REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ACESITE (PHILIPPINES) HOTEL CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5645

THE HONORABLE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 03 2000

x - x

DECISION

This is a Petition for Review filed on May 29, 1998, seeking for a refund of the Amount of P30,152,892.02 allegedly representing expanded value-added tax ("EVAT", for brevity) payments for the period January 1996, to April 1997 (not July 1996 to October 1997, as erroneously indicated in Petitioner's Petition for Review), from its earnings on lease rentals and various hotel services and changes with the Philippine Gaming Corporation ("PAGCOR", for brevity).

The antecedent facts giving rise to the controversy at bar are as follows:

Records show that for the period January 1996 to April 1997, Petitioner derived income from PAGCOR for the lease of casino space and sales of food/beverage and other hotel services catered to its high roller customers.

Pursuant to Section 99 (now 105) of the Tax Code, Petitioner shifted or passed on to PAGCOR the corresponding 10% EVAT on its sales of food and services to the latter.

However, PAGCOR refused to pay the 10% EVAT invoking its tax-exempt status under Presidential Decree 1869. For the period July 1996 to October 1997, PAGCOR paid Petitioner's billings for January 1996 to April 1997 sales of food and services except the corresponding 10% EVAT amounting to P21,413,026.78.

Fearing of legal sanctions that may be imposed, Petitioner paid to the Bureau of Internal Revenue the amount of P30,152,892.02 representing the 10% EVAT on its gross income from PAGCOR for the period January 1996 to April 1997. Of the total amount of P30,152,892.02, P8,739,865.24 represents the 10% EVAT on PAGCOR's rentals and P21,413,026.78 as the 10% EVAT on Petitioner's income from sales of food and services to PAGCOR (Exhs. X and A).

Realizing that its gross income from PAGCOR is zero-rated and that it has committed a mistake in remitting the 10% EVAT on its gross income from PAGCOR, Petitioner filed an administrative claim for refund with the Respondent on May 21, 1998 amounting to P30,152,892.00 (Exh. Q).

The manifest inaction of the Respondent on its claim for refund compelled the Petitioner to elevate its case to this Court on May 28, 1998, involving the same amount detailed as follows:

1996	10% EVAT on Total Sales to PAGCOR	10% EVAT on Advance Rent of PAGCOR	Total	Total Amount Remitted to the BIR: Amount Remitted	Date Remitted	Exh.
Jan.	P 2,199.94		P 2,199.94	P 1,159,307.99	2/26/96	X-18
Feb.	26,205.04		26,205.04	2,357,368.60	3/22/96	X-19
Mar.	70,338.42		70,338.42	2,923,891.30	4/22/96	X-20
April	183,343.08		183,343.08	2,524,720.48	5/24/96	X-21
May	478,369.60		478,369.60	4,016,956.80	6/25/96	X-22
June	1,357,795.42		1,357,795.42	4,621,955.44	7/22/96	X-23

July	1,824,215.77		1,824,215.77	3,422,898.13	8/20/96	X-24
Aug.	1,868,401.78		1,868,401.78	3,431,035.45	9/23/96	X-25
Sept.	2,267,800.42		2,267,800.42	5,031,296.51	10/21/96	X-26
Oct.	1,948,849.69		1,948,849.69	4,010,004.46	11/21/96	X-27
Nov.	2,382,866.45		2,382,866.45	3,726,289.81	12/23/96	X-28
Dec.	2,452,619.03		2,452,619.03	4,687,250.57	1/20/97	X-29
Subtotal	P 14,863,004.64		P 14,863,004.64	P 41,912,975.54		
1997						
Jan.	P 1,373,993.28		P 1,373,993.28	P 3,822,612.90	2/24/97	X-30
Feb.	1,782,088.07		1,782,088.07	3,677,072.26	3/24/97	X-31
Mar.	1,840,428.74		1,840,428.74	4,777,917.96	4/21/97	X-32
April	1,553,512.05		1,553,512.05	3,904,888.57	5/23/97	X-33
April	-	P 8,739,865.24	8,739,865.24	8,739,865.24	5/23/97	X-34
Subtotal	P 6,550,022.14	P 8,739,865.24	P 15,289,887.38	P 24,922,356.93		
Total	P 21,413,026.78	P 8,739,865.24	P 30,152,892.02	P 66,835,332.47		

In his Answer filed on June 26, 1998, Respondent assailed Petitioner's protestations and interposed the following Special and Affirmative Defenses, to wit:

> 4. Assuming Petitioner filed a claim for refund with the BIR, the same is subject to administrative investigation.
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> 5. Taxes are presumed to have been collected in accordance with law. Hence, Petitioner must prove that the taxes sought to be refunded were erroneously or illegally collected.
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> 6. Petitioner must show that it has complied with the provisions of Sections 204(3) and 230 of the Tax Code.
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> 7. Claims for refund of taxes are construed strictly against claimants, the same being in the nature of an exemption from taxation (Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 351).

On July 8, 1999, this case was submitted for decision after the parties have submitted their respective memorandum.

Forming the vortex of the controversy, legal and factual are as follows:

1) Whether or not Petitioner may validly claim for a refund of the amount representing the 10% EVAT which it tried to pass on or shift to PAGCOR; and

2) Whether or not Petitioner was able to substantiate its claim for refund.

Anent the first issue, Petitioner reiterates its stance *a quo* and maintains the view that it allegedly committed a mistake in remitting to the Bureau of Internal Revenue the 10% EVAT on its gross income from PAGCOR; that under pertinent law, it may as seller/lessor, shift or pass on said EVAT payments to PAGCOR, the buyer/lessee; and that it accordingly tried to shift or pass on to PAGCOR the EVAT due on its gross income by billing PAGCOR, but the latter allegedly "deducted" such EVAT from its payments.

Upon the other hand in denying Petitioner's assertions. Respondent relied on the ruling of the Supreme Court in the case of Philippine Acetylene Co. vs. Commissioner of Internal Revenue, 20 SCRA 1056 (1967) where it was held that an indirect tax may be shifted to the buyer of goods but once it is shifted, it is no longer a tax but an additional cost which the purchaser has to pay to obtain the goods. In view thereof, the buyer cannot invoke its tax exemption privileges to void the passing on or shifting of the tax. In other words, Respondent advances the view that the EVAT, being an indirect tax, could have been shifted by the Petitioner to PAGCOR in the form of an additional cost of the lease of Petitioner's property since the exemption of PAGCOR is only with respect to its direct tax liability.

We agree with the Petitioner.

In an earlier case entitled **Acesite (Philippines) Hotel Corporation vs. The Honorable Commissioner of Internal Revenue, CTA Case No. 5499, dated January 28, 1999**, which involved the same parties, this Court resolved the legal issue in this wise:

> "As regards the first issue, Section 99 of the Tax Code, as amended, states in no uncertain terms that the amount of VAT, being an indirect tax, may be passed on or shifted by the seller to the purchaser of goods or services, thus:
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>> Sec. 99 Persons liable. - Any person who, in the course of trade or business, sells, barters or exchanges goods, or properties renders services, and any person who imports goods shall be liable to the value-added tax (VAT) imposed in Sections 100 to 102 of this Code.
>>
>> The value-added tax is an indirect tax and the amount of tax may be shifted or passed on the buyer, transferee or lessee of the goods, properties or services. This rule shall likewise apply to existing contracts of sale of goods, properties or services at the time of the effectivity of this Act.
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>> (Italics and emphasis supplied)
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> Such amount of the EVAT is determined by the imposition of either 10% or 0% rate on the gross selling price or gross value in money of the goods or properties sold, bartered or exchange; on the total value or landed cost plus excise tax, if any, in case of importation of goods; or, on the gross receipts derived from the sale or exchange of services, including the use or lease of properties. (Section 100- 102, Tax Code, as amended)
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> In this case, the applicable rate is 0% on the gross receipts derived by the Petitioner from the sale or exchange of services to PAGCOR, in accordance with Section 102 (b) (3) of the Tax Code, as amended, which states, thus:
>
> Section 102 (b):
>
>> (3) Services rendered to persons or entities whose exemption under special laws or international agreements to

> which the Philippine is a signatory effectivity subjects the supply of such services to zero rate. (Italics and emphasis supplied)
>
> Petitioner has presented convincing evidence showing PAGCOR as an entity with a special charter, namely, Presidential Decree No. 1869, which categorically makes it exempt from the payment of all taxes, after paying a 5% franchise tax on its gross revenue or earnings. Hence, by virtue of said Charter, the services rendered by the Petitioner to PAGCOR are effectively subject to zero rate.
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> Contrary to the above-provisions of law, however, Petitioner mistakenly believed that its transactions with PAGCOR were subject to the 10% rate. Petitioner supports this observation by its alleged "advanced" payment of herein amount of EVAT in question to the Respondent's Bureau. It accordingly prays for the refund of said amount after failing to shift and collect the same from PAGCOR, inexplicably not knowing that the transactions involved are subject to zero rate.
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> Prescinding from the above, We note that Respondent's contention in citing the *Philippine Acetylene Company* case is inapplicable at bar. We simply observe that the Tax Code, as amended, clearly makes the particular transactions between Petitioner and PAGCOR as zero-rated. Thus, to adhere to the Respondent's view that the amount of 10% EVAT cannot be refunded because it had already become a part of the purchase price paid by PAGCOR and not really as a tax is manifestly wrong because no matter how one looks at it, a 10% EVAT has been imposed on the transactions which the law only allows a zero-rate."
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When Respondent appealed the aforequoted decision of **Acesite vs. Commissioner of Internal Revenue, CTA Case No. 5499, to the Court of Appeals**, the latter Court dismissed the same for failure to accompany its petition with a duplicate original or certified true copy of the resolution sought to be reviewed (CA GR No. 52749, dated June 30, 1999).

We find no compelling reason at this point to disregard much less, to deviate from the said dictum to which We have earlier adhered to.

Furthermore, it is worth mentioning that the Supreme Court in the case entitled ***Maceda vs, Macaraig,*** 197 SCRA 771, interpreted the phrase "exempted from all forms of taxes" as extending to both direct and indirect taxes, thus:

> "When the National Power Corporation (NPC) was exempted from all forms of taxes, duties, fees, imports and other charges, under P.D. No. 938, it means exactly what it says, i.e., all forms of taxes including those that were imposed directly or indirectly on petroleum products used in its operation." (Underscoring supplied)

Thus, since PAGCOR's charter specifically provides that the franchise tax collected is in "lieu of all kinds of taxes, levies, fees of any kind, nature or description", it follows that the exemption also extends to indirect taxes such as value-added tax.

We now proceed to the factual basis of Petitioner's claim for refund.

After a cursory review of all documents presented and submitted to this Court, We found out that Petitioner's claim for refund insofar as the first quarter ending March 31, 1996, amounting to P98,743.30 has already prescribed it appearing that both the administrative and judicial claims for refund were filed beyond the two-year period of limitation reckoned from the date the petitioner filed its VAT return covering the first quarter of 1996 on April 22, 1996. The remaining portion of the claim amounting to P30,054,148.62 pertaining to April 1996 to April 1997 was seasonably filed within the two-year period prescribed under Section 230 of the Tax Code (Exhs. A, X-17 and X-21 to X-34, inclusive).

As regards PAGCOR's July 1996 to October 1997 total payments for Petitioners January 1996 to April 1997 sales of food and services, it appears that the former excluded the amount of P21,413,026.78 (Exh. 7) representing the 10% expanded value added tax as duly supported by PAGCOR's audited payment summaries, petitioners official receipts and/or statement of accounts issued to Petitioner (Exhs. A-1-a to P-87-2, inclusive). The said amount of EVAT was included in the monthly remittances of the Petitioner to the Bureau of Internal Revenue for the period January 1996 to April 1997 (Exhs. A, X and X-17 to X-34, inclusive) as certified by Torres and Company, the auditing firm commissioned by this Court in accordance with CTA Circular No.1-95, as amended, in its report dated August 21, 1998. Likewise, the 10% unpaid EVAT of P8,735,865.24 by PAGCOR on advance rental payment of casino space on April 1997 was remitted to the Bureau of Internal Revenue by the Petitioner through a separate VAT return filed on May 22, 1997 (Exhs. A, X, X-34, R and S).

As earlier stated, Petitioner is subject to zero percent tax pursuant to Section 102 (b)(3) [now 106(A)(C)] insofar as its gross income from rentals and sales to PAGCOR, a tax exempt entity by virtue of a special law. Accordingly, the amounts of P21,413,026.78 and P8,739,865.24, representing the 10% EVAT on its sales of food and services and gross rentals, respectively from PAGCOR shall, as a matter of course, be refunded to the Petitioner for having been inadvertently remitted to the respondent.

Thus, taking into consideration the prescribed portion of Petitioner's claim for refund of P98,743.40, and considering further the principle of "***solutio indebiti***" which requires the return of what has been delivered through mistake, Respondent must refund to the Petitioner the amount of P30,054,148.64 computed as follows:

Total amount per claim	P 30,152,892.02
Less Prescribed amount (Exhs. A, X, & X-20)	

January 1996	P 2,199.94	
February 1996	26,205.04	
March 1996	70,338.42	98,743.40
		P 30,054,148.64

WHEREFORE, in view of all the foregoing, the instant Petition for Review is partially **GRANTED**. The Respondent is hereby **ORDERED** to **REFUND** to the Petitioner the amount of THIRTY MILLION FIFTY FOUR THOUSAND ONE HUNDRED FORTY EIGHT PESOS AND SIXTY FOUR CENTAVOS (P30,054,148.64) immediately.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution

ERNESTO D. ACOSTA
Presiding Judge