REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MELCO RESORTS LEISURE (PHP) CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 2608
(CTA Case No. 9811)

Present:

DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
JAN 0 8 2024 3:55 pm

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RESOLUTION

CUI-DAVID, J.:

For the resolution of the Court *En Banc* is petitioner's ***Motion for Reconsideration (of Decision dated July 11, 2023)***,[1] filed on July 31, 2023, with respondent's ***Opposition (Re: Motion for Reconsideration of the Decision dated July 11, 2023)***,[2] filed on September 15, 2023.

Petitioner seeks the reconsideration of the Court *En Banc*'s *Decision* promulgated on July 11, 2023,[3] the dispositive portion of which reads:

[1] *En Banc* (*EB*) Docket, pp. 181-199.
[2] *Id.*, pp. 209-214.
[3] *Id.*, pp. 140-169.

> **WHEREFORE**, in light of the foregoing, the instant *Petition for Review* is **DENIED**. The *Decision* dated October 28, 2021, and the *Resolution* dated April 6, 2022, of the Court's First Division in CTA Case No. 9811 are **AFFIRMED**.
>
> **SO ORDERED.**

Petitioner received the assailed Decision on July 14, 2023. Thus, petitioner had until July 31, 2023[4] to file its motion for reconsideration. Accordingly, on July 31, 2023, petitioner timely filed its *Motion for Reconsideration (of Decision dated July 11, 2023)*.

We now proceed to petitioner's arguments.

Petitioner argues that in a claim for refund of erroneously paid or passed-on taxes by a non-statutory taxpayer, the "payment of taxes" under Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, should be construed as the time the passed-on taxes are determined to be erroneous.[5] Petitioner suggests that the two-year period should be counted from the filing of petitioner's quarterly value-added tax (VAT) return because it is only when petitioner has determined which purchases are directly attributable and allocated to its gaming revenues.[6] Petitioner also argues that the issuance by the suppliers of VAT-registered invoice or official receipt (OR) separately showing the amount of input VAT passed on to petitioner should likewise sufficiently establish that the input VAT passed on and paid by it is in compliance with Section 229 of the NIRC of 1997, as amended.[7]

Petitioner likewise seeks to apply by analogy cases of refund of unutilized or excess creditable withholding tax (CWT). According to petitioner, considering that it is well-settled that the proof of remittance is the responsibility of the withholding agent and not of the taxpayer-refund claimant, it is sufficient for it to present its quarterly VAT return and its VAT-registered invoices and OR.[8] For petitioner, if the Court rules otherwise, the buyers shall be at the mercy of the suppliers if the latter do not furnish their VAT returns.[9]

[4] The 15th day counting from July 14, 2023, is July 29, 2023, a Saturday. The next working day is July 31, 2023.
[5] *Motion for Reconsideration*, par. 5.
[6] *Id.*, par. 7.
[7] *Id.*, par. 9.
[8] *Id.*, pars. 11 and 13.
[9] *Id.*, par. 14.1

Finally, petitioner invokes the principle of *solutio indebiti* and argues that "the government should not misuse technicalities to keep money it is not entitled to."[10]

In his *Opposition*, respondent quotes the assailed *Decision* and contends that petitioner failed to prove that it is entitled to the refund sought. Respondent closes his *Opposition* by stating that refunds, being in the nature of tax exemptions, are strictly construed against the taxpayer.

Accordingly, the main issue for resolution of this Court is the reckoning point of counting the two years prescribed under Sections 204(C) and 229 of the NIRC of 1997, as amended.

We quote Section 229:

> 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 **<u>two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment</u>**: 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 and underscoring supplied.*]

Section 229 of the NIRC of 1997, as amended, as consistently applied by the Supreme Court in a plethora of cases, provides that the two-year period is counted "from the date of payment of the tax or penalty regardless of any supervening cause; otherwise, the claim for refund shall have prescribed."

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[10] *Id.*, pars. 15, 19-23.

In the assailed *Decision*, We applied the ruling of the Supreme Court in *Philippine Airlines, Inc. v. Commissioner of Internal Revenue ("PAL case")*. [11] By way of recall, in determining whether PAL's claim for refund was filed on time, the Supreme Court inquired when Caltex, the statutory taxpayer, filed its excise tax return and paid the excise tax due thereon with the BIR. It is from the date Caltex electronically *filed* the requisite excise tax returns and *paid* the corresponding amount of excise taxes that the Supreme Court counted the two-year period within which PAL may file its claim for refund.

> ... the Court finds that the evidence on record shows that PAL was able to sufficiently prove its entitlement to the subject tax refund. The following incidents attest to the same:
>
> ***First,*** PAL timely filed its claim for refund.
>
> Section 229 of the NIRC provides that the claim for refund should be filed within two (2) years from the date of payment of the tax.
>
> Shortly after imported aviation fuel was delivered to PAL, **Caltex electronically filed the requisite excise tax returns and paid the corresponding amount of excise taxes**, as follows:

DATE OF FILING AND PAYMENT	FILING REFERENCE NO.
July 26, 2004	074400000178825
July 27, 2004	070400000179115
July 28, 2004	070400000179294
July 29, 2004	070400000179586

> **PAL filed its administrative claim for refund on October 29, 2004 and its judicial claim with the CTA on July 25, 2006**. In this regard, PAL's claims for refund were filed on time in accordance with the 2-year prescriptive period. [*Emphasis supplied*]

Petitioner seeks to differentiate the *PAL case* from the instant case and, instead, implores this Court to apply cases involving refunds of excess and unutilized CWTs by analogy.

We find petitioner's argument unconvincing.

[11] G.R. No. 198759, July 1, 2013, 713 SCRA 134-160.

The *PAL case*, which petitioner itself cited, involves indirect business taxes, a VAT-subject transaction, a non-exempt seller, and a buyer exempt from direct and indirect taxes due to a special law – all similar to the instant case. The *PAL case* likewise involves a claim for refund under Sections 204(C) and 229 of the NIRC of 1997, as amended, filed by the exempt buyer, which We likewise find the same in this case. Although the *PAL case* involves excise taxes and the instant case involves VAT, the rest of the factual milieu is similar. These similarities warrant application in the instant case, being the closest jurisprudential anchor.

To apply refunds of excess and unutilized CWTs by analogy would be to betray the similarities of this case and the *PAL case* and stretch the pronouncement of the Supreme Court to factual circumstances that the High Court may not have envisaged when it laid down those rulings. Accordingly, We cannot apply jurisprudential pronouncements regarding refunds of excess and unutilized CWTs to the instant case, and resultingly, We cannot give credence to petitioner's supposition that the quarterly VAT returns are sufficient for this Court to be able to determine compliance with the two year period to file the administrative and judicial claim for refund.

As interpreted by the Supreme Court in the *PAL case*, the two-year period is counted **from the date of payment**, *i.e.*, from the **date of the *filing* of the VAT return and *payment* of the corresponding amount of taxes by the suppliers that erroneously passed VAT to petitioner**. This Court adheres to the pronouncement of the Supreme Court. The principle of *stare decisis* enjoins adherence by lower courts to doctrinal rules established by the Supreme Court in its final decisions. It is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument. It is a bar to any attempt to relitigate the same issues, necessary for two simple reasons: economy and stability. In our jurisdiction, the principle is entrenched in Article 8 of the Civil Code.[12]

Petitioner additionally contends that it is only at the time of the filing of the VAT returns that it will be able to determine how much input VAT is attributable or allocable to its gaming operations. Thus, petitioner suggests that the two years should only be counted from its filing of the quarterly VAT returns.

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[12] Ting v. Velez-Ting, G.R. No. 166562, March 31, 2009, 601 PHIL 676-694.

To reiterate, Section 229 of the NIRC of 1997 is clear in stating that the period to file both the claim for refund before the Court is "**two (2) years from the date of payment of the tax or penalty** regardless of any supervening cause that may arise after payment." As applied by the Supreme Court in the *PAL* case and unless a contrary subsequent ruling by the Supreme Court would suggest, this would pertain to the filing of petitioner's suppliers of their VAT return and payment of the corresponding VAT.

Finally, the plain invocation of *solutio indebiti* fails to convince this Court. Although such civil law doctrine may indeed be the basis why the NIRC of 1997, as amended, allows taxpayers to file claims of refund, it must be observed that the exercise of such privilege must likewise be in accordance with the statutory deadlines and procedure. To underscore, not every untimely claim for a refund ought to be granted just because of the principle of *solutio indebiti.* Emphatically, the Supreme Court has held in *CIR v. Manila Electric Co. (Meralco)*[13] that the legal precept of *solutio indebiti* is inapplicable to tax refund cases **since the Tax Code, a special law, explicitly provides for a mandatory period for claiming a refund for taxes erroneously paid.** Accordingly, as held in *CIR v. San Miguel Corp.,*[14] there is no need to refer to the Civil Code provisions on quasi-contract. As already pointed out by the Court in *Meralco,*[15] the NIRC of 1997 is a special law, and it is a basic tenet in statutory construction that between a general law and a special law, the special law prevails. *Generalia specialibus non derogant.*

As such, We see no compelling reason to depart from our ruling in the assailed *Decision.*

WHEREFORE, premises considered, petitioner's *Motion for Reconsideration (of Decision dated July 11, 2023)* is hereby **DENIED** for lack of merit.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

[13] G.R. No. 181459, June 9, 2014, 735 PHIL 547-561.
[14] G.R. Nos. 180740 & 180910, November 11, 2019.
[15] *Supra* at note 13.

We Concur:

(I reiterate my Separate Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

(I maintain my concurrence in the result)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(I maintain concurrence with PJ's Separate Opinion)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice