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, *PJ,*
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, *and*
FERRER-FLORES, *JJ.*

Promulgated:
JUL 11 2023 4:28 pm

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DECISION

CUI-DAVID, J.:

Before the Court *En Banc* is a *Petition for Review* filed by Melco Resorts Leisure (PHP) Corporation[1] ("**Petitioner**"), under Section 3(b), Rule 8,[2] in relation to Section 2(a)(1), Rule 4[3] of the Revised Rules of the Court of Tax Appeals[4] ("**RRCTA**"), assailing the *Decision* dated October 28, 2021[5] ("**assailed Decision**") and

[1] Dated May 13, 2022, received by the Court on May 20, 2022; *En Banc* (*EB*) Docket, pp. 47-81.
[2] *Section 3. Who May Appeal; Period to File Petition.* — (a) x x
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.
[3] *Section 2. Cases Within the Jurisdiction of the Court En Banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies — Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture.
[4] A.M. No. 05-11-07-CTA.
[5] *EB* Docket, pp. 7-28; penned by Associate Justice Catherine T. Manahan, with Associate Justice Marian Ivy F. Reyes-Fajardo, concurring. Presiding Justice Roman G. Del Rosario penned his own concurring opinion.

Resolution dated April 6, 2022[6] ("**assailed Resolution**") of this Court's First Division ("**Court in Division**") in CTA Case No. 9811 entitled *Melco Resorts Leisure (PHP) Corporation v. Commissioner of Internal Revenue.*

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 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.[7] Petitioner is a value-added tax ("**VAT**")-registered taxpayer under Tax Identification Number ("**TIN**")/VAT Registration No. 008-362-871-00000.[8]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue ("**BIR**"), vested with the authority to act as such, including, *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the tax laws. He holds office at the BIR National Office Building, Diliman, Quezon City.[9]

THE FACTS

The following are the undisputed facts as narrated in the assailed *Decision* in CTA Case No. 9811, to wit:[10]

> On January 28, 2013, the Philippine Amusement and Gaming Corporation ("**PAGCOR**") issued an Amended Certificate of Affiliation & Provisional License to petitioner with other co-licensees, as a consortium, in accordance with Presidential Decree ("**PD**") No. 1896 [sic], as amended. The said Amended Certificate of Affiliation & Provisional License applies to casino(s) located in the Bagong Nayong Pilipino Manila Bay Entertainment City, Parañaque City, and in the Newport City Integrated Resort, Pasay City.

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[6] *Id.*, pp. 60-63.
[7] Exhibits "P-3" and "P-4", Division Docket, pp. 529 to 555.
[8] Facts Admitted, Joint Manifestation, Docket, p. 228; Par. 1, Facts, Pre-Trial Order dated March 26, 2019, Division Docket, p. 260.
[9] Par. 2, Facts, Pre-Trial Order dated March 26, 2019, Docket, p. 260.
[10] *Supra* at note 5.

Subsequently, also in accordance with PD No. 1896 [sic], as amended, PAGCOR issued the Gaming License dated April 29, 2015 and the Gaming License (Amended) dated August 8, 2017, valid until July 11, 2033, in favor of petitioner with other co-licensees, as a consortium, applicable to casino(s) located in the Entertainment City, Parañaque City, and in the Newport City Integrated Resort, Pasay City, specifically to the licensees' casinos located along Asean Avenue and Roxas Boulevard, Tambo, Parañaque City, with the brand name of City of Dreams Manila.

On April 25, 2016, petitioner filed with the BIR, through the Electronic Filing and Payment System (eFPS), its quarterly VAT return (BIR Form No. 2550-Q) for the 1st quarter of taxable year 2016. Subsequent thereto, it amended the aforesaid return on December 19, 2016, March 23, 2017, and June 22, 2017.

Petitioner then filed on December 19, 2017 an administrative claim for refund with the Large Taxpayers Service of the BIR.

On March 13, 2018, petitioner received the letter dated February 26, 2018 from the BIR, informing the former that its application for tax credit certificate/refund cannot be given due course based on the provisions of Revenue Memorandum Circular (RMC) No. 33-2013 dated April 17, 2013 which allegedly states that income derived from operations related to gaming activities as well as other income are subject to VAT at 12% and therefore not entitled to refund of creditable input tax.

Petitioner filed the present Petition for Review on April 12, 2018. The case was initially raffled to this Court's Third Division.

On July 10, 2018, respondent filed his Answer to the Petition for Review.

On August 14, 2018, respondent submitted the BIR Records of the case consisting of one (1) folder with sixty (60) pages.

In an Order dated September 25, 2018, the instant case was transferred to this Court's First Division.

The Pre-Trial Conference was initially set on October 16, 2018, but was reset to, and held on, January 24, 2019. Respondent's Pre-Trial Brief was filed on January 17, 2019, while the Pre-Trial Brief for Petitioner was submitted on January 18, 2019.

On February 21, 2019, the parties filed their Joint Manifestation. Subsequently, the Court issued the Pre-Trial Order dated March 26, 2019, deeming the termination of the Pre-Trial.

During trial, petitioner presented its documentary and testimonial evidence. It offered the testimonies of the following individuals, namely: (1) Ms. Shirley B. Sanchez, petitioner's Tax Manager; (2) Mr. Rafael B. Taladtad, Jr., Senior Manager of the Casino Control and Compliance of petitioner, formerly the latter's Gaming Audit Manager; and (3) Ms. Madonna Mia S. Dayego, the Court-commissioned Independent Certified Public Accountant (ICPA).

On August 15, 2019, the ICPA report was submitted.

During the hearing held on September 17, 2019, respondent's counsel manifested that he will no longer present evidence in support of this case.

Petitioner filed its Formal Offer of Exhibits [With Motion to Allow Submission of Copies of Exhibits "P-232-64", "P-242-4", and "P-242-5"], on October 2, 2019. Respondent then submitted his Comment (Re: Petitioner's Formal Offer of Evidence) on October 7, 2019.

In the Resolution dated November 6, 2019, the Court granted petitioner's Motion to Allow Submission of Copies of Exhibits "P-232-64", "P-242-4", and "P-242-5"], and thus, admitted the compact disc (CD) containing the scanned copies thereof, as part of the records of this case.

In a Resolution dated March 2, 2020, the Court admitted petitioner's exhibits, except for (1) Exhibit "P-200-15", on the ground that the exhibit formally offered do not correspond with the document actually marked; and (2) Exhibits "P-203-130", "P-209-132", "P-209-378", and "P-209-380", for not being found in the records of the case.

Petitioner then filed its Motion A. For Reconsideration of Resolution dated March 2, 2020 B. To Hold in Abeyance the Filing of Memorandum for Petitioner until after Resolution of the Instant Motion, on June 15, 2020. Respondent failed to file his comment to the said Motion. In the Resolution dated October 7, 2020, the Court granted the same Motion, and admitted Exhibits "P-200-15", "P-203-130", "P-209-132", "P-209-378", and "P-209-380", as part of petitioner's evidence.

On June 19, 2020, respondent submitted his Memorandum; while the Memorandum for Petitioner was filed on October 29, 2020.

The present case was submitted for decision on November 11, 2020.

On October 28, 2021, the Court in Division ruled in favor of respondent.[11] The dispositive portion reads:

> **WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review filed by Melco Resorts Leisure (PHP) Corporation, is **DENIED** for lack of merit.
>
> **SO ORDERED**.

On December 1, 2021, petitioner filed its *Motion for Reconsideration [of Decision dated October 28, 2021],*[12] with respondent's *Opposition (Re: Motion for Reconsideration of the Decision promulgated 28 October 2021)*[13] posted on January 10, 2022, and received by the Court in Division on February 23, 2022.

On April 6, 2022, the Court in Division promulgated a *Resolution*[14] with the following dispositive portion:

> **WHEREFORE**, in light of the foregoing considerations, the Motion for Reconsideration [of Decision dated October 28, 2021] filed by Melco Resorts Leisure (PHP) Corporation, is **DENIED** for lack of merit.
>
> **SO ORDERED**.

PROCEEDINGS BEFORE THE COURT *EN BANC*

On May 4, 2022, petitioner filed a *Motion for Extension of Time to File Petition for Review*,[15] which was granted in a *Minute Resolution* dated May 6, 2022.[16]

On May 20, 2022, petitioner filed its *Petition for Review.*[17] After being ordered to comment by the Court,[18] respondent filed his *Comment (Re: Petition for Review)* on June 20, 2022.[19]

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[11] *Supra* at note 5.
[12] Division Docket, Vol. II, pp. 759-787.
[13] *Id.*, pp. 794-798.
[14] *Supra* at note 6.
[15] *EB* Docket, pp. 1-3.
[16] *Id.*, p. 46.
[17] *Supra* at note 1.
[18] *EB* Docket, pp. 128-129.
[19] *Id.*, pp. 130-134.

Thus, on July 13, 2022, this Court issued a *Resolution* submitting the *Petition* for decision.[20]

Hence, this *Decision.*

ISSUES

Petitioner raises the following issues for the Court *En Banc's* resolution:

A. WHETHER OR NOT THE HONORABLE FIRST DIVISION ERRED IN RULING THAT PETITIONER IS NOT ENTITLED TO THE REFUND OR THE ISSUANCE OF A TAX CREDIT CERTIFICATE IN THE TOTAL AMOUNT OF P81,119,005.84, REPRESENTING ITS ERRONEOUSLY OR ILLEGALLY COLLECTED EXCESS AND UNUTILIZED INPUT VAT ON ITS PURCHASES OF CAPITAL GOODS, DOMESTIC PURCHASE OF GOODS (OTHER THAN CAPITAL GOODS) AND SERVICES, IMPORTATION OF GOODS (OTHER THAN CAPITAL GOODS), AND PURCHASES OF SERVICES RENDERED BY NON-RESIDENTS, WHICH ARE ATTRIBUTABLE TO GAMING REVENUES FOR THE 1ST QUARTER OF TAXABLE YEAR 2016.

B. WHETHER OR NOT THE HONORABLE FIRST DIVISION ERRED IN RULING THAT, PETITIONER BEING EXEMPT FROM VAT, THE INPUT TAXES PASSED ON TO PETITIONER BY ITS SUPPLIERS CANNOT BE THE SUBJECT OF A CLAIM FOR REFUND.

C. WHETHER OR NOT THE HONORABLE FIRST DIVISION ERRED IN NOT RULING THAT INPUT VAT PASSED ON BY PETITIONER'S SUPPLIERS ARE ERRONEOUSLY AND ILLEGALLY PAID, NOTWITHSTANDING THAT PD 1869 CLEARLY GRANTS AN EXEMPTION FROM BOTH DIRECT AND INDIRECT TAX TO PAGCOR AND ITS LICENSEES, TO WHICH THE ECONOMIC BURDEN OF TAX IS SHIFTED.

D. WHETHER OR NOT THE HONORABLE FIRST DIVISION ERRED IN DISREGARDING PHILIPPINE AIRLINES, INC. V. COMMISSIONER OF INTERNAL REVENUE, AND IN NOT HOLDING THAT A TAXPAYER CONFERRED WITH INDIRECT TAX EXEMPTION BY A SPECIAL LAW CAN CLAIM FOR A REFUND OF THE TAX ERRONEOUSLY AND ILLEGALLY PASSED ON, NOTWITHSTANDING THAT THE CLAIMANT-TAXPAYER IS NOT THE STATUTORY TAXPAYER.

[20] *Id.*, pp. 137-138.

PETITIONER'S ARGUMENTS

Petitioner requests the Court to "anchor its examination and appreciation of the merits of petitioner's case on the intent of the legislature in granting PAGCOR's indirect tax exemption to its licensees under Section 13(2)(b) in relation to Section 13(2)(a) of Presidential Decree ("**PD**") [No.] 1869."[21] Petitioner argues that it is entitled to the tax exemption granted under PD No. 1869 concerning its revenues from gaming operations,[22] as Section 13 extends PAGCOR's tax exemption to corporations with whom PAGCOR has a contractual relationship.[23]

Petitioner further argues that PD No. 1869 gives PAGCOR a blanket exemption from payment of taxes with no distinction on whether the taxes are direct or indirect.[24] Section 13(2) of the law extends the same privilege to it, being a corporation with which PAGCOR has a contractual relationship, [25] citing *Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue*, [26] *PAGCOR v. Bureau of Internal Revenue*, and *Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation.* [27] In support of its allegation that it has a contractual relationship with PAGCOR, petitioner points out the licenses issued by PAGCOR in favor of petitioner for its casino and gaming operations. [28] With this exemption, petitioner argues that input VAT should not have been passed on to petitioner by its suppliers on purchases related to petitioner's gaming operations.[29]

Invoking *Philippine Airlines, Inc. v. Commissioner of Internal Revenue ("**PAL Case**")*,[30] petitioner posits that, by way of an exception to the general rule that only the statutory taxpayer has the legal personality to file a claim for refund, taxpayers that are clearly and unequivocally conferred with an indirect tax exemption by a special law likewise have legal personality. [31] According to petitioner, Philippine Airlines' franchise exempts it from direct and indirect taxes, similar to the exemption under the PAGCOR charter.[32] Thus, petitioner

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[21] Petition for Review, par. 18.
[22] *Id.*, par. 18.1
[23] *Id.*, par. 20.
[24] *Id.*, par. 21.
[25] *Id.*, par. 22.
[26] *Id.*, par. 23.
[27] *Id.*, par. 33.
[28] *Id.*, par. 25.
[29] *Id.*, par. 26.
[30] G.R. No. 198759, July 1, 2013, 713 SCRA 134-160.
[31] *Id.*, pars. 18.2.1, 27, and 28.
[32] *Id.*, par. 30.

suggests that, as in the *PAL case*, petitioner has the right to file a claim for refund.[33]

According to petitioner, the Court in Division erred when it ruled that it was not the proper party to claim for refund, but it should instead seek reimbursement from its suppliers.[34] Petitioner points out that the ruling in *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue* is anchored in Revenue Memorandum Circular ("**RMC**") No. 42-2003, which pertains to a refund of input VAT by direct exporters.[35] Petitioner states that the ruling in the *Coral Bay case* is inapplicable as petitioner is not covered by RMC No. 42-2003.[36] Further, petitioner says that it is "unfair and totally repressive" of its rights to require it to go after its suppliers instead of the government. According to petitioner, it is "highly impractical, unrealistic, and very oppressive for taxpayers."[37]

After defining "erroneous"[38] and "erroneous or illegal tax,"[39] petitioner proceeds to argue that the input taxes it has paid are erroneous,[40] and it is, therefore, entitled to the issuance of a tax credit certificate.[41] Petitioner then invokes the principle of *solutio indebiti*.[42]

RESPONDENT'S ARGUMENTS

In his *Comment*, respondent echoes the ruling of the Court in Division. Respondent quotes the Court in Division in stating that nowhere in the case records does it show that petitioner is engaged in the zero-rated sale of goods or services or in transactions other than the business of developing and operating tourist facilities, including a hotel-casino entertainment complex. Respondent further quotes the Court in Division in stating that petitioner's reliance on Section 108(B)(3) of the NIRC of 1997, as amended, is misplaced.

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[33] *Id.*, par. 34.
[34] *Id.*, par. 39.
[35] *Id.*, par. 40.
[36] *Id.*, par. 40.5.
[37] *Id.*, par. 41.
[38] *Id.*, par. 43.
[39] *Id.*, par. 44.
[40] *Id.*, par. 45.
[41] *Id.*, pars. 46-47.
[42] *Id.*, pars. 50-54.

Respondent closes his comment by stating that refund claims are construed strictly against the claimant as they partake in the nature of an exemption from tax and that it is incumbent upon petitioner to prove that it is entitled to it under the law.

RULING OF THE COURT *EN BANC*

The instant *Petition* is not impressed with merit.

The Court *En Banc* has jurisdiction over the instant Petition.

Before proceeding to the merits of the case, *We* shall determine whether the Court *En Banc* has jurisdiction over the instant *Petition.*

On October 28, 2021, the Court in Division promulgated its *Decision* denying petitioner's *Petition for Review.*[43]

On December 1, 2021, petitioner filed its *Motion for Reconsideration [of Decision dated October 28, 2021],*[44] within the period provided under Section 3(b), Rule 8[45] of RRCTA.

On April 6, 2022, the Court in Division denied the *Motion for Reconsideration* through a *Resolution,*[46] a copy of which was received by petitioner on April 20, 2022.

As provided under Section 3(b), Rule 8[47] of the RRCTA, petitioner had fifteen (15) days from receipt of the assailed *Resolution,* or until May 5, 2022, to file its *Petition for Review* before the Court *En Banc.*

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[43] *Supra* at note 5.
[44] Division Docket, Vol. II, pp. 759-787.
[45] *Section 3. Who May Appeal; Period to File Petition.* — (a) x x
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.
[46] *Supra* at note 6.
[47] *Supra* at note 2.

On May 4, 2022, within the reglementary period, petitioner filed a *Motion for Extension of Time to File Petition for Review*,[48] which was granted in a *Minute Resolution* dated May 6, 2022.[49]

On May 20, 2022, petitioner filed its *Petition for Review* within the extended period.[50]

Having settled that the *Petition* was timely filed, *We* likewise rule that the Court *En Banc* has validly acquired jurisdiction to take cognizance of this *Petition* under Section 2(a)(1), Rule 4[51] of the RRCTA.

We now discuss the merits.

Legal basis of petitioner's claim for refund or tax credit

At the onset, it bears for this Court to clarify, considering that it is not explicitly invoked in the instant *Petition*, whether the claim for refund or tax credit of petitioner is hinged on Section 112(A) of the NIRC of 1997, as amended, the provision in which the discussion of the Court in Division revolved, or Section 229 of the same law, which involves the recovery of tax erroneously or illegally collected.

We quote both provisions:

> SEC. 112. Refunds or Tax Credits of Input Tax. -
>
> (A) Zero-rated or Effectively Zero-rated Sales. - Any VAT-registered person whose **sales are zero-rated or effectively zero-rated** may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of **creditable input tax due or paid attributable to such sales**, except transitional input tax, to the extent that such input tax has not been applied against output tax: ... [*Emphasis and underscoring supplied.*]

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[48] *EB* Docket, pp. 1-3.
[49] *Id.*, p. 46.
[50] *Supra* at note 1.
[51] *Section 2. Cases Within the Jurisdiction of the Court En Banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies — Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture.

> 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.
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> ... [*Emphasis and underscoring supplied.*]

To begin, petitioner, before the Court in Division, has seemingly invoked both grounds in its *Prayer* in the *Petition for Review*,[52] to wit:

> WHEREFORE, it is respectfully prayed that judgment be rendered:
>
> 1. Declaring petitioner entitled to a refund or tax credit in the amount of P81,119,005.84 representing ***excess and unutilized input VAT*** on its 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, which are attributable to zero-rated sales for the 1st quarter of taxable year 2016;
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> 2. In the alternative, declaring petitioner entitled to a refund or tax credit in the amount of P81,119,005.84 representing ***erroneously or illegally collected input VAT*** on its 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, which are passed on by its suppliers and are related to revenues from gaming operations for the 1st quarter of taxable year 2016; and
>
> 3. Ordering respondent to grant petitioner a refund or tax credit in the said amount of P81,119,005.84. [*Emphasis and underscoring supplied.*]

The first prayer invokes Section 112(A) of the NIRC of 1997, as amended, whereas the second alternative prayer invokes Section 229 of the same law. This Prayer is consistent with petitioner's *Memorandum* filed before the Court in

[52] Division Docket, Vol. I, p. 32.

Division,[53] wherein petitioner invokes both provisions in the alternative.

However, the Court *En Banc* observes a seeming difference in petitioner's *Prayer* in the instant *Petition. We* quote petitioner's *Prayer*:[54]

> WHEREFORE, it is respectfully prayed of this Honorable Court that the Decision dated October 28, 2021, and the Resolution dated April 6, 2022, be set aside and that judgment be rendered:
>
> 1. Declaring petitioner entitled to a refund or tax credit in the aggregate amount of P81,119,005.84 representing **erroneously or illegally collected input VAT** on its 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, which are passed on by its suppliers and are related to revenues from gaming operations for the 1st quarter of taxable year 2016; and
>
> 2. Ordering respondent to grant petitioner a refund or tax credit in the said amount of P81,119,005.84. [*Emphasis and underscoring supplied.*]

Based on the instant petition, petitioner's claim for refund or tax credit is now *solely* anchored under Section 229 of the NIRC of 1997, as amended. Nevertheless, to fully exhaust the merits of petitioner's claim, this Court will discuss petitioner's claim under both provisions of the law.

Requisites for a valid claim for refund or tax credit of input VAT attributable to zero-rated sales under Section 112.

Section 112(A) and (C) of the NIRC of 1997, as amended, provides:

> *Section 112. Refunds or Tax Credits of Input Tax. -*
>
> (A) Zero-rated or Effectively Zero-rated Sales. - Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the

[53] Division Docket, Vol. II, p. 722.
[54] *EB* Docket, p. 80.

> 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, 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.
>
> ... ...
>
> (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 ninety (90) days period shall be punishable under Section 269 of this Code. ... ...

Comprehensively, as culled from the foregoing provision and existing jurisprudence, particularly the case of *Commissioner of Internal Revenue v. Toledo Power Co.*,[55] the requisites for claiming a refund or tax credit of input VAT under Section 112 of the NIRC of 1997, as amended, are as follows:

> <u>As to the timeliness of the filing of the administrative and judicial claims:</u>
>
> 1. The refund claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[56]

[55] G.R. Nos. 195175 & 199645, August 10, 2015, 766 SCRA 20-33.
[56] *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 155732, April 27, 2007; *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; and *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010.

2. In case of full or partial denial of the refund claim rendered within a period of ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application, the judicial claim shall be filed with this Court within thirty (30) days from receipt of the decision;[57]

Concerning the taxpayer's registration with the BIR:

3. The taxpayer is a VAT-registered person;[58]

In relation to the taxpayer's output VAT:

4. The taxpayer is engaged in zero-rated or effectively zero-rated sales;[59]

5. For zero-rated sales under Sections 106 (A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), of the NIRC of 1997, as amended, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the *Bangko Sentral ng Pilipinas* ("BSP") rules and regulations;[60]

As regards the taxpayer's input VAT being refunded:

6. The input taxes are not transitional;[61]

7. The input taxes are due or paid;[62]

8. The input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, 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;[63] and

9. The input taxes have not been applied against output taxes during and in the succeeding quarters.[64]

Being uncontroverted and supported by the case records, the Court in Division's findings regarding the *first* and *second* requisites *i.e.*, that the refund claim is timely filed with respondent and the Court in Division,[65] will not be disturbed.

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[57] *Steag State Power, Inc. (Formerly State Power Development Corporation) v. Commissioner of Internal Revenue*, G.R. No. 205282, January 14, 2019; *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.
[58] *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, supra*; *San Roque Power Corporation v. Commissioner of Internal Revenue, supra*; and AT&T Communications Services Philippines, Inc., *supra*.
[59] *Id.*
[60] *Id.*
[61] *Id.*
[62] *Id.*
[63] *Id.*
[64] *Id.*
[65] Assailed Decision, p. 10; *EB* Docket, p. 16.

Anent the *third* requisite, *We* rule that petitioner is VAT-registered based on its Certificate of Registration with the BIR.[66]

Fourth requisite: Petitioner was not able to prove that it is engaged in zero-rated sales.

Anent the *fourth* requisite, *We* do not find any evidence on record to support the argument that petitioner is engaged in zero-rated or effectively zero-rated sales.

Petitioner invokes Section 108(B)(3) of the NIRC of 1997, as amended, *viz.*:

> SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. –
>
> (A) ...
>
> (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.
>
> ...
>
> (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**; [*Emphasis and underscoring supplied.*]

Petitioner argues that the special law involved is PD No. 1869.[67] Section 13 of said law provides:

> Section 13. Exemptions. —
>
> (1) ...
>
> (2) **Income and Other Taxes**. — (a) Franchise Holder: **No tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from the Corporation; nor shall any form of tax or charge attach in any way to the earnings of the Corporation, except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the**

[66] Facts Admitted, Joint Manifestation, Docket, p. 228; Par. 1, Facts, Pre-Trial Order dated March 26, 2019, Division Docket, p. 260.
[67] Consolidating and Amending Presidential Decree Nos. 1067-a, 1067-b, 1067-c, 1399 and 1632, Relative to the Franchise and Powers of the Philippine Amusement and Gaming Corporation (PAGCOR), July 11, 1983.

> **Corporation from its operation under this Franchise**. Such tax shall be due and payable quarterly to the National Government and shall be 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.
>
> (b) Others: The exemption herein 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 Corporation or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise** and to those receiving compensation or other remuneration from the Corporation or operator as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator. [*Emphasis and underscoring supplied.*]

Petitioner argues that it is entitled to the tax exemption granted under PD No. 1869 for its revenues from gaming operations,[68] as Section 13 extends PAGCOR's tax exemption to corporations with whom PAGCOR has a contractual relationship.[69]

The Court agrees with petitioner on this point.

This Court is one with the Court in Division in ruling that the exemption granted to PAGCOR extends to petitioner in this case. *We* quote the disquisition of the Court in Division on the matter, *viz.*:

> Section 13 of PD 1869 or the PAGCOR Charter provides, in part, as follows:
>
> ... ...
>
> 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:

[68] *Id.*, par. 18.1.
[69] *Id.*, par. 20.

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. Since the payment of the said five percent (5%) franchise tax 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. In *Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue*, 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.
>
> ... ...

> 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. (emphasis supplied).
>
> **There is no question then that the benefits extended to PAGCOR under its Charter inure to the benefit of its licensees and contractees including exemption from taxes subject to the condition that the 5% franchise tax is paid**. [*Emphasis and underscoring supplied; citations omitted.*]

The conclusion of the Court in Division is supported by jurisprudence. In *Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue*,[70] the Supreme Court thus discussed:

> Section 13 of PD No. 1869 evidently states that payment of the 5% franchise tax by PAGCOR and its contractees and licensees exempts them from payment of any other taxes, including corporate income tax, quoted hereunder for ready reference:
>
> ... ...
>
> As previously recognized, the above-quoted provision providing for the said exemption was neither amended nor repealed by any subsequent laws (i.e., Section 1 of R.A. No. 9337 which amended Section 27 (C) of the NIRC of 1997); thus, it is still in effect. Guided by the doctrinal teachings in resolving the case at bench, **it is without a doubt that, like PAGCOR, its contractees and licensees remain exempted from the payment of corporate income tax and other taxes since the law is clear that said exemption inures to their benefit**.
>
> We adhere to the cardinal rule in statutory construction that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. As has been our consistent ruling, where the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application.
>
> 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

[70] G.R. No. 212530, August 10, 2016, 792 SCRA 751-768.

> 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**. [*Emphasis and underscoring supplied; citations omitted.*]

This was echoed by the Supreme Court in the more recent case of *Saint Wealth Ltd. v. Bureau of Internal Revenue*,[71] to wit:

> Considering the above-cited provisions, this Court clarified in *Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue* (Bloomberry), that PAGCOR's tax privilege of paying only a five percent (5%) franchise tax for income generated from its gaming operations, in lieu of all other taxes, inures to the benefit of PAGCOR's licensees:
>
> ... ...
>
> 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 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. [*Emphasis and underscoring supplied; citations omitted.*]

Thus, it is settled that petitioner is entitled to the tax privileges granted under PAGCOR's charter.

The second inquiry is concerned with whether the tax incentives granted under PAGCOR's charter subject petitioner's sale to zero rate of VAT.

Before the Court in Division, petitioner alleges in the affirmative, citing Section 108(B)(3) of the NIRC of 1997, as amended. However, this Court disagrees with petitioner and affirms the disposition of the Court in Division.

To reiterate, Section 108(B)(3) of the NIRC of 1997, as amended, provides that "[s]ervices 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."

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[71] G.R. Nos. 252965 & 254102, December 7, 2021.

This provision applies to petitioner, as it is enjoying tax incentives under Section 13 of PD No. 1869. Nevertheless, this Court finds petitioner's reliance in Section 108(B)(3) of the NIRC of 1997, as amended, utterly misplaced.

The concept of effectively zero-rated sales was discussed by the Supreme Court in the landmark case of *Commissioner of Internal Revenue v. Seagate Technology (Philippines) (Seagate Technology),*[72] *viz.*:

> ***Zero-Rated and Effectively Zero-Rated Transactions***
>
> Although both are taxable and similar in effect, zero-rated transactions differ from effectively zero-rated transactions as to their source.
>
> Zero-rated transactions generally refer to the export sale of goods and supply of services. The tax rate is set at zero. When applied to the tax base, such rate obviously results in no tax chargeable against the purchaser. The seller of such transactions charges no output tax, but can claim a refund of or a tax credit certificate for the VAT previously charged by suppliers.
>
> **Effectively zero-rated transactions, however, refer to the sale of goods or supply of services *to* persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects such transactions to a zero rate**. Again, as applied to the tax base, such rate does not yield any tax chargeable against the purchaser. The seller who charges zero output tax on such transactions can also claim a refund of or a tax credit certificate for the VAT previously charged by suppliers. [*Emphasis and underscoring supplied; citations omitted.*]

Given the above discussion in *Seagate Technology*, Section 108(B)(3) of the NIRC of 1997, as amended, which effectively subjects sales to zero-rate of VAT, pertains to sales **to** entities exempt by virtue of an exemption from indirect taxes as provided under international agreements or special laws. Under the said provision, the entity enjoying incentives under a special law is not the seller, but rather, the buyer. By virtue of such entity's exemption from indirect taxes, the law bars any shifting of taxes to it, thus, effectively subjecting such sales to a zero rate.

[72] G.R. No. 153866, February 11, 2005, 491 SCRA 317-351.

Jurisprudence is replete with examples.

In *Commissioner of Internal Revenue v. Team Energy Corp.*[73], *Kepco Philippines Corp. v. Commissioner of Internal Revenue,*[74] and *Commissioner of Internal Revenue v. Toledo Power Company,*[75] the Court ruled that sale to the National Power Corporation ("**NPC**") is zero-rated because Section 13 of the NPC Charter,[76] as amended by Section 10 of P.D. No. 938,[77] provides that NPC is "declared exempt from the payment of all forms of taxes, duties, fees, imposts."

Specifically, as it applies to the PAGCOR Charter, the case of *Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corp.*[78] is instructive, *viz.*:

> Thus, while it was proper for PAGCOR not to pay the 10% VAT charged by Acesite, the latter is not liable for the payment of it as it is exempt in this particular transaction by operation of law to pay the indirect tax. **Such exemption falls within the former Section 102 (b) (3) of the 1977 Tax Code, as amended (now Sec. 108 [b] [3] of R.A. 8424)**, which provides:
>
> > Section 102. Value-added tax on sale of services. — (a) Rate and base of tax — There shall be levied, assessed and collected, a value-added tax equivalent to 10% of gross receipts derived by any person engaged in the sale of services ...; Provided, that the following services performed in the Philippines by VAT-registered persons shall be subject to 0%.
> >
> > ... ...
> >
> > (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 (0%) rate.

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[73] G.R. No. 230412, March 27, 2019.
[74] G.R. No. 179961, January 31, 2011, 656 SCRA 68-86.
[75] G.R. Nos. 196415 & 196451, December 2, 2015.
[76] Republic Act No. 6395, AN ACT REVISING THE CHARTER OF THE NATIONAL POWER CORPORATION. Approved on September 10, 1971.
[77] FURTHER AMENDING CERTAIN SECTIONS OF REPUBLIC ACT NUMBERED SIXTY-THREE HUNDRED NINETY-FIVE ENTITLED, "AN ACT REVISING THE CHARTER OF THE NATIONAL POWER CORPORATION," AS AMENDED BY PRESIDENTIAL DECREE NOS. 380, 395 AND 758. Approved on May 27, 1976.
[78] G.R. No. 147295, February 16, 2007, 545 SCRA 1-13.

> The rationale for the exemption from indirect taxes provided for in P.D. 1869 and the extension of such exemption to entities or individuals dealing with PAGCOR in casino operations are best elucidated from the 1987 case of *Commissioner of Internal Revenue v. John Gotamco & Sons, Inc.*, where the absolute tax exemption of the World Health Organization (WHO) upon an international agreement was upheld. We held in said case that the exemption of contractee WHO should be implemented to mean that the entity or person exempt is the contractor itself who constructed the building owned by contractee WHO, and such does not violate the rule that tax exemptions are personal because the manifest intention of the agreement is to exempt the contractor so that no contractor's tax may be shifted to the contractee WHO. Thus, **the proviso in P.D. 1869, extending the exemption to entities or individuals dealing with PAGCOR in casino operations, is clearly to proscribe any indirect tax, like VAT, that may be shifted to PAGCOR**. [*Emphasis and underscoring supplied; citations omitted.*]

In *Philippine Amusement and Gaming Corp. (PAGCOR) v. Bureau of Internal Revenue*[79] and *Commissioner of Internal Revenue v. Secretary of Justice,*[80] the Supreme Court had a similar discussion, to wit:

> Moreover, the exemption of PAGCOR from VAT is supported by Section 6 of R.A. No. 9337, which retained Section 108 (B) (3) of R.A. No. 8424, thus:
>
> ... ...
>
> As pointed out by petitioner, although R.A. No. 9337 introduced amendments to Section 108 of R.A. No. 8424 by imposing VAT on other services not previously covered, it did not amend the portion of Section 108 (B) (3) that subjects to zero percent rate services performed by VAT-registered persons 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 0% rate.

As such, sales **to** PAGCOR, and by extension, 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), such as petitioner herein, is subject to zero rate of VAT.

---

[79] G.R. No. 172087, March 15, 2011, 660 SCRA 636-664.
[80] G.R. No. 177387, November 9, 2016, 799 SCRA 13-46.

However, what is contemplated in this case are sales of services **by** petitioner and not **to** petitioner. The provision that applies to sales **by** petitioner is Section 109(1)(K) of the NIRC of 1997, as amended. We quote:

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

Accordingly, petitioner's sale of services is exempt from VAT and not subject to zero rate. Such distinction carries significant differences, most especially in the ability of a taxpayer to claim passed-on VAT as a tax credit or refund.

The case of *Seagate Technology*[81] elucidates:

> ***Zero Rating and Exemption***
>
> In terms of the VAT computation, zero rating and exemption are the same, but the extent of relief that results from either one of them is not.
>
> Applying the destination principle to the exportation of goods, automatic zero rating is primarily intended to be enjoyed by the seller who is directly and legally liable for the VAT, making such seller internationally competitive by allowing the refund or credit of input taxes that are attributable to export sales. Effective zero rating, on the contrary, is intended to benefit the purchaser 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.
>
> **In both instances of zero rating, there is total relief for the purchaser from the burden of the tax. But in an exemption there is only partial relief, because the purchaser is not allowed any tax refund of or credit for input taxes paid**. [*Emphasis and underscoring supplied; citations omitted.*]

[81] G.R. No. 153866, February 11, 2005, 491 SCRA 317-351.

The pronouncement in *Seagate Technology* is premised on the rule that passed-on VAT attributable to VAT-exempt sales may not be claimed as input VAT refund or credit. This is clear from Section 110(A)(3) of the NIRC of 1997, as amended:

> SEC. 110. Tax Credits. -
>
> A. Creditable Input Tax. –
>
> ... ...
>
> (3) A VAT-registered person who is also engaged in transactions not subject to the value-added tax shall be allowed tax credit as follows:
>
> (a) Total input tax which **can be directly attributed to transactions subject to value-added tax**; and
>
> (b) **A ratable portion of any input tax which cannot be directly attributed to either activity**. [*Emphasis and underscoring supplied.*]

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

Accordingly, the Court *En Banc* deems it unnecessary to discuss petitioner's compliance with the other requisites for claiming a refund or tax credit under Section 112.

With this, *We* see no cogent reason to disturb the Court in Division's finding in relation to the denial of petitioner's claim under Section 112.

Petitioner failed to file a valid claim for refund or credit of erroneously or illegally paid taxes.

Having denied petitioner's claim for refund or tax credit under Section 112 of the NIRC of 1997, as amended, *We* now determine whether petitioner's claim may be granted under

Sections 204(C) and 229 of the NIRC of 1997, as amended, which state:

> SEC. 204. Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes. –
>
> The Commissioner may –
>
> ... ...
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.
>
> ... ...
>
> SEC. 229. Recovery of Tax Erroneously or Illegally Collected.- No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

Firstly, petitioner argues that input VAT should not have been passed on to it by its suppliers on purchases related to its gaming operations.[82]

We agree with petitioner.

As discussed above, petitioner is exempt from direct and indirect taxes, as it enjoys the privileges afforded by PAGCOR's franchise. To recapitulate, its sales of services are exempt under Section 109(1)(K) of the NIRC of 1997, as amended, and its purchases of goods and services are effectively zero-rated under Section 108(B)(3) of the NIRC of 1997, as amended.

Simply put, petitioner's suppliers of goods and services should not have shifted VAT to it, as the sales are effectively zero-rated.

Having now settled that the taxes were indeed erroneously paid, the next point of scrutiny is whether petitioner was able to timely and properly file its claim for refund or tax credit.

It is well-settled in our jurisprudence that the following requirements must be complied with to prove a claim for refund or credit of taxes erroneously paid or illegally collected under Sections 204 and 229 of the NIRC of 1997, as amended:

> (1) That the taxpayer should file a written claim for refund or tax credit with the BIR Commissioner within two years from the date of payment of the tax or penalty;[83]
>
> (2) That, if denied or not acted upon within said period, the petition for refund be filed with the CTA within 30 days from receipt of the denial and within said 2-year period from the date of payment of the tax or penalty regardless of any supervening cause, otherwise, the claim for refund shall have prescribed; and,[84]
>
> (3) The claim for refund must be a categorical demand for reimbursement.[85]

Unfortunately for petitioner, it cannot be determined whether it timely filed its claim for refund or tax credit.

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[82] *Id.*, par. 26.
[83] See *Commissioner of Internal Revenue v. Victorias Milling Co., Inc.*, et al., G.R. No. L-24108, January 3, 1968.
[84] See *Allison J. Gibbs, et al. v. Collector of Internal Revenue*, et al., G.R. No. L-13453, February 29, 1960.
[85] *Commissioner of Internal Revenue v. Rosemarie Acosta*, as represented by Virgilio A. Abogado, G.R. No. 154068, August 3, 2007.

It must be stressed that Section 229 requires that the claim for refund or tax credit must be filed with respondent within two (2) years after the alleged payment of the tax.

Ordinarily, for claims under Section 229, the two-year period will be reckoned from the date of payment of taxes by the statutory taxpayer. However, considering that petitioner is not the statutory taxpayer, *i.e.*, petitioner only bore the economic burden of paying taxes, guidance may be obtained from jurisprudence to determine the day to count the two-year period.

In the *PAL* case,[86] cited by petitioner, Caltex passed on excise taxes to PAL, which PAL paid. PAL filed a claim to refund the excise taxes Caltex passed to it.

In determining whether PAL's claim for refund was timely filed, the Supreme Court inquired as to 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 of filing of Caltex that the Supreme Court counted the two-year period within which PAL may file its claim for refund.

In its *Petition for Review* before the Court in Division,[87] petitioner counted the two-year period from the date of filing of its first quarter VAT return, *i.e.*, April 25, 2016.

This is erroneous.

We note that the ruling in the *PAL* case is applicable. The instant case and the *PAL* case both involve a claim for refund of VAT erroneously passed on by suppliers to an entity that is exempt from both direct and indirect taxes by virtue of special laws.

Hence, applying the ruling in the *PAL* case, the two-year period is counted from the date of payment to the BIR of the VAT passed on to petitioner by its suppliers *i.e.*, the filing of its suppliers' VAT return and payment of the VAT due thereon. As the buyer, petitioner shoulders the VAT and treats it as **input VAT**. However, as the sellers, petitioner's suppliers pay the same to the BIR as **output VAT**.

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[86] *Supra* at note 30.
[87] Petition for Review, par. 49; Division Docket, Vol. I, p. 30.

The records are miserably bereft of any proof of the date of the filing of VAT returns and payment of the VAT purportedly passed on to petitioner by its suppliers. Hence, this Court cannot determine whether a *Petition for Review* praying for a refund or credit of erroneously or illegally collected taxes under Section 229 is timely and properly filed.

Considering petitioner's failure to establish that it timely filed both its administrative and judicial claims, it may even be gainsaid that the Court is without authority to rule on the refund or tax credit under Section 229. With this, the Court will no longer rule on the other requisites for a claim for refund to prosper under said provision of law.

In fine, petitioner's claim for refund or tax credit, under Sections 112 and 229 of the NIRC of 1997, as amended, despite being invoked in the alternative before the Court in Division, must perforce fail.

Strict compliance with the mandatory and jurisdictional conditions prescribed by law to claim such tax refund or credit is essential and necessary for such a claim to prosper. Well-settled is the rule that tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer.[88]

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.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

(See Separate Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

[88] *Commissioner of Internal Revenue v. San Roque Power Corp.*, G.R. Nos. 187485, 196113 & 197156, February 12, 2013, 703 PHIL 310-434)

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

(I concur in the result)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(I concur and join JJ's Separate Opinion)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(With Concurring Opinion)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

(I concur in the result and join Justice Fajardo's concurring opinion)
CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MELCO RESORTS LEISURE (PHP) CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondents.

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, and
FERRER-FLORES, *JJ.*

Promulgated:
JUL 11 2023 4:28 pm

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SEPARATE OPINION

DEL ROSARIO, P.J.:

I concur in the denial of the Petition for Review.

I wish to echo, however, the discussion in my Concurring Opinion in the assailed Decision dated October 28, 2021 rendered by the Court in Division.

Pursuant to Section 108(B)(3) of the National Internal Revenue Code (NIRC) of 1997, as amended, sales made **TO** petitioner are subject to value-added tax (VAT) at zero percent (0%). Meanwhile, in accordance with Section 109(1)(K), sales made **BY** petitioner are VAT-exempt. Thus, any "input tax" paid by petitioner, for which it should not have been liable in the first place as a contractee of the Philippine Amusement and Gaming Corporation (PAGCOR) in accordance with Section 13 of Presidential Decree No. 1869 or the PAGCOR Charter, would only form part of the cost of purchasing the goods and services from its suppliers.

VAT is an indirect tax, and as such it may be passed on to the buyer of goods or services.[1] However, what is really borne by the buyer is not the tax itself, but its "economic burden" which has been integrated as part of the purchase price. What the buyer ultimately pays is not the tax, but only the purchase price made higher due to the added cost of the tax. As the Supreme Court explained in *Philippine Acetylene Co., Inc. vs. Commissioner of Internal Revenue and Court of Tax Appeals*:[2]

> "It may indeed be that **the economic burden of the tax finally falls on the purchaser; when it does the tax becomes a part of the price which the purchaser must pay**. It does not matter that an additional amount is billed as tax to the purchaser. The method of listing the price and the tax separately and defining taxable gross receipts as the amount received less the amount of the tax added, merely avoids payment by the seller of a tax on the amount of the tax. **The effect is still the same, namely, that the purchaser does not pay the tax. He pays or may pay the seller more for the goods because of the seller's obligation, but that is all and the amount added because of the tax is paid to get the goods and for nothing else**." (*Boldfacing and underscoring supplied*)

In *Malayan Insurance Company, Inc. vs. St. Francis Square Realty Corporation, et seq.*,[3] the Supreme Court further elucidated that any "input tax" paid by a non-VAT buyer of goods or services forms part of the cost or purchase price, and is not really input tax which is creditable to output tax, *viz.*:

> "x x x VAT as an indirect and consumption tax which the end users of consumer goods, properties or services ultimately shoulder, as the liability therefor is passed on to them by the providers of goods and services who, in turn, may credit their own VAT liability from the VAT payments they receive from the final consumer. For the VAT-registered purchaser, the tax burden passed on does not constitute cost, but input tax which is creditable against his output tax liabilities; conversely, **it is only in the case of a non-VAT purchaser that VAT forms part of cost of the purchase price. The input tax passed on to the final consumers, like the buyers of Malayan's condominium units and parking slots, thus becomes part of their acquisition cost of the asset or operating expense**." (*Boldfacing and underscoring supplied*)

Considering that petitioner, a contractee of PAGCOR, is exempt from payment of VAT in accordance with Section 13 of the PAGCOR Charter and as confirmed by the Supreme Court in *Commissioner of*

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[1] Section 105, NIRC of 1997, as amended.
[2] G.R. No. L-19707, August 17, 1967.
[3] G.R. Nos. 198916-17 & 198920-21, July 23, 2018 (Resolution)

Internal Revenue vs. Acesite (Philippines) Hotel Corporation,[4] it is thus considered a non-VAT purchaser, and any input tax passed on to it by its suppliers only forms part of the cost of the goods or services purchased.

Verily, what petitioner prays is the refund of a component of the purchase price it paid to its suppliers, which relief this Court may not grant considering that the amount it paid is not an "erroneous or illegal tax"[5] mistakenly paid to the government within the context of Section 229 of the NIRC of 1997, as amended.

ALL TOLD, I *CONCUR* in the result.

ROMAN G. DEL ROSARIO
Presiding Justice

[4] G.R. No. 147295, February 16, 2007.
[5] An "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property not subject to taxation or by some officer having no authority to levy the tax, or one which is some other similar respect is illegal. See *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MELCO RESORTS LEISURE (PHP) CORPORATION, *Petitioner,*	**CTA EB No. 2608** (CTA Case No. 9811)
	Present:
-versus-	**DEL ROSARIO,** *P.J.*, **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID,** and **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUL 11 2023 4:28 pm

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CONCURRING OPINION

REYES-FAJARDO, ***J.*:**

I agree with the conclusion reached by the *ponente* denying the Petition for Review. I, however, disagree with the *ponente*'s pronouncement that petitioner is entitled to the tax exemption granted under Presidential Decree (PD) No. 1869 for its revenues from gaming operations pursuant to Section 13 of the same law.

In the 2016 case of *Bloomberry Resorts and Hotels, Inc. vs. Bureau of Internal Revenue, represented by Commissioner Kim S. Jacinto,*[1] the

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[1] G.R. No. 212530, August 10, 2016.

Supreme Court held that the income tax exemption of PAGCOR may indeed extend to its licensees and contractees.

Recent jurisprudence, however, clarified that PAGCOR's exemption extends only to entities or individuals with contractual relationship with it in connection with its casino operations but not to its licensees. In *Thunderbird Pilipinas Hotels and Resorts, Inc. v. Commissioner of Internal Revenue*,[2] the Supreme Court categorically held that income from casino operations of a PAGCOR licensee authorized to operate its own casino is not tax-exempt. The Supreme Court discussed as follows:[3]

> A more deliberate reading of Section 13(2)(b) of Presidential Decree No. 1869 and the amendments under Republic Act No. 9487 provides more formidable support for the conclusion in this case. **The amendments merely pertained to giving PAGCOR the authority to issue licenses for casino operations. Had Congress also intended to extend the tax exemptions to PAGCOR licensees, it could have easily done so by expanding Section 13(2)(b) and adding words such as "licensees of PAGCOR" and the like. There must be a positive provision, not merely a vague implication, of the law creating that exemption.**
>
> Presidential Decree No. 1869 was issued to centralize the operation of casinos into one corporate entity, PAGCOR.
>
> . . .
>
> Thus, when the tax exemptions were granted under Section 13 of Presidential Decree No. 1869, the legislature contemplated a scenario where the casino operations would be centralized under the sole and exclusive authority of PAGCOR.
>
> **Under Section 13(2)(a), PAGCOR was granted tax exemption on earnings derived from its casino operations. This tax exemption was, under Section 13(2)(b), also extended to entities that have a contractual relationship with PAGCOR in connection with its operation of casinos.**
>
> **In other words, the clause "operations of the casino(s) authorized to be conducted under this Franchise" under Section 13(2)(b) referred to casinos operated by PAGCOR itself.**
>
> **The legislature, then, could not have envisioned that the clause would cover casinos operated by PAGCOR licensees since, at that time, PAGCOR had the sole and exclusive authority to**

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2 GR No. 211327, November 11, 2020.

3 *Thunderbird Pilipinas Hotels and Resorts, Inc. v. Commissioner of Internal Revenue*, GR No. 211327, November 11, 2020.

operate casinos. Had that been its intention, Congress should have unequivocally provided in the amendatory law, Republic Act No. 9487, that tax exemptions extend to PAGCOR licensees.

As stated earlier, it is a settled rule that tax exemptions are strictly construed and must be couched in clear language. This Court has held that "if an exemption is found to exist, it must not be enlarged by construction, since the reasonable presumption is that the state has granted in express terms all it intended to grant at all[.]"

. . .

Thus, following this Court's pronouncement in *Acesite*, we construe Section 13(2)(b) of Presidential Decree No. 1869 to mean that the tax exemption of PAGCOR extends only to those individuals or entities that have contracted with PAGCOR in connection with PAGCOR's casino operations. **The exemption does not include private entities that were licensed to operate their own casinos.**

Here, petitioner was authorized and licensed by PAGCOR to construct and operate a casino complex, by virtue of the April 11, 2006 Memorandum of Agreement and the October 31, 2006 License. Petitioner does not fall within the purview of Section 13(2)(b). Therefore, revenues derived by petitioner from its casino operations are not exempt from income tax.[4]

This is further clarified by Revenue Memorandum Circular (RMC) No. 32-2022,[5] which provides:

. . .

For VAT purposes, however, the ruling of the Court in CIR v. Acesite (Philippines) Hotel Corporation, as further clarified by the Court in the recent case of Thunderbird Pilipinas Hotel & Resorts, Inc. v. CIR, is instructive. There, the Court clarified that PAGCOR, pursuant to its Charter, is also exempt from indirect tax, like VAT, on its gaming operations. **The tax exemption of PAGCOR extends only to those individuals or entities that have contracted with PAGCOR (PAGCOR Contractees and not Licensees) in connection with PAGCOR's gaming operations.** This is to proscribe any indirect tax, like VAT, that may be shifted to PAGCOR.[6]

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4 Emphasis supplied.

5 Clarifying the Tax Treatment of the Philippine Amusement and Gaming Corporation (PAGCOR), Its Licensees and Contractees.

6 Emphasis supplied.

With the foregoing, petitioner, a private entity licensed by PAGCOR to operate its own casino, does not benefit from PAGCOR's tax incentives under PD No. 1869.

The doctrine *stare decisis et non quieta movere*, as embodied in Article 8 of the Civil Code of the Philippines,[7] enjoins adherence to judicial precedents and requires courts in a country to follow the rule established in a decision of the Supreme Court thereof. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land.[8]

All told, I **CONCUR** with the *ponencia*.

MARIAN IVY F. REYES-FAJARDO
Associate Justice

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7 ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.

8 *Umali v. Judicial and Bar Council*, GR No. 228628, July 25, 2017.