAN, *J.:*

For this Court's resolution is petitioner's *Motion for Reconsideration (of Decision dated September 21, 2023)* filed on October 12, 2023 with respondent's *Comment (Re: Petitioner's Motion for Reconsideration)* filed via electronic mail on October 31, 2023.[1]

Petitioner prays for the reversal of the Court's Decision dated September 21, 2023, the dispositive portion of which, reads as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the present consolidated *Petitions for Review* are **DENIED** for lack of merit.
>
> **SO ORDERED**."

[1] Hard copies were filed on November 6, 2023 as an attachment to respondent's *Manifestation with Compliance.*

Petitioner sets forth the following arguments in support of its Motion for Reconsideration, to wit:

1. Section 13(2)(b) in relation to Section 13(2)(A) of Presidential Decree (PD) No. 1869, as amended, clearly and unequivocally grants Philippine Amusement and Gaming Corporation's (PAGCOR) licensees exemption from indirect taxes on its gaming-related operations.

2. The principle under *Thunderbird Pilipinas Hotels and Resorts, Inc. vs. Commissioner of Internal Revenue*[2] ("Thunderbird Case") has been overturned by *Saint Wealth Ltd v. Bureau of Internal Revenue*[3] *("Saint Wealth Case").*

3. Petitioner has legal personality to file the claim for refund or issuance of Tax Credit Certificate (TCC) as PD No. 1869 clearly grants PAGCOR and its licensees an exemption from both direct and indirect taxes, such as VAT.

4. Under the principle of *solutio indebiti*, the Government has to restore to petitioner the sums representing erroneous payments of taxes.

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

As a PAGCOR licensee, petitioner avers that the input value-added tax (VAT) passed on by its suppliers should be refunded in its favor considering that it is exempt from the "indirect" VAT under Section 13(2)(b), in relation to Section 13(2)(a) of PD No. 1869. Petitioner emphasizes that for as long as the revenues are established to be arising from gaming operations, the same shall be exempt from all kinds of taxes of whatever nature, including direct and indirect VAT. Seen in this light, petitioner urges the Court to reconsider its denial of the claim for refund and instead grant the entire amount claimed

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[2] G.R. No. 211327, November 11, 2020.
[3] G.R. Nos. 252965 & 254102, December 7, 2021.

representing erroneously paid input VAT on its purchases of capital goods, domestic purchases of goods other than capital goods and services for the third and fourth quarters of taxable year (TY) 2017.

Petitioner cites the recently decided *Saint Wealth* case,[4] which allegedly overturned the ruling of the Supreme Court in the *Thunderbird* case when it ruled that the tax exemption of PAGCOR under its Charter "shall inure to the benefit of and extend to corporations, associations, agencies or individuals with whom the PAGCOR or operator has any contractual relationship in connection with the operations of the casinos authorized to be conducted under this Franchise."

Petitioner further invokes the principle of *solutio indebiti* which can be applied with equal force to the Government where the latter has the obligation to restore to the taxpayer, the taxes it erroneously paid.

Lastly, petitioner maintains that it has the legal personality to file the instant claim for refund because it bears the economic burden of indirect taxes even if it is not the statutory taxpayer under relevant laws. It disagrees with the ruling of the Court in the assailed Decision and cites the decision of the Supreme Court in the case of *Philippine Airlines vs. Commissioner of Internal Revenue,*[5] where it was allegedly ruled that the party who bears the economic burden of taxation has the legal personality to file a claim for refund, where the entity enjoys exemption from both direct and indirect taxes.

In his *Comment (Re: Petitioner's Motion for Reconsideration)*, respondent argues that petitioner is a mere licensee of PAGCOR, hence, it is not entitled to the tax exemption under PD No. 1869. He agrees with the ruling of the Court that petitioner is not exempt for the payment of VAT on its alleged purchase of goods (other than capital goods) and services, importation of goods (other than capital goods) and purchase of services. It follows then that the alleged VAT passed on by petitioner's suppliers and paid by petitioner cannot be said to have been erroneously or illegally collected and thus cannot be the proper subject of a claim for refund.

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[4] *Ibid.*
[5] G.R. No. 198759, July 1, 2013.

On the issue of the proper legal personality of petitioner to file a claim for refund, respondent avers that in this particular case, it is the supplier/seller who is the proper party to claim a refund of input VAT.

To cap off his arguments, respondent reiterates the oft-repeated dictum that tax refunds like tax exemptions, are strictly construed against the taxpayer and that tax exemptions cannot be permitted to exist upon vague implications.

RULING OF THE COURT

While we agree with petitioner that the tax exemptions granted to PAGCOR extends to petitioner, this Court still denies petitioner's *Motion for Reconsideration (of Decision dated September 21, 2023)* for reasons that will be discussed below.

Based on the arguments of both parties, this Court is compelled to determine the merits of the case through the lens of the relevant provisions of the 1997 National Internal Revenue Code (NIRC), as amended, particularly on refunds of input VAT.

The records show that petitioner filed an administrative claims for refund or tax credit of input VAT on purchases attributable or allocable to its revenues from gaming operations for the third and fourth quarters of TY 2017. These administrative claims were denied by respondent.

Essential to any claim for refund of taxes is the legal basis of entitlement to such claim. It is well-settled that the entitlement to a refund or credit of excess input tax is solely based on the distinctive nature of the VAT system.[6] There is indeed a distinction between claims for refund of *erroneously paid or illegally collected tax* under Section 229 of the 1997 NIRC, as amended, and the refund of <u>unutilized</u> input VAT based on zero-rated sales under Section 112 of the same Code. Relevant to the nature of the instant claim for refund is Section 112 of the 1997 NIRC, as amended, quoted as follows:

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[6] *CBK Power Co. Limited vs. Commissioner of Internal Revenue*, G.R. Nos. 198729-30, January 15, 2014.

"SEC. 112. *Refunds or Tax Credits of Input Tax.* —

(A) *Zero-Rated or Effectively Zero-Rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

(B) *Cancellation of VAT Registration.* — A person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 106(C) of this Code may, within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unusual input tax which may be used in payment of his other internal revenue taxes.

(C) *Period within which Refund of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes within one hundred twenty (120) days from date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof: xxx xxx xxx"

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or expiration of the one hundred twenty-day period, appeal the decision with the Court of Tax Appeals." *om*

Notwithstanding petitioner's reliance on Section 229 of the NIRC, as amended, as one of the bases of its claim for refund, the records cannot hide the fact that the same refers to its alleged excess/unutilized input VAT. The foregoing provisions of Section 112 of the 1997 NIRC, as amended, clearly show that the input tax to be refunded must be attributable to VAT zero-rated or effectively VAT zero-rated sales.

In the recently decided CTA *En Banc* case involving the same parties,[7] the Court *En Banc*, in affirming the decision of the First Division's Decision in CTA Case No. 9811,[8] ruled thus:

> "Therefore, as aptly found by the Court in Division, petitioner's refund or tax credit claim under Section 112 of the NIRC of 1997, as amended, fails. **There is no showing that petitioner is engaged in zero-rated sales or effectively zero-rated sales to comply with the fourth requisite and entitle it to a refund or tax credit of its input VAT attributable to its purported zero-rated sales**." (*emphasis supplied*)

Petitioner is engaged in the business of developing and operating tourist facilities, including hotel casino entertainment complexes with hotel, retail and amusement areas and themed development components, without being engaged in retail trade, and in casino gaming activities.[9] These activities are not considered zero-rated or effectively zero-rated sales under the relevant provisions of the 1997 NIRC, as amended, thus cannot be the source of the claimed input VAT.

Even the indirect tax exemption invoked by petitioner arising from its status as a PAGCOR licensee, cancels out the possibility of claiming the alleged excess input VAT because the input VAT attributable to an exempt transaction is neither creditable or refundable. Nonetheless, the Court adopts a different view on petitioner's claim for refund pertaining to the input VAT paid on importation of goods other than capital goods for the third and fourth quarters of 2017.

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[7] *Melco Resorts Leisure (PHP) Corporation vs. Commissioner of Internal Revenue*, CTA *EB* No. 2608, July 11, 2023.
[8] *Melco Resorts Leisure (PHP) Corporation vs. Commissioner of Internal Revenue*, October 28, 2021.
[9] Exhibit "P-1" – Petitioner's Certificate of Filing of Amended Articles of Incorporation dated May 30, 2017.

Section 107(A) of the 1997 NIRC, as amended,[10] imposes upon the importer the liability to pay the 12% VAT on the importation of goods. Accordingly, since the herein petitioner (as importer and one who directly paid the VAT) is exempt from doing so under the clear provisions of Section 13(2) of the PAGCOR Charter, it is entitled to the refund of the amount paid.

To recall, petitioner reported the following sales and input taxes in its amended Quarterly VAT Returns for the third and fourth quarters of 2017, as follows:[11]

Schedule of Sales	(CTA Case No. 10099) 3rd Quarter	(CTA Case No. 10176) 4th Quarter	Total Consolidated
VATable Sales	₱ 1,443,355,639.20	₱ 1,522,186,825.88	₱ 2,965,542,465.08
Sale to Government	11,776,110.03	32,223,968.41	44,000,078.44
Zero-rated Sales	6,669,041.24	7,576,315.56	14,245,356.80
Exempt Sales	8,925,779,900.78	9,873,907,467.86	18,799,687,368.64
Total	**₱10,387,580,691.25**	**₱11,435,894,577.71**	**₱21,823,475,268.96**

Schedule of Input Taxes Current Transactions	3rd Quarter	4th Quarter	Total
Purchases of Capital Goods Exceeding ₱1 million	₱ 3,462,194.86	₱ 10,613,037.67	₱ 14,075,232.53
Domestic Purchases of Goods Other Than Capital Goods	29,861,318.66	31,448,537.57	61,309,856.23
Importation of Goods Other Than Capital Goods	2,500,235.00	1,328,543.00	3,828,778.00
Domestic Purchases of Services	75,459,891.46	66,442,297.09	141,902,188.55
Purchases of Services Rendered by Non-residents	2,036,560.38	2,117,187.71	4,153,748.09
Total	**₱113,320,200.36**	**₱111,949,603.04**	**₱225,269,803.40**

Petitioner's claim for refund of VAT paid attributable or allocable to its VAT-exempt revenues from gaming operations for the third and fourth quarters of TY 2017 is in the aggregate amount of ₱82,689,950.91, detailed as follows:[12]

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[10] Section 107. *Value-Added Tax on Importation of Goods.* –

(A) *In General.* – There shall be levied, assessed and collected on every importation of goods a value-added tax equivalent to twelve percent (12%) based on the total value used by the Bureau of Customs in determining tariff and customs duties, plus customs duties, excise taxes, if any, and other charges, such tax to be paid by the importer prior to the release of such goods from customs custody: *Provided,* That where the customs duties are determined on the basis of the quantity or volume of the goods, the value-added tax shall be based on the landed cost plus excise taxes, if any.

[11] Exhibits "P-14" and "P-16", Docket – Vol. I, CTA Case No. 10099, pp. 223 to 228. See also Exhibit "P-34", Docket – Vol. I, CTA Case No. 10099, p. 559.

[12] Exhibit "P-34", Docket – Vol. I, CTA Case No. 10099, p. 538.

Particulars	3rd Quarter (CTA Case No. 10099)	4th Quarter (CTA Case No. 10176)	Total Consolidated
Input tax directly attributable to VAT-exempt sales (gaming purchases)	₱ 13,357,111.65	₱ 14,570,766.13	₱ 27,927,877.78
Input tax on common purchases (allocated to revenues from gaming operations)	31,976,400.62	33,014,345.89	64,990,746.51
Input tax on capital goods (exceeding ₱1 million) allocated to VAT-exempt sales	(1,941,610.17)	(9,135,919.78)	(11,077,529.95)
Amortized input tax on capital goods (exceeding ₱1 million) allocated to VAT-exempt sales	78,017.07	770,839.50	848,856.57
Total input tax on common purchases (allocated to revenues from gaming operations), net of deferred input tax	30,112,807.52	24,649,265.61	54,762,073.13
Amount of claim for refund of or issuance of TCC	**₱43,469,919.17**	**₱39,220,031.74**	**₱82,689,950.91**

However, as mentioned earlier, only petitioner's VAT on importation of goods other than capital goods and on payments for services rendered by non-residents, for which petitioner is directly liable, in the total amounts per VAT returns of ₱3,828,778.00 and ₱4,153,748.09, respectively, may be refundable, provided that the same are directly attributable to petitioner's VAT-exempt sales, hence, this Court's analysis and conclusions will be restricted to said amounts.

The Court-commissioned Independent Certified Public Accountant (ICPA) finds that the input VAT on petitioner's importation of goods other than capital goods in the amount of ₱3,069,606.00 are not duly supported by sufficient evidence, detailed as follows:[13]

Particulars	3rd Quarter (CTA Case No. 10099)		4th Quarter (CTA Case No. 10176)		Total Consolidated
	Exhibit	Amounts	Exhibit	Amounts	
Per Schedules of Input Taxes on Importation of Goods other than Capital Goods	"P-217"	₱2,500,235.00	"P-251"	₱1,328,543.00	₱3,828,778.00
Less Disallowance: Not supported by IEIRDs and SADs	"P-238"	2,362,251.00	"P-270"	707,355.00	3,069,606.00
Valid Input Taxes on Input Taxes on Importation of Goods other than Capital Goods	"P-237"	₱ 137,984.00	"P-269"	₱ 621,188.00	₱ 759,172.00

[13] Exhibit "P-34", Docket – Vol. I, CTA Case No. 10099, p. 566.

The ICPA also found that petitioner's VAT paid on services rendered by non-residents amounting to ₱4,153,748.09 is fully supported by BIR Forms No. 1600, and that said VAT are directly attributable to petitioner's *VATable* sales for the third and fourth quarters of TY 2017.[14] As such, VAT paid on these purchases of services *may not be* refunded.

Thus, out of the total amount of VAT on importations of ₱3,828,778.00, only the amount of ₱759,172.00 are properly supported with the corresponding Bureau of Customs (BOC) Single Administrative Document (SAD) and Statement of Settlement of Duties and Taxes (SSDT), hence, may be considered for refund, to wit:

Exhibit	Receipt Number	Receipt Date[15]	Supplier	Input VAT
"P-237-1" & "P-237-4"	R-45287	07/20/2017	AutoValet Systems LTD	₱ 53,949.00
"P-237-2" & "P-237-5"	R-438396	07/20/2017	Ideemaxe Creative Company	76,796.00
"P-237-3" & "P-237-6"	R-55658	09/13/2017	Magcard Enterprise Limited	7,239.00
Total - 3rd Quarter				*₱ 137,984.00*
"P-269-1" & "P-269-6"	R-48415	08/08/2017	Diamond Walker PTE LTD	₱ 89,906.00
"P-269-2" & "P-269-7"	R-441182	11/09/2017	Carpet International Thailand Public Company Limited	120,003.00
"P-269-3" & "P-269-8"	R-441184	11/09/2017	Elecrotest PTE LTD	201,206.00
"P-269-4" & "P-269-9"	R-505016	12/22/2017	CMC Trading Engineering International PTE LTD	148,471.00
"P-269-5" & "P-269-10"	R-739452	12/01/2017	Interblock D.D.	61,602.00
Total - 4th Quarter				*₱ 621,188.00*
GRAND TOTAL				**₱759,172.00**

It is important to note that the foregoing documents indicate the importer's name as *"MCE Leisure (Philippines) Corporation"* and is the former name of herein petitioner as seen in its Certificate of Filing of Amended Articles of Incorporation dated May 30, 2017, clearly showing that petitioner was *"Formerly: MCE Leisure (Philippines) Corporation doing business under the name and style of City of Dreams Manila and COD Manila"* and that its present name is *"Melco Resorts Leisure (PHP) Corporation as amended on April 7, 2017"*.[16]

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[14] Exhibit "P-34", Docket – Vol. I, CTA Case No. 10099, p. 569.

[15] Expressed as Month/Day/Year (mm/dd/yyyy).

[16] Exhibit "P-1", Docket – Vol. I, CTA Case No. 10099, pp. 187 to 192.

Upon further analysis of the documents submitted by petitioner, this Court finds that the foregoing valid input VAT amount should be reduced by the amounts that are already barred by prescription pursuant to Section 229 of the 1997 NIRC, as amended, which provides:

> "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, of any sum alleged to have been excessively or in any manner wrongfully 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." *(Emphasis supplied)*

Based on the dates of receipt of the aforementioned VAT on importations, petitioner had until the following dates to file its administrative and judicial claims for refund:[17]

Exhibit	Receipt Date	End of 2-year Period	Administrative Claim	Petition for Review
3rd Quarter				
"P-237-1" & "P-237-4"	07/20/2017	07/20/2019		
"P-237-2" & "P-237-5"	07/20/2017	07/20/2019	3/29/2019[18]	7/01/2019[19]
"P-237-3" & "P-237-6"	09/13/2017	09/13/2019		
4th Quarter				
"P-269-1" & "P-269-6"	08/08/2017	08/08/2019		
"P-269-2" & "P-269-7"	11/09/2017	11/09/2019		
"P-269-3" & "P-269-8"	11/09/2017	11/09/2019	6/28/2019[20]	10/01/2019[21]
"P-269-4" & "P-269-9"	12/22/2017	12/22/2019		
"P-269-5" & "P-269-10"	12/01/2017	12/01/2019		

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[17] Dates are expressed as Month/Day/Year (mm/dd/yyyy).
[18] Exhibits "P-20" and "P-20-1", Docket – Vol. I, CTA Case No. 10099, pp. 235 to 247.
[19] Docket – Vol. I, CTA Case No. 10099, pp. 10 to 26.
[20] Exhibits "P-21" and "P-21-1", Docket – Vol. I, CTA Case No. 10099, pp. 248 to 260.
[21] Docket – Vol. I, CTA Case No. 10176, pp. 6 to 22.

Considering the foregoing, VAT paid by petitioner on importation in the fourth quarter of 2017 in the amount of ₱89,906.00 with the following details should be disallowed because the judicial claim pertaining thereto was filed outside of the prescribed period:

Exhibit	Receipt Number	Receipt Date	Supplier	Input VAT
"P-269-1" & "P-269-6"	R-48415	08/08/2017	Diamond Walker PTE LTD	₱ 89,906.00

The ICPA describes petitioner's total valid input VAT on importation as follows:[22]

	3rd Quarter	4th Quarter	Total
Directly attributable to exempt sales (gaming purchases)	₱ 84,035.00	₱ 501,185.00	₱ 585,220.00
Common purchases allocated to exempt sales	46,267.79	103,433.34	149,701.13
Common purchases allocated to VATable sales	7,681.21	16,569.66	24,250.87
TOTAL	**₱137,984.00**	**₱621,188.00**	**₱759,172.00**

It can be surmised from the foregoing that only the following VAT on importation in the total amount of ₱173,952.00 are not directly attributable to petitioner's exempt sales:

	3rd Quarter	4th Quarter	Total
Valid VAT on importations per ICPA	₱137,984.00	₱ 621,188.00	₱ 759,172.00
Less: Directly attributable to exempt sales	84,035.00	501,185.00	585,220.00
VAT on importations NOT directly attributable to exempt sales	**₱53,949.00**	**₱120,003.00**	**₱173,952.00**

These amounts pertain specifically to the following importations:

Exhibit	Receipt Number	Receipt Date	Supplier	Input VAT
3rd Quarter				
"P-237-1" & "P-237-4"	R-45287	07/20/2017	AutoValet Systems LTD	₱ 53,949.00
4th Quarter				
"P-269-2" & "P-269-7"	R-441182	11/09/2017	Carpet International Thailand Public Company Limited	120,003.00
TOTAL				**₱173,952.00**

[22] Exhibit "P-34", Docket – Vol. I, CTA Case No. 10099, p. 566.

Thus, it can be safely deduced that the input taxes on importation that is barred by prescription in the amount of ₱89,906.00 is directly attributable to petitioner's exempt sales but shall be deducted from the total input VAT that are directly attributable to its exempt sales.

Having determined petitioner's valid VAT on importations and the portion of it that is directly attributable to its VAT-exempt revenues from gaming operations for the third and fourth quarters of TY 2017, the Court finds that petitioner is only entitled to the refund of VAT on its importation of goods other than capital goods in the amount of ₱495,314.00, computed thus:

	3rd Quarter	4th Quarter	Total
Valid VAT on importations directly attributable to VAT-exempt sales	₱ 84,035.00	₱ 501,185.00	₱ 585,220.00
Less: Disallowed due to prescription	-	89,906.00	89,906.00
Total refundable VAT on importations	**₱84,035.00**	**₱411,279.00**	**₱495,314.00**

WHEREFORE, premises considered, petitioner's *Motion for Reconsideration (of Decision dated September 21, 2023)* filed on October 12, 2023, is **PARTIALLY GRANTED**.

Accordingly, respondent is hereby **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE (TCC)** to petitioner the reduced amounts of ₱84,035.00 and ₱411,279.00, for the third and fourth quarters of TY 2017, respectively, or in the aggregate amount of ₱495,314.00 representing tax paid on importation of goods other than capital goods.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Marian Ivy F Reyes - Fajardo
(With due respect, with D.O.)
MARIAN IVY F. REYES-FAJARDO
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 before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

MELCO RESORTS LEISURE (PHP) CORPORATION, *Petitioner,*	**CTA Case Nos. 10099 & 10176**
	Members:
- versus -	**DEL ROSARIO,** *PJ, Chairperson,* **MANAHAN,** and **REYES-FAJARDO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: FEB 21 2024 3:40pm

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DISSENTING OPINION

REYES-FAJARDO, *J.*:

With due respect to my esteemed colleague Associate Justice Catherine T. Manahan, I dissent from the majority opinion for the reasons discussed below.

Petitioner anchored its refund claim of erroneously or illegally collected input value-added tax ("VAT") on purchases of capital goods, domestic purchases of goods (other than capital goods) and services, importations of goods (other than capital goods), and purchases of services rendered by non-residents, passed on by its suppliers and directly attributable or allocable to revenues from gaming operations based on Section 229 of the National Internal Revenue Code ("NIRC"), as amended, which reads as follows:

> 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.[1]

Indirect taxes are demanded in the first instance from one person with the expectation and intention that he can shift the economic burden to someone else.[2]

VAT is an indirect tax that a statutory taxpayer can transfer to its customers by treating it as part of the cost of the goods and tacking it on to the selling price. Notably, this shifting process, otherwise known as *"passing on,"* is largely a contractual affair between the parties. Meaning, even if the purchaser effectively pays the value of the tax, the manufacturer/producer (in case of goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition) or the owner or importer (in case of imported goods) are still regarded as the statutory taxpayers under the law. To this end, the purchaser does not really pay the tax; rather, he only pays the seller more for the goods because of the latter's obligation to the government as the statutory taxpayer.[3]

Relative to this, Section 204(c)[4] of the NIRC, as amended, states that it is the statutory taxpayer who has the legal personality to file a

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1 Emphasis supplied.

2 *Philippine Airlines, Inc. v. Commissioner of Internal Revenue,* G.R. No. 198759, July 1, 2013.

3 *Id.,* citing *Exxonmobil Petroleum and Chemical Holdings, Inc.-Philippine Branch v. Commissioner of Internal Revenue,* G.R. No. 180909, January 19, 2011.

4 SEC. 204. Authority of the Commissioner to Compromise/Abate and Refund or Credit Taxes. —
The Commissioner may —

. . .

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good claim for refund. Thus, the Supreme Court, in *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue ("Coca-Cola")*,[5] held that it is the statutory taxpayer who is entitled to claim a tax refund of excessively collected input VAT under Section 229 of the NIRC, as amended, and not the person to whom the tax is passed on.

However, in the analogous case of *Philippine Airlines, Inc. v. Commissioner of Internal Revenue ("Philippine Airlines")*,[6] the Supreme Court held that the abovementioned rule should not apply to instances where the law clearly grants an exemption from both direct and **indirect** taxes. In which case, the party to which the economic burden of the tax is shifted must be allowed to claim a tax refund even if it is not considered as the statutory taxpayer under the law. This is precisely the peculiar circumstance present in this case.

In *Philippine Airlines*,[7] Presidential Decree ("PD") No. 1590,[8] otherwise known as "PAL's franchise," granted petitioner therein an exemption from both direct and indirect taxes on its purchase of petroleum products. Section 13 of PAL's franchise 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,

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condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. 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.

. . .

5 G.R. No. 222428, February 19, 2018.

6 G.R. No. 198759, July 1, 2013.

7 *Id.*

8 Presidential Decree No. 1590, *Grant of New Franchise to Philippine Airlines, Inc. To Operate, etc. Air Transport Services*, June 11, 1978.

> 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:[9]

Interpreting the phrase *"in lieu of all other taxes"*, as an express exemption from both direct and indirect taxes, the Supreme Court ruled that PAL was also exempted from *"the cost of the taxes billed or passed on to it by seller, producer, manufacturer, or importer of the said products,"* to wit:[10]

> 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**.[11]

In the present case, Section 13(2)(a) of PD No. 1869 similarly provides that the five percent (5%) franchise tax on the gross revenues or earnings derived by Philippine Amusement and Gaming

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[9] Emphasis supplied.
[10] *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 198759, July 1, 2013.
[11] Emphasis supplied.

Corporation ("PAGCOR") from its operations conducted under the franchise, which shall be due and payable *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.[12]

Verily, in *Coca-Cola*, the claim for refund is premised on the taxpayer's inadvertence of applying the excessively collected input VAT against the output VAT. The taxpayer/claimant in *Coca-Cola* does not enjoy exemption from indirect taxes under any law. In the present case, the claim for refund is premised on petitioner's exemption from **all kinds of taxes**, including **indirect taxes**, under PD No. 1869.

PD No. 1869 grants PAGCOR an exemption from both direct and indirect taxes. The same tax exemption inures to the benefit of petitioner, a PAGCOR licensee, as provided under Section 13(2)(a) and (b) of PD No. 1869, giving petitioner legal standing to file the subject tax refund claims.

Accordingly, I **SUBMIT** that petitioner should be allowed to refund the amount representing erroneously or illegally collected input VAT on purchases of capital goods, domestic purchases of goods (other than capital goods) and services, importations of goods (other than capital goods), and purchases of services rendered by non-residents, passed on by its suppliers and directly attributable or allocable to revenues from gaming operations for the third and fourth quarters of taxable year 2017 to the extent that it has proven its entitlement thereto.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

[12] *Philippine Amusement and Gaming Corporation (PAGCOR) v. The Bureau of Internal Revenue, et al.*, G.R. No. 215427, December 10, 2014.