19-000613-0076

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NOS. 10236, 10271, 10294 & 10359

MELCO RESORTS LEISURE (PHP) CORPORATION,
Petitioner,

- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

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

ATTY. MARVEEN B. DE LA PAZ
Bureau of Internal Revenue
Room 703, Litigation Division
BIR National Office Building
Senator Miriam P. Defensor-Santiago Avenue
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 5, 2024,** a Decision was rendered in the above-entitled cases, copy of which is attached hereto.

Quezon City, Philippines, **February 6, 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. 10236, 10271, 10294 & 10359

Members:

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

Promulgated:

FEB 0 5 2024; 3:30PM

x - x

DECISION

MANAHAN, *J.:*

These are consolidated Petitions for Review filed by Melco Resorts and Leisure Corporation praying for the refund or issuance of a tax credit certificate (TCC) in the total amount of ₱192,435,633.14, representing 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 for the four (4) quarters of taxable year (TY) 2018, detailed as follows:

CTA Case Nos.	Amounts	Periods covered
10236	₱61,415,651.17[1]	1st quarter of 2018
10271	₱31,467,212.22[2]	2nd quarter of 2018
10294	₱43,553,115.94[3]	3rd quarter of 2018
10359	₱55,999,653.81[4]	4th quarter of 2018

[1] Petition for Review, Docket (CTA Case No. 10236) – Vol. I, p. 22.
[2] Petition for Review, Docket (CTA Case No. 10271), p. 21.
[3] Petition for Review, Docket (CTA Case No. 10294), p. 30.
[4] Petition for Review, Docket (CTA Case No. 10359), p. 30.

THE PARTIES

Petitioner Melco Resorts Leisure (PHP) Corporation [formerly, "MCE Leisure (Philippines) Corporation"] is a domestic corporation organized and existing under the laws of the Philippines. It is engaged in the business of developing and operating tourist facilities, including hotel casino entertainment complexes with hotel, retail and amusement areas and themed development components, without being engaged in retail trade, and to engage in casino gaming activities.[5] Petitioner is a VAT-registered taxpayer under tax identification number (TIN)/VAT Registration No. 008-362-871-00000.[6]

Respondent is the duly appointed Commissioner of Internal Revenue (CIR) holding office at the Bureau of Internal Revenue (BIR), National Office Building located at BIR Road, Diliman, Quezon City.

FACTS

Petitioner filed administrative claims for refund or tax credit of erroneously and illegally paid VAT on purchases attributable or allocable to its revenues from gaming operations for the four (4) quarters of TY 2018,[7] with the Large Taxpayers Service of the BIR, on the following dates:

For the period covered (Taxable year 2018)	Date of filing
1st Quarter	November 27, 2019[8]
2nd Quarter	March 2, 2020[9]
3rd Quarter	May 29, 2020[10]
4th Quarter	August 4, 2020[11]

Subsequently, petitioner received on August 20, 2020 and November 26, 2020, the letters from the BIR dated June 26,

[5] Exhibits "P-3" and "P-4, Docket, pp. 529 to 555.
Facts Admitted, *Joint Manifestation*, Docket, p. 228; Par. 1, Facts, *Pre-Trial Order* dated March 26, 2019, Docket, p. 260.
[7] Par. 3, Stipulation of Facts, JSFI, Docket (CTA Case No. 10236) – Vol. I, p. 584.
[8] Exhibits "P-25" and "P-25-1", Docket (CTA Case No. 10236) – Vol. I, pp. 396 to 408.
[9] Exhibits "P-26" and "P-26-1", Docket (CTA Case No. 10236) – Vol. I, pp. 409 to 421.
[10] Exhibits "P-27" and "P-27-1", Docket (CTA Case No. 10236) – Vol. I, pp. 422 to 435.
[11] Exhibits "P-28" and "P-28-1", Docket (CTA Case No. 10236) – Vol. I, pp. 436 to 449. *am*

2020[12] and September 18, 2020,[13] respectively, denying its administrative claim for VAT refund for the 3rd and 4th quarters of TY 2018.

For an orderly presentation, the Court deems it proper to primarily state the proceedings that took place prior to the consolidation of the cases.

For CTA Case No. 10236:

On December 27, 2019, petitioner filed a Petition for Review,[14] praying that judgment be rendered declaring petitioner entitled to a refund or tax credit in the amount of ₱61,415,651.17, 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, attributable or allocable to revenues from gaming operations for the 1st quarter of TY 2018; and ordering respondent to grant petitioner a refund or tax credit in the said amount. The case was raffled to the Court's First Division and docketed as Court of Tax Appeals (CTA) Case No. 10236.

On March 9, 2020, respondent filed his Answer to the Petition for Review and on June 26, 2020, respondent transmitted the BIR Records for CTA Case No. 10236.[15]

On August 20, 2020[16] and November 5, 2020,[17] respondent and petitioner filed their Pre-Trial Briefs, respectively.

On December 10, 2020, petitioner filed a Motion for Consolidation with Motion for Postponement [of Pre-Trial Conference Set on March 4, 2021],[18] which was granted by the Court in a Resolution dated March 2, 2021.[19] Hence, CTA Case

[12] Exhibit "R-3", BIR Records (Exhibit "R-4"), p. 89.
[13] Exhibit "R-7", BIR Records (Exhibit "R-8"), p. 104.
[14] Docket (CTA Case No. 10236) – Vol. I, pp. 7 to 24.
[15] Compliance dated June 26, 2020, Docket (CTA Case No. 10236) – Vol. I, pp. 98 to 99.
[16] Docket (CTA Case No. 10236) – Vol. I, pp. 104 to 106.
[17] Docket (CTA Case No. 10236) – Vol. I, pp. 156 to 178.
[18] Docket (CTA Case No. 10236) – Vol. I, pp. 241 to 244.
[19] Docket (CTA Case No. 10236) – Vol. I, pp. 257 to 258.

No. 10294 was consolidated with CTA Case No. 10236 and the Pre-Trial Conference was cancelled until further orders from the Court. In the same Resolution, the parties were also directed to submit their consolidated pre-trial briefs, within ten (10) days from receipt thereof.

On March 17, 2021, respondent filed a Consolidated Pre-Trial Brief for CTA Case Nos. 10236 and 10294.[20]

In the Resolution dated May 20, 2021,[21] the Court approved the consolidation of CTA Case Nos. 10271, 10294, and 10359 with CTA Case No. 10236, the case bearing the lowest docket number.

<u>For CTA Case No. 10271</u>:

On March 26, 2020, petitioner filed a Petition for Review,[22] praying that judgment be rendered declaring petitioner entitled to a refund or tax credit in the amount of ₱31,467,212.22, 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, attributable or allocable to revenues from gaming operations for the 2nd quarter of TY 2018; and ordering respondent to grant petitioner a refund or tax credit in the said amount of ₱31,467,212.22. The case was raffled to the Court's Third Division and was docketed as CTA Case No. 10271.

On October 1, 2020, respondent filed an Answer[23] interposing substantially the same special and affirmative defenses raised in CTA Case No. 10236.

On November 17, 2020, respondent transmitted the BIR Records for CTA Case No. 10271.[24]

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[20] Docket (CTA Case No. 10236) – Vol. I, pp. 262 to 265.
[21] Docket (CTA Case No. 10236) – Vol. I, pp. 301 to 302.
[22] Docket (CTA Case No. 10271), pp. 10 to 33.
[23] Docket (CTA Case No. 10271), pp. 99 to 110.
[24] Respondent's Compliance filed on November 17, 2020, Docket (CTA Case No. 10271), pp. 122 to 123.

On December 10, 2020, petitioner filed a Motion for Consolidation with Motion for Postponement [of Pre-Trial Conference Set on March 16, 2021].[25] Respondent failed to file his comment thereto.[26]

In the Resolution dated March 12, 2021,[27] the Court granted petitioner's motion to consolidate, and ordered the consolidation of CTA Case No. 10271 with CTA Case No. 10236, subject to the conformity of the Court's First Division.

For CTA Case No. 10294:

On June 30, 2020, petitioner filed a Petition for Review,[28] praying that judgment be rendered granting petitioner's refund or tax credit in the amount of ₱43,553,115.94, 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, attributable or allocable to revenues from gaming operations for the 3rd quarter of TY 2018. The case was raffled to this Court's Second Division, and docketed as CTA Case No. 10294.

On September 14, 2020, respondent filed an Answer[29] interposing substantially the same special and affirmative defenses he raised in CTA Case No. 10236, and adding that the petition must be dismissed for failure to substantiate its administrative claim for refund.

On November 18, 2020, the Pre-Trial Conference of the case was set and held.[30]

On September 18, 2020, respondent transmitted the BIR Records for CTA Case No 10294.[31]

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[25] Docket (CTA Case No. 10271), pp. 126 to 129.
[26] Records Verification Report dated February 22, 2021 issued by the Judicial Records Division of this Court, Docket (CTA Case No. 10271), p. 134.
[27] Docket (CTA Case No. 10271), pp. 138 to 139.
[28] Docket (CTA Case No. 10294), pp. 7 to 32.
[29] Docket (CTA Case No. 10294), pp. 201 to 215.
[30] Notice of Pre-Trial Conference dated September 18, 2020, Docket (CTA Case No. 10294), pp. 254 to 255; Minutes of the hearing held on, and Order dated, November 18, 2020, Docket (CTA Case No. 10294), pp. 284 to 285.
[31] Compliance filed on September 18, 2020, Docket (CTA Case No. 10294), pp. 256 to 258.

On December 9, 2020, petitioner filed a Motion for Consolidation with Motion for Postponement.[32] Respondent, however, failed to file his comment thereon.[33] The said Motion for Consolidation was granted by the Court in the Resolution dated February 2, 2021,[34] consolidating CTA Case No. 10294 with CTA Case No. 10236, subject to the conformity of the Court's First Division.

For CTA Case No. 10359:

On September 30, 2020, petitioner filed a Petition for Review,[35] praying that judgment be rendered granting petitioner's refund or tax credit in the amount of ₱55,999,653.81, 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, attributable or allocable to revenues from gaming operations for the 4th quarter of TY 2018. The case was raffled to the Court's First Division, and was docketed as CTA Case No. 10359.

On December 10, 2020, petitioner filed a Motion for Consolidation,[36] praying for the consolidation of CTA Case No. 10359, with CTA Case Nos. 10236, 10271 and 10394. Respondent, however, failed to file his comment thereon.[37]

On December 18, 2020, respondent filed an Answer,[38] interposing the same special and affirmative defenses raised in CTA Case No. 10294.

On February 15, 2021, respondent transmitted the BIR Records for CTA Case No. 10359.[39]

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[32] Docket (CTA Case No. 10294), pp. 300 to 303.
[33] Records Verification dated January 29, 2021 issued by the Judicial Records Division of this Court, Docket (CTA Case No. 10294), p. 307.
[34] Docket (CTA Case No. 10294), p. 308.
[35] Docket (CTA Case No. 10359), pp. 6 to 32.
[36] Docket (CTA Case No. 10359), pp. 201 to 204.
[37] Records Verification dated February 1, 2021 issued by the Judicial Records Division of this Court, Docket (CTA Case No. 10359), p. 236.
[38] Docket (CTA Case No. 10359), pp. 206 to 220.
[39] Compliance with Manifestation dated February 11, 2021, Docket (CTA Case No. 10359), pp. 237 to 239.

In the Resolution dated March 4, 2021,[40] the Court granted petitioner's Motion for Consolidation.

After the consolidation of the cases:

On July 8, 2021, the Pre-Trial Conference for the consolidated cases was held.[41]

On July 28, 2021, the parties submitted their Joint Stipulation of Facts and Issues (JSFI),[42] which was approved by the Court in the Resolution dated September 21, 2021,[43] thereby terminating the Pre-Trial. On February 14, 2022, the Court issued the Consolidated Pre-Trial Order.[44]

On October 27, 2021, the Report of the Court-commissioned Independent Certified Public Accountant (ICPA) was submitted.[45]

Trial ensued.

Petitioner offered the testimonies of: (1) Mr. Julius-Ver A. De Guzman,[46] petitioner's Financial Controller; (2) Mr. Rafael B. Taladtad, Jr.,[47] current Director of Operational Accounting of petitioner; and (3) the Court-commissioned ICPA,[48] Ms. Ma. Milagros Padernal.[49]

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[40] Docket (CTA Case No. 10359), pp. 246 to 248.
[41] Resolution dated May 20, 2021, Docket (CTA Case No. 10236) – Vol. I, pp. 301 to 302; Minutes of the hearing held on, and Order dated, July 8, 2021, Docket (CTA Case No. 10236) – Vol. I, pp. 534 to 536, and 538 to 540, respectively.
[42] Docket (CTA Case No. 10236) – Vol. I, pp. 584 to 594.
[43] Docket (CTA Case No. 10236) – Vol. I, p. 612.
[44] Docket (CTA Case No. 10236) – Vol. II, pp. 788 to 807.
[45] Docket (CTA Case No. 10236) – Vol. II, pp. 637 to 753.
[46] Exhibit "P-41", Docket (CTA Case No. 10236) – Vol. I, pp. 319 to 335; Order dated September 21, 2021, Docket (CTA Case No. 10236) – Vol. I, pp. 602 to 604.
[47] Exhibit "P-42", Docket (CTA Case No. 10236) – Vol. I, pp. 453 to 462; Order dated September 21, 2021, Docket (CTA Case No. 10236) – Vol. I, pp. 602 to 604.
[48] Oath of Commission dated July 22, 2021, Docket (CTA Case No. 10236) – Vol. I, p. 577; Minutes of the hearing held on, and Order dated, July 22, 2021, Docket (CTA Case No. 10236) – Vol. I, pp. 574 to 576 and 578 to 579, respectively.
[49] Exhibit "P-196", Docket (CTA Case No. 10236) – Vol. II, pp. 757 to 766. Minutes of the hearing held on, and Order dated, February 9, 2022, Docket (CTA Case No. 10236) – Vol. II, pp. 776 to 785.

On March 16, 2022, petitioner filed its Formal Offer of Evidence.[50] On March 31, 2022, respondent filed a Comment (on Petitioner's Formal Offer of Evidence).[51]

In the Resolution dated June 13, 2022,[52] the Court admitted petitioner's exhibits, except for Exhibits "P-48-142", "P-48-305", "P-48-1089", "P-54-1041", "P-54-1147", "P-54-1224", "P-54-3033" to "P-54-3037", "P-54-3080", "P-54-3136", "P-54-3151" to "P-54-3152", "P-89-14" to "P-89-148", and "P-176-1181" to "P-176-1580", for not being found in the records of the case.

On June 29, 2022, petitioner filed its Motion for Partial Reconsideration [Of Resolution dated June 13, 2022] with Manifestation,[53] which was granted by the Court in the Resolution dated August 5, 2022,[54] thereby admitting Exhibits "P-48-142", "P-48-305", "P-48-1089", "P-54-1041", "P-54-1147", "P-54-1224", "P-54-3033" to "P-54-3037", "P-54-3080", "P-54-3136", "P-54-3151" to "P-54-3152", and "P-176-1181" to "P-176-1580".

Respondent presented Revenue Officers Joel De Sagun Samiano[55] and Sherwin Manuel Lagmay.[56]

On August 18, 2022, respondent filed his Formal Offer of Evidence,[57] to which petitioner filed a Comment [On Respondent's Formal Offer of Evidence dated August 17, 2022] on August 25, 2022.[58] In the Resolution dated September 22, 2022,[59] the Court admitted respondent's offered exhibits.

[50] Docket (CTA Case No. 10236) – Vol. II, pp. 814 to 889.
[51] Docket (CTA Case No. 10236) – Vol. II, pp. 915 to 917.
[52] Docket (CTA Case No. 10236) – Vol. II, pp. 921 to 932.
[53] Docket (CTA Case No. 10236) – Vol. II, pp. 952 to 967.
[54] Docket (CTA Case No. 10236) – Vol. II, pp. 974 to 983.
[55] Exhibit "R-9", Docket (CTA Case No. 10294), pp. 248 to 252; Minutes of the hearing held on, and Order dated, June 14, 2022, Docket (CTA Case No. 10236) – Vol. II, pp. 933 to 940.
[56] Exhibit "R-10", Docket (CTA Case No. 10359), pp. 223 to 227; Minutes of the hearing held on, and Order dated, June 14, 2022, Docket (CTA Case No. 10236) – Vol. II, pp. 933 to 940.
[57] Docket (CTA Case No. 10236) – Vol. II, pp. 984 to 989.
[58] Docket (CTA Case No. 10236) – Vol. II, pp. 999 to 1000.
[59] Docket (CTA Case No. 10236) – Vol. II, pp. 1002 to 1007.

On November 2, 2022, respondent filed a Manifestation,[60] stating that he is adopting the arguments stated in the Answers filed before this Court in place of the Memorandum. Petitioner also filed a Memorandum on the same date.[61]

Thereafter, the consolidated cases were submitted for decision.[62]

THE ISSUE

As stipulated by the parties, the issue was limited to:

> "Whether petitioner is entitled to a refund or tax credit of erroneously and illegally paid VAT on 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 rendered by nonresidents, attributable or allocable to revenues from gaming operations of taxable year 2018, for the 1st quarter amounting to ₱61,415,651.17, 2nd quarter amounting to ₱31,467,212.22, 3rd quarter amounting to ₱43,553,115.94 and 4th quarter amounting to ₱55,999,653.81, or in the aggregate amount of ₱192,435,633.14."[63]

Petitioner's arguments:

Petitioner argues that Section 13(2)(B), in relation to Section 13(2)(a), of Presidential Decree (PD) No. 1869, as amended, grants Philippine Amusement and Gaming Corporation (PAGCOR) licensees/contractees exemption from taxes on revenues derived from its gaming-related operations; that petitioner is allowed to claim a tax refund as PD No. 1869, as amended, clearly grants PAGCOR and its licensees, to which the economic burden of the tax is shifted, an exemption from both direct and indirect taxes, such as VAT; that the case of *Thunderbird Pilipinas Hotels and Resorts, Inc. v.*

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[60] Docket (CTA Case No. 10236) – Vol. II, pp. 1008 to 1010.
[61] Docket (CTA Case No. 10236) – Vol. II, pp. 1012 to 1053.
[62] Resolution dated November 22, 2022, Docket (CTA Case No. 10236) – Vol. II, pp. 1055 to 1056.
[63] Stipulation of Issue, JSFI, Docket (CTA Case No. 10236) – Vol. I, p. 585.

Commissioner of Internal Revenue ("Thunderbird")[64] and Revenue Memorandum Circular No. 32-2022 are not applicable to the instant case and contrary to law and jurisprudence, respectively; and that petitioner timely filed its claim for refund or issuance of TCC of its erroneously and illegally paid VAT on purchases that are attributable or allocable to its revenues from gaming operations for the four (4) quarters of TY 2018, pursuant to Sections 204 and 229 of the 1997 National Internal Revenue Code (NIRC), as amended.

Respondent's counter-arguments:

Respondent contends that petitioner, being a mere licensee of PAGCOR, is not entitled to the tax exemption under PD No. 1869; that petitioner's reliance on the theory that Section 13(2)(B), in relation to Section 13(2)(A) of PD No. 1869, exempts it from payment of income taxes, is misplaced; that even on the assumption that petitioner is included in the exemption as a co-licensee or grantee of PAGCOR, still, petitioner is not entitled to refund because petitioner failed to prove that the amount claimed for refund relates solely to its income realized from operation of casinos; and that even assuming that petitioner is exempt from payment of VAT, petitioner cannot claim a refund from respondent, as the recourse of the former is not to claim the same from the latter, but from its suppliers.

THE RULING OF THE COURT

This Court shall first determine the timeliness of the filing of petitioner's claims for refund with the Court.

The claim for refund of alleged excess or unutilized input VAT attributable to zero-rated sales is governed by Section 112 (A) and (C) of the 1997 NIRC, as amended,[65] which we quote below:

"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

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[64] G.R. No. 211327, November 11, 2020.

[65] As amended by the Tax Reform for Acceleration and Inclusion Law or the TRAIN Law. *an*

> 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.
>
> xxx xxx xxx
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be made.* – In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: Provided, That, should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
>
> In case of full or partial denial of the claim for tax refund, the taxpayer affected, may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: Provided, however, that failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90) day period shall be punishable under Section 269 of this Code."

Records show that petitioner filed applications for tax credit/refund with the BIR on its alleged excess input VAT for the four quarters of TY 2018.

As earlier narrated, petitioner received letters from the BIR on August 20, 2020 and November 26, 2020, denying its administrative claims for input VAT refund for the 3rd and 4th quarters of TY 2018.

Based on the afore-quoted Section 112 of the 1997 NIRC, as amended, the last days for filing the administrative and judicial claims for refund via Petitions for Review on all the four (4) quarters of TY 2018 are as follows:

Period Covered	Last day to file admin claim	Date of filing of admin claim	Last day for BIR to act on the claim	Date of receipt of BIR's Decision	Last Day to file Petition for Review
1st quarter 2018	03/31/2020	11/27/2019	02/25/2020		03/26/2020
2nd quarter 2018	06/30/2020	03/02/2020	05/31/2020		06/30/2020
3rd quarter of 2018	09/30/2020	05/29/2020	08/27/2020	08/20/2020	09/19/2020
4th quarter of 2018	12/31/2020	08/04/2020	11/02/2020	11/26/2020	12/02/2020

Petitioner filed the instant Petitions for Review with the Court as follows:

CTA Case No.	Taxable Quarter	Date of Filing of Petitions for Review
10236	1st Quarter of 2018	December 27, 2019
10271	2nd quarter of 2018	March 26, 2020
10294	3rd Quarter of 2018	June 30, 2020
10359	4th quarter of 2018	September 30, 2020

Evidently, all the Petitions for Review were filed within the periods provided under the afore-quoted Section 112 (A) and (C) of the 1997 NIRC, as amended.[66]

Correspondingly, petitioner timely filed its judicial claims for refund via Petitions for Review.

The Court will now proceed to resolve the substantive merits of petitioner's claim for refund.

Petitioner anchors its claims for refund 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. It further contends that the privileges granted to PAGCOR under its charter, inures to the benefit of its

[66] As amended by the TRAIN Law.

licensees and contractees such as exemption from taxes including income tax and VAT. Simply put, petitioner claims that as a licensee of PAGCOR, it enjoys tax exemptions similarly granted to the latter under its charter.

On this matter, we agree with petitioner.

In a case involving the same parties [67], the First Division of this Court affirmed that the tax exemptions granted to PAGCOR extends to petitioner. We quote the relevant portions of said Decision, to wit:

> "Section 13 of PD 1869 or the PAGCOR Charter provides, in part, as follows:
>
> 'SEC. 13. *Exemptions.* —
>
> xxx xxx xxx
>
> Based on the foregoing provision of PD No. 1869, it is clear that PAGCOR is exempt from the payment of any tax, whether national or local, except for a franchise tax at the rate of five percent (5%) of the gross revenues or earnings derived from its operations and that said tax exemption inures to the benefit of and extends to the following:
>
> 1) Corporations, associations, agencies, or individuals with whom PAGCOR or operator has any contractual relationship in connection with the operation of casino(s) authorized under PD No. 1869; and
>
> 2) To those receiving compensation or other remuneration from PAGCOR or operator as a result of essential facilities furnished and/or technical services rendered to PAGCOR or operator.'
>
> In other words, PD No. 1869 provides for the imposition of a five percent (5%) franchise tax of the gross revenues or earnings derived by 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.[68] Since the payment of the said five percent (5%) franchise tax

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[67] *Melco Resorts Leisure (PHP) Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 9811, October 28, 2021.

[68] Refer to *Philippine Amusement and Gaming Corporation (PAGCOR) vs. The Bureau of Internal Revenue, et al.*, G.R. No. 215427, December 10, 2014. *an*

shall be "in lieu of all kinds of taxes", the tax exemption privilege being enjoyed by PAGCOR is dependent on such payment.

As a corollary, in case of non-payment of the same five percent (5%) franchise tax by PAGCOR, and thus, no tax exemption privilege is bestowed on the latter, it follows that PAGCOR's contractees and licensees shall neither be entitled to any tax exemption. As the old adage goes, the spring cannot rise higher than its source.[69] In *Bloomberry Resorts and Hotels, Inc. vs. Bureau of Internal Revenue,*[70] the Supreme Court emphasized the significance of the payment of the said five percent (5%) franchise tax to entitle PAGCOR and all its contractees and licensees to the tax exemption to be enjoyed by them, and we quote:

> '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**.'
>
> xxx xxx xxx
>
> Plainly, too, **upon payment of the 5% franchise tax, petitioner's income** from its gaming operations of gambling casinos, gaming clubs and other similar recreation or amusement places, and gaming pools, defined within the purview of the aforesaid section, is not subject to corporate income tax." (*emphases supplied*)."

In the recently decided case of *Saint Wealth Ltd. v. Bureau of Internal Revenue, ("Saint Wealth Ltd.")*,[71] the Supreme Court categorically held that PAGCOR's licensees are only liable to pay a five percent (5%) franchise tax for income derived from its gaming operations, and we quote:

> Clearly, both law and jurisprudence mandate that **PAGCOR's licensees are only liable to pay a five percent (5%) franchise tax for income derived from its gaming operations.** However, a plain reading of the PAGCOR Charter

[69] *Heirs of Maximo Labanon, et al. vs. Heirs of Constancio Labanon,* G.R. No. 160711, August 14, 2007.
[70] G.R. No. 212530, August 10, 2016.
[71] G.R. Nos. 252965 & 254102, December 7, 2021.

> and the ruling in *Bloomberry* shows that the liability of paying the five percent (5%) franchise tax only applies to PAGCOR's licensees which are connected to the operations of casinos and other related amusement places.

Thus, this Court holds that the tax exemption granted to PAGCOR extends to petitioner but the issue that confronts us pertains to a claim for refund of alleged excess/unutilized input VAT as enunciated in the wordings of the stipulated issue presented for resolution, and we again quote for emphasis:

> "Whether petitioner is entitled to a refund or tax credit of erroneously and illegally paid VAT on 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 rendered by nonresidents, attributable or allocable to revenues from gaming operations of taxable year 2018, for the 1st quarter amounting to ₱61,415,651.17, 2nd quarter amounting to ₱31,467,212.22, 3rd quarter amounting to ₱43,553,115.94 and 4th quarter amounting to ₱55,999,653.81, or in the aggregate amount of ₱192,435,633.14."[72]

As distinguished from an exemption from taxes, petitioner is seeking the refund of input VAT supposedly passed on to it by its suppliers/sellers which are allegedly attributable to its zero-rated sales. 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.[73] The afore-quoted Section 112 of the 1997 NIRC, as amended, governs refunds of excess and/or unutilized input VAT and provides conditions and requirements for its entitlement. In the case of *Luzon Hydro Corporation vs. CIR*,[74] the Supreme Court provided said requisites, as follows:

> A claim for refund or tax credit for unutilized input VAT may be allowed only if the following requisites concur, namely: (a) the taxpayer is VAT-registered; (b) the taxpayer is engaged in zero-rated or effectively zero-rated sales; (c) the input taxes

[72] Stipulation of Issue, JSFI, Docket (CTA Case No. 10236) – Vol. I, p. 585.
[73] *CBK Power Co. Limited vs. Commissioner of Internal Revenue*, G.R. Nos. 198729-30, January 15, 2014.
[74] G.R. No. 188260, November 13, 2013.

are due or paid; (d) the input taxes are not transitional input taxes;(e) the input taxes have not been applied against output taxes during and in the succeeding quarters; (f) the input taxes claimed are attributable to zero or effectively zero-rated sales ; (g) for zero-rated sales under Section 106 (A)(2) (1) and (2); 106 (B) ; and 108 (B) (1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas ; (h) where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales , and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and (i) the claim is filed within two years after the close of the taxable quarter when such sales were made."

Note that one of the essential requirements for a refund of excess/unutilized input VAT is that the taxpayer must be engaged in zero-rated or effectively zero-rated sales.

Section 112(A) and (B)[75] of the 1997 NIRC, as amended, in relation to Section 110(B) of the same code,[76] provides that the option of refund or tax credit of excess/unutilized input VAT is allowed in two instances: (a) when it is attributable to zero-rated or effectively zero-rated sales[77] and/or (b) when the business or the corporation has been dissolved, i.e., cessation from business. In quoting Sections 110(B) and 112 of the 1997 NIRC, as amended, the Supreme Court, in the case of *Coca-Cola Bottlers Philippines, Inc. vs. CIR*,[78] affirmed that the option of refund or issuance of a TCC is available to a VAT-registered taxpayer if such input taxes are attributable to zero-rated or effectively zero-rated sales, and we quote:

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[75] "Section 112. **Refunds or Tax Credits of Input Tax.**-
(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 unused input tax which may be used in payment of his other internal revenue taxes.**" (*emphasis supplied*)

[76] "Section 110. **Tax Credits.**-
(A) *Creditable Input Tax.* –
xxx xxx xxx
(B) *Excess Output or Input Tax.* – If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: **Provided, however, That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against any other internal revenue taxes, subject to the provisions of Section 112.**" (*emphasis supplied*)

[77] Section 112 (A) of the 1997 NIRC, as amended.

[78] G.R. No, 222428, February 19, 2018.

> "A plain and simple reading of the afore-quoted provision reveals that if and when the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. **It is only when the sales of a VAT-registered person are zero-rated or effectively zero-rated that he may have the option of applying for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales.**" (*emphasis supplied*).

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

Section 106 of the 1997 NIRC, as amended,[79] provides for the *sale of goods or properties* that are considered zero-rated or effectively zero-rated sales, thus:

> "**SEC. 106**. *Value-Added Tax on Sale of Goods or Properties*. –
>
> xxx xxx xxx
>
> (2) The following sales by VAT-registered persons **shall be subject to zero percent (0%) rate**:
>
> (a) Export Sales. - The term '*export sales*' means:
>
> (1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
>
> (2) The sale of goods, supplied equipment and fuel to persons engaged in international shipping or international air transport operations: *Provided*, that the goods, supplies, equipment and fuel shall

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[79] As amended by TRAIN Law.

be used for international shipping or air transport operations.

(b) Sales to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subject such sales to zero rate.

xxx xxx xxx"

Section 108 of the 1997 NIRC, as amended,[80] enumerates the *services/activities* that are considered zero-rated or effectively zero-rated sales, and we quote:

"SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –

xxx xxx 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**:

(1) Processing, manufacturing or repacking goods for other persons doing business outside of the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services. Are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(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;"

(4) Services rendered to persons engaged in international shipping or international air transport

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[80] As amended by Train Law.

operations, including leases of property for use thereof: Provided, that these services shall be exclusive for international shipping or air transport operations

(5) Services performed by subcontractors and/or contractors in processing, converting or manufacturing goods for an enterprise whose export sales exceed seventy percent (70%) of total annual production.

(6) Transport of passengers and cargo by air or sea vessels from the Philippines to a foreign country, and

(7) Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels.

xxx xxx xxx"

The records of the case show that petitioner is engaged in the business of developing and operating tourist facilities, including hotel casino entertainment complexes with hotel, retail and amusement areas and themed development components, without being engaged in retail trade, and to engage in casino gaming activities.[81]

Nowhere in the records of the case, particularly in the evidence adduced by petitioner, does it show that it is engaged in the sale of goods or services or in transactions other than the aforementioned activities.

PAGCOR's tax exemption from the payment of taxes including VAT which inures to the benefit of its licensees and contractees, does not entitle the latter to claim the input VAT that may have been passed on to it by its suppliers/sellers as discussed earlier, because such privilege belongs only to those which are engaged in VAT zero-rated and not VAT-exempt sales.

Relative thereto, Section 109(1)(K) of the 1997 NIRC, as amended,[82] reads:

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[81] Exhibit 'P-1' – Petitioner's Certificate of Filing of Amended Articles of Incorporation dated May 30, 2017.

[82] As amended by TRAIN Law.

"SEC. 109. *Exempt Transactions.* – (1) Subject to the provisions of Subsection (2) hereof, **the following transactions shall be exempt from the value-added tax**:

xxx xxx xxx

(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; (*emphasis supplied*)

xxx xxx xxx

Thus, since PD No. 1869 is a special law, the treatment under Section 109(1)(K) of the 1997 NIRC, as amended, of PAGCOR's sales is one of VAT exemption, and not one of VAT-zero rating. Parenthetically, an exempt transaction is defined as one involving goods or services, which by their nature, are specifically listed in and expressly exempted from the VAT, under the 1997 NIRC, as amended, without regard to the tax status of the party in the transaction.[83] To be sure, PAGCOR's tax privilege on its *sales* is a VAT exempt transaction.

The said VAT exemption of PAGCOR was affirmed in the case of *Philippine Amusement and Gaming Corporation (PAGCOR) vs. The Bureau of Internal Revenue, et al.*,[84] where the Supreme Court *En Banc*, in no uncertain terms, declared:

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

Moreover, a cursory reading of the aforequoted Section 13(2) of PD No. 1869 would reveal that PAGCOR was not given any VAT zero-rating treatment on its sales. Thus, no such treatment 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".

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[83] *Commissioner of Internal Revenue vs. Philippine Health Care Providers, Inc.*, G.R. No. 168129, April 24, 2007, citing *Commissioner of Internal Revenue vs. Seagate Technology (Philippines)*, G.R. No. 153866, February 11, 2005; and *Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc.*, G.R. No. 150154, August 9, 2005.

[84] G.R. No. 172087, March 15, 2011.

Seen in the perspective of PAGCOR being exempt under a special law, it is apparent that the proper party to seek the subject tax refund or credit should be petitioner's suppliers because it is the latter's supply of services to a VAT exempt entity (PAGCOR and/or its licensees) that are considered effectively zero-rated.

The term *"effectively zero-rated sales of services"* shall refer to the local sale of services by a VAT-registered person to a person or entity who was granted indirect tax exemption under special laws or international agreement.[85] It is clear that the right to claim a refund of excess or unutilized input VAT does not belong to petitioner because its sales are not considered zero-rated nor effectively zero-rated based on the relevant afore-quoted provisions.

The term *"effectively zero-rated sales of services"* shall refer to the local sale of services by a VAT-registered person **to <u>a person or entity</u> who was granted indirect tax exemption under special laws** or international agreement.[86] Effective zero rating is **intended to benefit <u>the purchaser</u>** who, not being directly and legally liable for the payment of the VAT, will ultimately bear the burden of the tax shifted by the suppliers.[87]

In conclusion, the claim for refund of alleged excess/unutilized input tax incurred by petitioner during the first quarter of 2016 cannot be refunded because the latter is not engaged in zero-rated activities pursuant to the relevant afore-quoted provisions of the 1997 NIRC, as amended.

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[85] Section 4.108-6, Revenue Regulations No. 16-2005.
[86] Section 4.108-6, Revenue Regulations No. 16-2005.
[87] *Commissioner of Internal Revenue vs. Seagate Technology (Philippines)*, G.R. No. 153866, February 11, 2005.

As for the input VAT paid by petitioner on its importation of goods other than capital goods for the four (4) quarters of TY 2018, the Court rules in favor of petitioner.

Section 107 (A) of the 1997 NIRC, as amended,[88] 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.

Based on the report of the Independent Certified Public Accountant (ICPA), petitioner's valid input taxes on importation of goods other than capital goods for the four (4) quarters of TY 2018 amounted to ₱6,222,788.72, detailed as follows:

PARTICULAR	**1st QUARTER**	**2nd QUARTER**	**3rd QUARTER**	**4th QUARTER**	**TOTAL**
Amount of input tax	₱3,183,450.00	₱1,652,356.00	₱5,902,560.00	₱2,314,869.00	₱13,053,235.00
Less: ICPA Disallowances	716,868.21	976,361.07	3,595,803.76	1,541,413.24	6,830,446.28
Total Amount of Valid Input Tax	**₱2,466,581.79**	**₱ 675,994.93**	**₱2,306,756.24**	**₱ 773,455.76**	**₱6,222,788.72**

Upon further verification however, the Court finds that a additional disallowance of ₱2,502,467.00 is in order, broken down as follows:

1st Quarter, TY 2018		
Exhibit No.	**Single Administrative Document (SAD)/ Statement of Settlement of Duties and Taxes (SSDT) Reference No.**	**Amount of Input VAT**
No SAD		
"P-86-16"	C-19336	₱ 85,451.00

[88] 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.

"P-86-17"	C-21608	1,081,918.00
"P-86-18"	C-22309	34,337.00
"P-86-21"	C-13091	36,771.00
Subtotal – No SAD (1Q)		*₱ 1,238,477.00*
2nd Quarter, TY 2018		
Exhibit No.	**SAD/SSDT Reference No.**	**Amount of Input VAT**
No SAD		
"P-118-6"	C70120	₱ 16,509.00
"P-118-8"	C102837	10,871.00
Subtotal – No SAD (2Q)		*₱ 27,380.00*
3rd Quarter, TY 2018		
No SAD		
Exhibit No.	**SAD/SSDT Reference No.**	**Amount of Input VAT**
"P-152-10"	C-87149	₱ 71,122.00
Subtotal – No SAD (3Q)		*₱ 71,122.00*
SAD with incomplete pages/details pertaining to VAT		
Exhibit No.	**SAD/SSDT Reference No.**	**Amount of Input VAT**
"P-152-17"	C-244524	₱ 72,335.00
"P-152-18"	C-244468	194,444.00
"P-152-19"	C-244575	865,690.00
Subtotal – SAD with incomplete pages/details (3Q)		*₱ 1,132,469.00*
Subtotal – Total Disallowances (3Q)		*₱ 1,203,591.00*
4th Quarter, TY 2018		
Exhibit No.	**SAD/SSDT Reference No.**	**Amount of Input VAT**
Difference of VAT per SAD and per SSDT		
"P-184-5"	C-23119	₱ 33,019.00
Subtotal – Difference of VAT per SAD and SSDT (4Q)		*₱ 33,019.00*
TOTAL COURT DISALLOWANCES		**₱ 2,502,467.00**

Combined with the disallowances found by the ICPA, the total disallowances are now computed at ₱9,332,913.28, leaving a valid input tax in the amount of ₱3,720,321.72, detailed as follows:

PARTICULAR	1st QUARTER	2nd QUARTER	3rd QUARTER	4th QUARTER	TOTAL
Amount of input tax	₱3,183,450.00	₱1,652,356.00	₱5,902,560.00	₱2,314,869.00	₱13,053,235.00
Less: ICPA Disallowances	716,868.21	976,361.07	3,595,803.76	1,541,413.24	6,830,446.28
Less: Court Disallowances	1,238,477.00	27,380.00	1,203,591.00	33,019.00	2,502,467.00
Total Amount of Valid Input Tax	**₱1,228,104.79**	**₱648,614.93**	**₱1,103,165.24**	**₱740,436.76**	**₱3,720,321.72**

In sum, petitioner is entitled to the refund in the amount of ₱3,720,321.72, representing VAT paid by petitioner on the importation of goods other than capital goods for the four (4) quarters of TY 2018.

WHEREFORE, in light of the foregoing considerations, the consolidated Petitions for Review filed by petitioner Melco Resorts Leisure (PHP) Corporation, is **PARTIALLY GRANTED**.

Accordingly, respondent is hereby **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE (TCC)** to petitioner the reduced amount of ₱3,720,321.72, representing the input tax paid on importation of goods for the four (4) quarters of 2018.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(*See Separate Concurring Opinion*)
ROMAN G. DEL ROSARIO
Associate Justice

Marian Ivy F. Reyes-Fajardo
(*With due respect, please see Dissenting Opinion*)
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 consolidated cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

MELCO RESORTS LEISURE (PHP) CORPORATION, Petitioner,	**CTA Case Nos. 10236, 10271, 10294 & 10359**
- versus -	Members: **DEL ROSARIO,** P.J., *Chairperson*, **MANAHAN,** and, **REYES-FAJARDO**, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 0 5 2024; 3:30PM

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SEPARATE CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur in the partial grant of refund to petitioner in the amount of **₱3,720,321.72** representing the input value-added tax (VAT) paid on importation of goods other than capital goods for the four (4) quarters of taxable year (TY) 2018.

The *ponencia* aptly confirms that the benefits of tax exemption under Section 13(2) of Presidential Decree (PD) No. 1869, as amended, or the Charter of the Philippine Amusement and Gaming Corporation (PAGCOR), inures to the benefit of petitioner as a PAGCOR licensee.[1]

I note that petitioner invoked, as basis for its refund claim, **Sections 204(C) and 229** of the National Internal Revenue Code (NIRC) of 1997, as amended, regarding claims for refund of erroneously or illegally collected tax.[2] It is **not** anchored on **Section 112**, involving claims for refund of unutilized input tax attributable to

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[1] *Ponencia*, pp. 13-16.

[2] Petition for Review, CTA Case No. 10236, Docket, Vol. I, pp. 20-22; Petition for Review, CTA Case No. 10271, Docket, pp. 28-31; Petition for Review, CTA Case No. 10294, Docket, pp. 20-22; Petition for Review, CTA Case No. 10359, Docket, pp. 19-21; Petitioner's Memorandum, CTA Case No. 10236, Docket, Vol. II, pp. 1049-1051.

zero-rated sales. As expounded hereunder, petitioner's refund claim of its erroneously paid "input tax" should still be denied, except for those paid on the importation of goods other than capital goods for which petitioner is directly liable.

The Supreme Court has declared, in *Malayan Insurance Company, Inc. vs. St. Francis Square Realty Corporation, et seq.*,[3] that "in the case of a non-VAT purchaser[,] [the] VAT forms part of cost of the purchase price. The input tax passed on to the final consumers x x x thus becomes part of their acquisition cost of the asset or operating expense."

Considering that petitioner, a licensee of PAGCOR, is exempt from payment of VAT in accordance with Section 13(2)(b) of the PAGCOR Charter, it is thus considered a non-VAT purchaser, and any input tax passed on to it by its local suppliers only forms part of the cost of the goods or services purchased.

The analogous case of *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue*[4] is illustrative. Applied here, the erroneous shifting of VAT to petitioner, which otherwise should have been subjected to zero percent (0%) VAT, cannot be a subject of a refund claim, but petitioner's recourse should be against the suppliers who ought not have passed on the VAT. Petitioner's recourse then is to seek reimbursement from its local suppliers and not from the government.

ALL TOLD, I *CONCUR* in the result.

ROMAN G. DEL ROSARIO
Presiding Justice

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[3] G.R. Nos. 198916-17 & 198920-21, July 23, 2018 (Resolution).
[4] G.R. No. 190506, June 13, 2016.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

MELCO RESORTS LEISURE (PHP) CORPORATION, *Petitioner,*	**CTA Case Nos. 10236, 10271, 10294 and 10359**
	Members:
-versus-	**DEL ROSARIO,** *P.J., Chairperson,* **MANAHAN,** and **REYES-FAJARDO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: FEB 0 5 2024, 3:30PM

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DISSENTING OPINION

REYES-FAJARDO, *J.*:

My esteemed colleague Associate Justice Catherine T. Manahan denied petitioner Melco Resorts Leisure (PHP) Corporation (Melco)'s judicial claim for refund for its failure to establish the zero-rated nature of its sales relative to the requirements set out in Section 112(A) of the National Internal Revenue Code of 1997, as amended (Tax Code). Verily, the *ponencia* recognizes that Philippine Amusement and Gaming Corporation (PAGCOR)'s VAT exemption extends even to Melco, as the former's licensee. However, it disqualifies Melco from claiming a refund of the input value-added tax (VAT) passed on to it by its suppliers because it is not engaged in zero-rated sales, *viz.*:

> PAGCOR's tax exemption from the payment of taxes including VAT which inures to the benefit of is licensees and contractees, does not entitle the latter to claim the input VAT that

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> may have been passed on to it by its suppliers/sellers as discussed earlier, because such privilege belongs only to those which are engaged in VAT zero-rated and not VAT-exempt sales.[1]

With due respect, I differ from this position.

Petitioner anchored its refund claim of **erroneously or illegally collected 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.[2]

That the present judicial claim is founded on Section 229 of the Tax Code, not Section 112(A) thereof, underscores that Melco is seeking a refund *not* as a seller engaged in zero-rated sales, but **as a VAT-exempt entity to whom VAT was passed on erroneously or illegally because it was in violation of Melco's exemption.** The essence of a tax exemption is the immunity or freedom from a charge or burden to which others are subjected. It is a waiver of the

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[1] Page 19 of the *Ponencia*.
[2] Emphasis supplied.

government's right to collect the amounts that would have been collectible under our tax laws. Thus, when the law speaks of a tax exemption, it should be understood as freedom from the imposition and payment of a particular tax.[3]

When a party immune from tax is nonetheless forced to pay or be burdened with its economic effects, the payment or burden becomes erroneous or illegal. Consequently, taxes paid or shifted in error may be refunded under Section 229 of the Tax Code. Here, the erroneous character of the Melco's payment is founded mainly on its exemption from indirect taxes.

In *Commissioner of Internal Revenue v. San Roque Power Corp.*,[4] the Supreme Court contemplated two scenarios in the refund of input VAT: (1) ***excess* input VAT credit** as a direct consequence of the VAT system, which may be refunded *via* Section 112 of the Tax Code and (2) ***excessively collected* input VAT,** which may be refunded outside the VAT system *via* Section 229 of the Tax Code. In said case, the Supreme Court explained that input VAT under Section 112 is not "excessively" collected as understood under Section 229 but that if the input VAT is in fact "excessively" collected as understood under Section 229, then tax refund or credit under Section 229 is proper, as an ordinary refund or credit outside of the VAT System, to wit:

> The input VAT is not "excessively" collected as understood under Section 229 because at the time the input VAT is collected the amount paid is correct and proper. The input VAT is a tax liability of, and legally paid by, a VAT-registered seller of goods, properties or services used as input by another VAT-registered person in the sale of his own goods, properties, or services. This tax liability is true even if the seller passes on the input VAT to the buyer as part of the purchase price. The second VAT-registered person, who is not legally liable for the input VAT, is the one who applies the input VAT as credit for his own output VAT. **If the input VAT is in fact "excessively" collected as understood under Section 229, then it is the first VAT-registered person — the taxpayer who is legally liable and who is deemed to have legally paid for the input VAT — who can ask for a tax refund or credit under Section 229 as an ordinary refund or credit outside of the VAT System.** In such event, the second VAT-registered taxpayer will

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[3] *Purisima v. Lazatin*, G.R. No. 210588, November 29, 2016, 801 PHIL 395-427.
[4] G.R. Nos. 187485, 196113 & 197156, February 12, 2013, 703 PHIL 310-434.

have no input VAT to offset against his own output VAT. (Emphasis supplied)

Certainly, persons who do not engage in zero-rated sales but whose immunity from the burden of input VAT had been violated are not without recourse. Section 229 of the Tax Code allows the recovery of input VAT **outside the VAT system**, if the same was paid or passed on erroneously or illegally, as in Melco's case. To be sure, the subject input VAT does not relate to input VAT credits; it pertains to input VAT erroneously or illegally passed on to Melco.

That the law allows the aggrieved taxpayer to recover erroneously paid taxes is consistent with the prohibition against unjust enrichment. Under the principle of *solutio indebiti*, the government is duty-bound to restore the sums representing erroneous payments of taxes.[5]

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 four (4) quarters of taxable year 2018 to the extent that it has proven its entitlement thereto.

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

[5] *Philippine Geothermal Inc. v. Commissioner of Internal Revenue*, G.R. No. 154028, July 29, 2005, 503 PHIL 278-288.