REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MELCO RESORTS LEISURE (PHP) CORPORATION [formerly MCE LEISURE (PHILIPPINES) CORPORATION doing business under the name and style of City of Dreams Manila and COD Manila], Petitioner,	**CTA EB NO. 2718** (CTA Case Nos. 9582, 9667, & 9724)
	Members: **DEL ROSARIO**, *P.J.* **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 20 2025 1:05

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RESOLUTION

FERRER-FLORES, J.:

For this Court's resolution are the following:

1. **Motion for Partial Reconsideration (of Decision dated June 28, 2024)** filed by petitioner Melco Resorts Leisure (PHP) Corporation (Melco) on July 17, 2024, with **Opposition (Re: Motion for Reconsideration of the Decision dated 28 June 2024)** filed by respondent Commissioner of Internal Revenue (CIR) on August 30, 2024; and,

2. **Motion for Partial Reconsideration (Re: Decision promulgated 28 June 2024)** filed by respondent CIR on July 18, 2024, with **Opposition [To Respondent's Motion for Partial**

Reconsideration dated July 5, 2024] filed by petitioner Melco on September 4, 2024.

Both parties move for reconsideration of the *Decision* dated June 28, 2024 (**assailed Decision**),[1] wherein the Court partially granted Melco's *Petition for Review*, the dispositive portion of which reads:

> **WHEREFORE**, in light of the foregoing considerations, the Petition for Review is **PARTIALLY GRANTED**. The refund of input taxes on purchases of (1) capital goods; and, (2) domestic purchases of goods (other than capital goods) and services, subject of CTA Case Nos. 9582, 9667, and 9724 are **DENIED** for lack of merit. Let the cases be **REMANDED** to the CTA Third Division for the proper determination of the refundable amount of value-added tax (VAT) paid on (1) importation of goods (other than capital goods); and, (2) purchases of services rendered by non-residents for the fourth quarter of 2014, first quarter of 2015, and second quarter of 2015.
>
> **SO ORDERED.**

Melco's Motion for Partial Reconsideration

In Melco's *Motion for Partial Reconsideration*, it insists that it should be allowed to claim for refund or tax credit on input taxes erroneously passed on by its domestic suppliers in violation of Presidential Decree (P.D.) No. 1869, as amended, notwithstanding that it is not considered as the statutory taxpayer under the law. Melco maintains that the fact of payment of input value-added tax (VAT) passed on by suppliers to it as evidenced by a VAT-registered invoice or official receipt *per se*, is sufficient compliance with the requisite of erroneously or illegally collected tax under Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended. Under the principle of *solutio indebiti,* the Government has to restore to Melco the sums representing erroneous payments of taxes.

On the other hand, the CIR counters that Melco failed to prove that it is entitled to the refund of the input taxes paid which was fatal to its claim for refund.

The CIR's Motion for Partial Reconsideration

In the CIR's *Motion for Partial Reconsideration*, he maintains that Melco, being a licensee and contractee of Philippine Amusement and Gaming

[1] *Rollo*, pp. 141 to 168.

Corporation (PAGCOR), is subject to income tax and VAT. The CIR also points out that Melco's alleged sales transactions are not among those considered as zero-rated transactions under the NIRC of 1997, as amended. As such, input VAT passed on to Melco cannot be claimed for refund, instead, the same will form part of cost of goods and services. Furthermore, the CIR assigns error in the Court's partial grant of the refund of the VAT withheld on its payment for services rendered by non-residents, arguing that the related VAT should not be refunded. Finally, respondent posits that it is incumbent upon Melco to prove that it is entitled to the refund sought and that Melco failed to discharge its burden of establishing its entitlement to the same.

Melco, on the other hand, alleges that the CIR's *Motion* is a mere rehash of his previous arguments which have already been resolved in the assailed Decision. Melco emphasizes that the Court has already affirmed its exemption from taxes under Section 13(2) of P.D. No. 1869, as amended; hence, it is entitled to the refund. Melco likewise reiterates that it is entitled to the refund of input taxes related to its payments for services rendered by non-residents, echoing the Court's ruling in the assailed Decision.

We resolve.

After an evaluation of the respective arguments raised by the parties, this Court finds both parties' *Motions for Partial Reconsideration* bereft of merit.

A cursory reading of the present *Motions for Partial Reconsideration* would reveal that the arguments of the parties are mere repetitions of the matters raised in their various pleadings which have already been considered and exhaustively discussed by the Court *En Banc* in the assailed Decision.

At the risk of sounding repetitive, the Court emphasizes that the tax exemption privileges of PAGCOR inure to the benefit of Melco, being a PAGCOR licensee, pursuant to Section 13(2)(b), in relation to Section 13(2)(a), of P.D. No. 1869, as amended.[2] Such tax exemption covers both direct and indirect taxes, including VAT. Consequently, Melco's gaming revenues are exempt from VAT and not subject to 0% VAT as argued by Melco.

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[2] *Philippine Amusement and Gaming Corporation vs. Bureau of Internal Revenue*, G.R. No. 172087, March 15, 2011.

With regard to Melco's entitlement to the refund of its input taxes, as thoroughly explained in the assailed Decision, only VAT-registered persons engaged in zero-rated and effectively-zero rated sales are entitled to the refund of creditable input tax attributable to such sales. As such, the input taxes paid by Melco, which is not engaged in zero-rated sales, to its local suppliers of goods (other than capital goods) and services and capital goods cannot be subject to refund under Section 112(A) of the NIRC of 1997, as amended.

On the other hand, the input taxes paid by Melco, as the statutory taxpayer, on its importation and services rendered by non-residents are refundable inasmuch these were erroneously collected and may be subject of refund pursuant to Section 229 of the NIRC of 1997, as amended.

In *Department of Energy vs. Commissioner of Internal Revenue*,[3] the Supreme Court, citing *Shangri-la International Hotel Management, Ltd., et al. vs. Developers Group of Companies, Inc.*,[4] held that, while a motion for reconsideration, by its nature, may tend to dwell on issues already resolved in the decision or resolution sought to be reconsidered, a circumstance which should not be an obstacle for a reconsideration, petitioners must still raise matters substantially plausible or compellingly persuasive to warrant a reversal of the Court's previous ruling.

Clearly, both motions failed to raise matters which are compelling enough to warrant any modification of the assailed Decision.

All told, there being no new matters which warrant the Court's attention, the Court *En Banc* finds no cogent reason to reverse or modify the assailed Decision.

WHEREFORE, premises considered, petitioner's *Motion for Partial Reconsideration (of Decision dated June 28, 2024)* and respondent's *Motion for Partial Reconsideration (Re: Decision promulgated 28 June 2024)* are both **DENIED** for lack of merit.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

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[3] G.R. No. 260912 (Resolution), August 30, 2023.
[4] G.R. No. 159938 (Resolution), January 22, 2007.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

With due respect, I reiterate my Concurring and Dissenting Opinion.
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

With due respect, I maintain my Concurring and Dissenting Opinion dated June 28, 2024.
CATHERINE T. MANAHAN
Associate Justice

With due respect, I reiterate my Dissenting Opinion.
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

With due respect, I reiterate my joining of Justice Ringpis-Liban's C.D.O.
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

With due respect, I maintain my Dissenting Opinion.
MARIAN IVY F. REYES-FAJARDO
Associate Justice

With due respect, I maintain and reiterate my Concurring and Dissenting Opinion.
LANEE S. CUI-DAVID
Associate Justice

HENRY S. ANGELES
Associate Justice