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. 2670
(CTA Case Nos. 10029 & 10052)

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

Promulgated:
JAN 09 2024 4:22pm

x- x

DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before the Court is a Petition for Review praying for the setting aside of the Decision[1] ("Assailed Decision") dated September 07, 2021 and Resolution[2] ("Assailed Resolution") dated July 19, 2022 of the Court of Tax Appeals Second Division ("Second Division"), and that judgment be rendered:

1) Declaring Petitioner entitled to a refund or tax credit in the amount of Php45,499,623.59 and Php47,260,792.90

---

1 Penned by Associate Justice Jean Marie A. Bacorro-Villena and with Associate Justice Juanito C. Castañeda, Jr. concurring. Docket, pp. 782-814.

2 Penned by Associate Justice Jean Marie A. Bacorro-Villena and with Associate Justice Lanee S. Cui-David concurring. *Id.*, pp. 913-923.

representing erroneously and illegally paid value-added tax ("VAT") on its purchases of capital goods, domestic purchases 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 passed on by its suppliers and are related to revenues from gaming operations for the 1st and 2nd quarter of taxable year 2017; and

2) Ordering Respondent to refund or issue a tax credit certificate in the said amount of Php45,499,623.59 and Php47,260,792.90.

The Parties

Petitioner is a domestic corporation organized and existing under the laws of the Philippines with principal address at Asean Avenue corner Roxas Boulevard, Barangay Tambo, Parañaque City 1701, Philippines.[3]

Petitioner is registered with the Securities and Exchange Commission (SEC) under Company Registration No. CS201215883 to develop and operate 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. Petitioner was formerly known as "MCE Leisure (Philippines) Corporation" prior to the change in its corporate name to "Melco Resorts Leisure (PHP) Corporation" effective 30 May 2017. Petitioner is also registered with the BIR as a VAT taxpayer, among others, with Taxpayer Identification Number (TIN) 008-362-871-00000.[4]

Respondent is the duly appointed Commissioner of Internal Revenue, who holds office at the Bureau of Internal Revenue ("BIR") National Office Building located at BIR Road, Diliman, Quezon City.[5]

The Facts

The facts as found by the Second Division are as follows:

"On 28 January 2013, the Philippine Amusement and Gaming Corporation (PAGCOR) issued a Provisional License to petitioner, together with its co-licensees.

---

3 *Id.*, Decision, p. 783.
4 *Id.*, Decision, Facts of the Case, p. 784.
5 *Id.*, Decision, p. 783.

Subsequently, PAGCOR issued the regular Gaming License dated 29 April 2015 to petitioner and its co-licensees for the operation of City of Dreams Manila with a validity period until 11 July 2033. PAGCOR then issued an (Amended) Gaming License dated 08 August 2012 to reflect petitioner's amended corporate name but still bearing the same validity as the original Gaming License. The three [(3)] licenses (Provisional License, regular Gaming License and [Amended] Gaming License) expressly state that petitioner and its co-licensees are 'entitled to the customs duties and tax exemptions specified under Title IV Section 13 of the PAGCOR Charter (as amended).'

Petitioner claims that its suppliers passed on the VAT on its purchases of capital goods, domestic purchases of goods (other than capital goods) and services, importation of goods (other than capital goods), and purchases of services rendered by nonresidents, which are attributable or allocable to its gaming operations. Petitioner declared and reported the said purchases with passed-on input VAT in its Monthly Value-Added Tax Declaration (BIR Form No. 2550-M) for January February, April and May of [taxable year] 2017 and Quarterly Value Added Tax Return (BIR Form No. 2550-Q) covering the 1st and 2nd quarters of [taxable year] 2017.

For the 1st and 2nd quarters of [taxable year] 2017, petitioner also reported the following revenue:

Activity	**1st Quarter**	
VATable sales		[Php]1,347,095,521.59
Zero-rated sales		3,467,569.73
Exempt sales (Gaming)	[Php]8,801,872,270.97	
(Non-gaming)	9,891,379.66	8,811,763,650.63
Total Sales		**[Php]10,162,326,741.95**

Activity	**2nd Quarter**	
VATable sales		[Php]1,379,344,944.65
Zero-rated sales		5,448,869.45
Exempt sales (Gaming)	[Php]10,631,410,476.31	
(Non-gaming)	14,624,102.23	10,646,034,578.50
Total Sales		**[Php]12,030,828,392.64**

Likewise, petitioner reported an input VAT amounting to [Php]1,718,979.29 and [Php]8,942,851.71 on its purchases for the 1st and 2nd quarters of [taxable year] 2017, respectively. According to petitioner, out of the said figures, the amounts of [Php]45,499,623.59 and [Php]47,260,792.90 are attributable or

allocable to VAT exempt sales representing revenues from gaming operations.

On 23 November 2018 and 20 February 2019, petitioner filed with the Large Taxpayer Service (LTS) of the BIR administrative claims for refund or tax credit of erroneously and illegally paid VAT on purchases attributable or allocable to its revenues from gaming operations for the 1st and 2nd quarters of [taxable year] 2017 in the amounts of [Php]45.499,623.59 and [Php]47,260,792.90, respectively.

As the statutory period of two (2) years within which to file a judicial action is about to prescribe and claiming inaction on respondent's part, petitioner filed with this Court the instant Petitions for Review on 20 February 2019 and on 01 April 2019 respectively."[6]

The Ruling of the Second Division

On September 07, 2021, the Second Division promulgated the Assailed Decision partially granting the Petition for Review, the dispositive portion of which reads:

"**WHEREFORE**, in view of the foregoing, petitioner Melco Resorts Leisure (PHP) Corporation's Petitions for Review are hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO REFUND OR ISSUE TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of Nine Thousand Seven Thirty-Seven Pesos (**[Php]9,737.00**), representing its erroneous payment of input VAT on importation directly attributable to its gaming operations.

SO ORDERED."[7]

Aggrieved, Petitioner filed an "Omnibus Motion I. For Partial Reconsideration of the Decision dated September 7, 2021; and II. For Leave of Court to Reopen the Case for Presentation of Additional Evidence"[8] on October 21, 2021, which the Second Division denied in the Assailed Resolution on July 19, 2022, to wit:

---

6 *Id.*, Decision, Facts of the Case, pp. 784-787.
7 *Id.*, Decision p. 813.
8 *Id.*, pp. 861-886.

> "**WHEREFORE**, in view of the foregoing, petitioner's 'Omnibus Motion I. For Partial Reconsideration of the Decision dated September 7, 2021; and II. For Leave of Court to Reopen the Case for Presentation of Additional Evidence' filed on 21 October 2021 is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"[9]

The Proceedings in the Court of Tax Appeals En Banc

On August 17, 2022, Petitioner filed a "Motion for Extension to File Petition for Review"[10], praying for an extension of fifteen (15) days from August 09, 2022 or until September 03, 2022 within which to file its petition.

On August 23, 2022, a Minute Resolution[11] was issued granting Petitioner's motion.

On September 05, 2022, Petitioner filed the present "Petition for Review"[12].

On October 18, 2022, the Court issued a Resolution[13] directing Respondent to comment on the Petition for Review within ten (10) days from notice.

On November 10, 2022, Respondent filed his "Comment/Opposition"[14].

Thus, on January 12, 2023, a Resolution[15] was issued noting Respondent's "Comment/Opposition" and submitting the instant case for decision.

Assignment of Errors

Petitioner raises the following grounds[16] in support of the petition:

1) Whether or not the Honorable Second Division erred in deciding that Petitioner is not entitled to the refund or the issuance of a tax credit certificate ("TCC") of erroneously or

---

9 *Id.*, p. 922.
10 Rollo, pp. 1-5. Record shows that Petitioner received the Assailed Resolution on August 04, 2022; Docket, p. 912.
11 *Id.*, p. 53.
12 *Id.*, pp. 54-100.
13 *Id.*, pp. 149-150.
14 *Id.*, pp. 151-158.
15 *Id.*, pp. 160-161.
16 *Id.*, Petition for Review, Statement of the Issues, pp. 66-67.

illegally paid VAT on its purchases of goods and services, which are passed on by its suppliers and are related to gaming revenues for the 1st and 2nd quarters of taxable year 2017;

2) Whether or not the Honorable Second Division erred in applying *Thunderbird Pilipinas Hotels and Resorts, Inc. v. Commissioner of Internal Revenue*[17] ("*Thunderbird v. CIR*") and Revenue Memorandum Circular ("RMC") No. 32-2022 in the instant case;

3) Whether or not the Honorable Second Division erred in deciding that the exemption of Philippine Amusement and Gaming Corporation ("PAGCOR") under Section 3 of Presidential Decree ("PD") No. 1869 does not extend to Petitioner, as PAGCOR licensee;

4) Whether or not the Honorable Second Division erred in not holding that PD No. 1869 clearly grants an exemption from both direct and indirect tax to Petitioner as PAGCOR licensee, to which the economic burden of tax is shifted;

5) Whether or not the Honorable Second Division erred in relying on *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue*[18] ("*Coral Bay v. CIR*"), in holding that the refund should be sought against its supplier and not the government;

6) Whether or not the Honorable Second Division erred in disregarding *Philippine Airlines v. Commissioner of Internal Revenue*[19] ("*PAL v. CIR*"), 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; and

7) Whether or not the Honorable Second Division erred in denying the omnibus motion for leave of court to reopen the case for presentation of additional evidence.

The Arguments of Parties

---

17 G.R. No. 211327, November 11, 2020.
18 G.R. No. 190506, June 13, 2016.
19 G.R. No. 198759, July 01, 2013.

Petitioner avers that under Section 13(2)(b) of PD No. 1869, as amended, all contractees and licensees of PAGCOR are likewise exempt from all other taxes, including corporate income tax, on earnings realized from the operation of casinos. PAGCOR licensees are unequivocally granted exemption from indirect taxes as an extension of, and as similarly granted to, PAGCOR.

Consequently, Petitioner asserts that the court *a quo* incorrectly applied *Thunderbird v. CIR* which is contrary to *Bloomberry Resorts and Hotels, Inc. v. Commissioner of Internal Revenue*[20] ("*Bloomberry v. CIR*"). *Bloomberry v. CIR* expressly declared the intent of the law under Section 13(2)(b) of PD No. 1869, as amended. According to Petitioner, the doctrine in *Bloomberry v. CIR* still prevails since it was recently affirmed in *Commissioner of Internal Revenue v. Travellers International Hotel Group, Inc.*[21] ("*CIR v. Travellers*"). Moreover, *Thunderbird v. CIR* appears to suggest that it pertains to tax liabilities for taxable year 2006 while the facts in *Bloomberry v. CIR* occurred after amendments to PD No. 1869 by Republic Act ("R.A.") No. 9487, which took effect in 2007.

Similarly, RMC No. 32-2022, which the Second Division incorrectly applied, is also contrary to law and jurisprudence for also being contrary to the provisions of PD No. 1869, as amended.

Additionally, Petitioner claims that it has the right to file a claim for refund when Petitioner's suppliers pass on input VAT to it, applying the case of *PAL v. CIR*. The tax exemption of PAGCOR under the law encompasses both direct and indirect taxes, as held in in *Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation*[22] ("*CIR v. Acesite*"). Accordingly, the input VAT passed on to and collected from Petitioner is erroneously collected and should be refunded to Petitioner.

Petitioner also contends that the court *a quo* incorrectly based its Decision on the ruling of the Supreme Court in *Coral Bay v. CIR*, when it ruled that Petitioner's recourse is not against the government but against the supplier who shifted the output VAT to Petitioner. Petitioner submits that the factual milieu of *Coral Bay v. CIR* is different from the case at bar. In any case, Petitioner maintains that it is unfair and totally repressive to require them to go after the suppliers instead of the government when records would show that input VAT was passed on and paid by the claimant-taxpayer.

Furthermore, Petitioner professes that as an entity clearly granted exemption from payment of VAT, it should rightfully be granted a refund of the VAT erroneously paid on its purchases related to its gaming operations following the principle of *solutio indebiti*.

---

[20] G.R. No. 212530, August 10, 2016.
[21] G.R. No. 255487, May 03, 2021 (Resolution).
[22] G.R. No. 147295, February 16, 2007.

On top of that, Petitioner argues that the fact of payment of input VAT passed on by suppliers to Petitioner as evidenced by a VAT-registered invoice or official receipt is sufficient compliance with the requisite of erroneously or illegally collected tax under Section 229 of the National Internal Revenue Code ("NIRC") as amended. Further, Petitioner insists that the allocation of common expenses between Petitioner's VATable revenues from hotel operations and its VAT-exempt revenues from casino operations should be allowed, particularly if it can be attributed to the generation of gaming revenues, since such allocation is deemed reasonable.

Lastly, Petitioner implores in the paramount interest of justice, that the Court allow to reopen trial and/or evaluate the documents attached to its Omnibus Motion filed with the Second Division.

On the other hand, Respondent in his "Comment/Opposition" declares that Petitioner, being a mere licensee of PAGCOR, is not entitled to the tax exemption under PD No. 1869, as amended. The exemption is granted only to PAGCOR when the same operates the casino by itself, and extends to entities who provide necessary services to PAGCOR, in relation to its gaming operations. This tax exemption does not inure to the benefit of the licensees to which the operation and management of the gaming services is not under the control of the franchise holder, PAGCOR.

Petitioner stresses that there is nothing in PD No. 1869 which specifically states that a licensee of PAGCOR is exempt from tax. The mentioned entities in Section 13(2)(b) pertain to those who perform essential and technical services for PAGCOR in relation to the latter's operations of the casinos. It does not cover those entities not actually operated by PAGCOR itself, such as Petitioner.

Likewise, Respondent asseverates that assuming that Petitioner is exempt from payment of VAT, it has still no personality to claim refund of erroneously paid passed-on VAT on its alleged purchases of capital goods, domestic purchases of goods (other than capital goods) and services, importation of goods (other than capital goods) and purchase of services rendered by non-residents, following *Coral Bay v. CIR*.

The Ruling of the Court

Timeliness of Petition

The Court in Division issued the Assailed Resolution, denying Petitioner's "Omnibus Motion I. For Partial Reconsideration of the Decision dated September 7, 2021; and II. For Leave of Court to Reopen the Case for Presentation of Additional Evidence", on July 19, 2022. Petitioner received said

Resolution on August 04, 2022.[23] Pursuant to Rule 4, Section 2(a)(1)[24] in relation to Rule 8, Section 3(b)[25] of the Revised Rules of the Court of Tax Appeals[26] (RRCTA), Petitioner had fifteen (15) days from date of receipt of the resolution or until August 19, 2022 within which to file its petition for review.

On August 17, 2022, Petitioner filed a "Motion for Extension to File Petition for Review" praying for an extension of fifteen (15) days from August 09, 2022 or until September 03, 2022 within which to file its petition, which the Court granted in a Minute Resolution dated August 23, 2022.

On September 05, 2022, Petitioner timely filed the present "Petition for Review".[27] Hence, the Court *En Banc* validly acquired jurisdiction.

We now proceed to the merits of the case.

Petitioner presents no new argument to persuade Us that it has a meritorious case. In fact, the contentions of Petitioner in the instant Petition for Review are the same assertions found in the "Omnibus Motion I. For Partial Reconsideration of the Decision dated September 7, 2021; and II. For Leave of Court to Reopen the Case for Presentation of Additional Evidence"[28] filed by Petitioner on October 21, 2021 before the Second Division. They were already passed upon, addressed and resolved in the Assailed Decision and Assailed Resolution. Nevertheless, we will discuss, once again, the demerits of Petitioner's arguments which may serve as a guidepost in deciding issues of similar nature in the future.

---

23 Docket, p. 912.

24 **Sec. 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:
>
> xxx xxx xxx
>
> (1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture; x x x

25 **Sec. 3.** *Who may appeal; period to file petition.* — x 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. (Rules of Court, Rule 42, sec. 1a)

26 A.M. No. 05-11-07-CTA, November 22, 2005.

27 September 03, 2022 fell on a Saturday. The next working day (Monday) fell on September 05, 2022.

28 Docket, pp. 861-886.

Requisites for recovery of tax erroneously or illegally collected

Petitioner is seeking a refund or issuance of a tax credit in the amount of Php45,499,623.59 and Php47,260,792.90, for its allegedly erroneously and illegally paid VAT on its purchases of capital goods, domestic purchases 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 passed on by its suppliers and are related to revenues from gaming operations for the 1st and 2nd quarters of taxable year 2017.

Sections 204(C)[29] and 229[30] of the NIRC of 1997, as amended, govern refund claims of erroneously or illegally collected tax. Pursuant to the said provisions, the following pre-requisites must be satisfied for such claim to prosper:

1) that the subject tax paid is an *erroneous or illegal tax*, that is, "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 aspect is illegal"[31]; and,

---

29 **SEC. 204.** *Authority of the Commissioner to Compromise/Abate and Refund or Credit Taxes.* — The Commissioner may —

xxx xxx xxx

(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.

30 **SEC. 229.** *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

31 Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation, G.R. No. 188497, April 25, 2012, *citing* the definition provided in BLACK'S LAW DICTIONARY, Fifth Edition, p. 486.

2) that an administrative claim for refund or credit must be filed with the BIR before filing a judicial claim with this court, both within two (2) years from the date of payment of tax.

We now determine whether or not Petitioner was able to comply with the above-mentioned requirements.

There was erroneous payment of VAT

The first matter this Court shall resolve is whether or not there was erroneous payment of VAT by Petitioner for the 1st and 2nd quarters of taxable year 2017.

PAGCOR was explicitly granted an exemption from the payment of taxes, including any form of charges, fees and levies (with the exemption of the five percent franchise tax on gross revenues or earnings) with respect to its income from gaming operations under Section 13(2) of PD No. 1869[32] as amended by RA No. 9487[33], *viz.:*

"SECTION 13. Exemptions. —

xxx xxx xxx

(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 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 exemptions herein granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income of otherwise, as

---

32 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.

33 An Act Further Amending Presidential Decree No. 1869, Otherwise Known As PAGCOR Charter, June 20, 2007.

> 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."[34]

In *CIR v. Acesite*, it was explained that this exemption granted to PAGCOR includes payment of indirect taxes such as VAT:

> "Under the above provision [Section 13 (2) (b) of P.D. 1869], the term 'Corporation' or operator refers to PAGCOR. Although the law does not specifically mention PAGCOR's exemption from indirect taxes, PAGCOR is undoubtedly exempt from such taxes because the law exempts from taxes persons or entities contracting with PAGCOR in casino operations. **Although, differently worded, the provision clearly exempts PAGCOR from indirect taxes.** In fact, it goes one step further by granting tax exempt status to persons dealing with PAGCOR in casino operations. **The unmistakable conclusion is that PAGCOR is not liable for the [Php]30,152,892.02 VAT** and neither is Acesite as the latter is effectively subject to zero percent rate under Sec. 108 B (3). R.A. 8424.
>
> Indeed, by extending the exemption to entities or individuals dealing with PAGCOR, the legislature clearly granted exemption also from indirect taxes. It must be noted that the indirect tax of VAT, as in the instant case, can be shifted or passed to the buyer, transferee, or lessee of the goods, properties, or services subject to VAT. Thus, by extending the tax exemption to entities or individuals dealing with PAGCOR in casino operations, it is exempting PAGCOR from being liable to indirect taxes."[35]

Does PAGCOR's VAT exemption extends to PAGCOR's contractors, and licensees, such as Petitioner?

A review of jurisprudence suggests the affirmative.

In *Bloomberry v. BIR*, the Supreme Court had the occasion to finally clarify the taxation of the income from gaming operations derived by PAGCOR's contractees and licensees, *viz.*:

---

[34] *Emphasis and underscoring supplied.*
[35] *Emphasis supplied.*

"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:

xxx xxx xxx

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.

xxx xxx xxx

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.**

For the same reasons that made us conclude in the 10 December 2014 Decision of the Court sitting En Banc in G.R. No. 215427 that PAGCOR is subject to corporate income tax for 'other related services,' we find it logical that its *contractees and licensees* shall likewise pay corporate income tax for income derived from such 'related services.'

Simply then, in this case, we adhere to the principle that since the statute is clear and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is the plain meaning rule or *verba legis*, as expressed in the maxim *index animi sermo* speech is the index of intention.

> 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."[36]

In view of the foregoing, the categorical pronouncement is that PAGCOR's exemption inures to the benefit of and extend to other entities with whom PAGCOR has any contractual relationship in connection with the operations of the casinos authorized to be conducted under its charter. In other words, it is not only PAGCOR that is exempt from paying taxes on its gaming operations, whether local or national, but also PAGCOR's contractees and licensees.

Indeed, this Court in *Commissioner of Internal Revenue v. Travellers International Hotel Group, Inc.*[37] and *Commissioner of Internal Revenue v. Premiumleisure and Amusement, Inc. (PLAI)*[38] has confirmed the same tax treatment for the licensees of PAGCOR (*i.e.*, five percent franchise tax in lieu of any and all taxes).

In 2020 however, the Supreme Court modified its stance and ruled that the PAGCOR 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 v. CIR*, the High Court ruled as follows:

> "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.
>
> xxx xxx xxx
>
> 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.

---

[36] *Emphasis and underscoring supplied.*
[37] CTA E.B. No. 2141 (CTA Case No. 9275), September 22, 2020.
[38] CTA E.B. No. 2226 (CTA Case No. 9572), June 14, 2021.

> 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 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.
>
> xxx xxx xxx
>
> 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.***"[39]

And yet, in 2021, the Supreme Court in *Commissioner of Internal Revenue v. Travellers International Hotel Group, Inc.*[40] affirmed this Court's ruling and once again adopted the doctrine in *Bloomberry v. BIR*; essentially abandoning the previous principle under *Thunderbird v. CIR*.

Additionally, in the same year, in the case of *Saint Wealth, Ltd. v. Bureau of Internal Revenue*[41] ("*Saint Wealth v. BIR*"), the Supreme Court, for the second time, abandoned the *Thunderbird* doctrine and confirmed the *Bloomberry* doctrine. The case of *Saint Wealth v. BIR* concerns the separate tax treatment of Philippine Offshore Gaming Operators ("POGOs") as PAGCOR licensees who derive profit from other means. In the said case, it was reiterated that PAGCOR's licensees (aside from POGOs) are only liable to pay a five percent (5%) franchise tax for income derived from its gaming operations. Simply stated, licensees of PAGCOR which operate casinos and other related amusement places, upon

---

39 *Emphasis supplied.*
40 G.R. No. 255487, May 03, 2021 (Resolution).
41 G.R. Nos. 252965 and 254102, December 07, 2021.

payment of the five percent (5%) franchise tax, shall likewise be exempted from all other taxes including VAT.

At first glance, it seems that the Supreme Court has conflicting rulings. Nonetheless, We shall consider the case of *Saint Wealth v. BIR* as the controlling doctrine as to the question of whether or not PAGCOR's tax exemption under its Charter can be extended to its contractees and licensees. This is because *Saint Wealth v. BIR* is the most recent and was promulgated by the Supreme Court *En Banc* as opposed to the *Thunderbird v. CIR* which was issued by the Supreme Court Third Division. The High Court in *Saint Wealth v. BIR* overturned the previous ruling in *Thunderbird v. CIR* and returned to the original dogma in *Bloomberry v. BIR*.

To recapitulate, PAGCOR's tax exemption extends to its contractees and licensees. Therefore, a PAGCOR licensee is exempt from the payment of corporate income tax and other taxes. Since the court *a quo* found that Petitioner was able to prove that it is a licensee of PAGCOR,[42] it follows therefore that Petitioner is also exempt from payment of any tax, which includes VAT.

The implication of this is that the sales of goods and services to Petitioner (*i.e.*, purchases of goods and services of Petitioner) are effectively zero-rated under Sections 106(A)(2)(b)[43] and 108(B)(3)[44] of the NIRC of 1997, as amended, following the case of *Commissioner of Internal Revenue v. Team Energy Corporation*[45] where it was ruled that sales to National Power Corporation (NPC) are zero-rated because Section 13 of Republic Act No. 6395[46], as amended, declares that it is "exempt from the payment of all forms of taxes, duties, fees".

For this reason, Petitioner's suppliers should not have passed on VAT to Petitioner, and Petitioner should not have paid for the VAT portion of the purchase price from its suppliers.

---

42 Docket, Decision, Facts of the Case, p. 784.

43 SEC. 106. Value-Added Tax on Sale of Goods or Properties. -
(A) Rate and Base of Tax. –
xxx xxx xxx
(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
xxx xxx xxx
(b) Sales to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects such sales to zero rate.

44 SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. -
xxx xxx xxx
(B) Transactions Subject to Zero Percent (0%) Rate - The following services performed in the Philippines by VAT- registered persons shall be subject to zero percent (0%) rate.
xxx xxx xxx
(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;

45 G.R. No. 230412, March 27, 2019.

46 An Act Revising The Charter Of The National Power Corporation, September 10, 1971.

But was there erroneous payment of the passed-on VAT, so that it can be refunded under Sections 204(C) and 229 of the NIRC of 1997, as amended?

There are two (2) schools of thought.

In the *first* one, the answer is no. In the cases of *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue*[47], *Pilipinas Shell Petroleum Corp. v. Commissioner of Internal Revenue*[48] ("*Pilipinas Shell v. CIR*"), and *Coral Bay v. CIR*, it was held that in the refund of indirect taxes such as VAT, the statutory taxpayer is the proper party who can claim the refund. Even if the purchaser bears the tax burden (of the VAT or excise tax paid and added to the purchase price), this does not convert the purchaser-claimant's status into a statutory taxpayer.

The case of *Pilipinas Shell v. CIR* which fully elucidated the difference between "incidence of taxation" with "burden of taxation" in indirect taxes, is instructive:

> "Furthermore, excise taxes are indirect taxes, as opposed to direct taxes. Pertinently, these types of taxes relate to the statutory taxpayer who is obligated to pay taxes to the government. In this relation, one must understand the concepts of tax incidence (or the actual liability to pay the tax) and tax burden (the economic burden of the tax incident).
>
> On the one hand, **direct taxes** are 'those that are exacted from the very person who, it is intended or desired, should pay them; they are impositions for which a taxpayer is directly liable on the transaction or business he is engaged in,' which means, **the tax incidence and tax burden fall upon the same person**.
>
> On the other, **indirect taxes** are 'those that are demanded, in the first instance, from, or are paid by, one person in the expectation and intention that he can shift the burden to someone else. Stated elsewise, indirect taxes are taxes **wherein the liability for the payment of the tax falls on one person but the burden thereof can be shifted or passed on to another person**, such as when the tax is imposed upon goods before reaching the consumer who ultimately pays for it. When the seller passes on the tax to his buyer, he, in effect, shifts the tax burden, not the liability to pay it, to the purchaser as part of the price of goods sold or services rendered.' As jurisprudence explains, **'this shifting process, otherwise known as 'passing on,' is largely a contractual affair between the parties.** Meaning, even if the purchaser effectively pays the value of the tax, the manufacturer [or] producer (in case

[47] G.R. No. 173594, February 06, 2008.
[48] G.R. No. 211303, June 15, 2021.

> of goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition) or the owner or importer (in case of imported goods) [is] still regarded as the statutory [taxpayer] under the law. **To this end, the purchaser does not really pay the tax; rather, he only pays the seller more for the goods because of the latter's obligation to the government as the statutory taxpayer**.'
>
> **Thus, when it comes to indirect taxes**, the statutory taxpayer remains to be the manufacturer or importer of the articles. Despite being able to pass the burden of the tax to the buyer as an inherent component of the total price of the article, **the onus to actually pay the excise tax and to remit the returns incidental thereto remains with the statutory taxpayer, who must correspondingly benefit from any tax exemption.** In effect, upon the sale of the goods, the portion of the price corresponding to the excise tax originally paid by the manufacturer or importer is not per se the excise tax liability imposed under Section 129 of the Tax Code. The price passed on, and assumed by the buyer of the goods, is therefore no different from any other component cost in arriving at the price of the article sold, such as raw material cost or distributed overhead expenses. In a similar situation, the Court held that '[e]ven if the consumers or purchasers ultimately pay for the tax, they are not considered the taxpayers. The fact that [statutory taxpayer/importer], on whom the excise tax is imposed, can shift the tax burden to its purchasers does not make the latter the taxpayers and the former the withholding agent. [The purchaser/end-consumer] ultimately bears the tax burden, but this does not transform [its] status into a statutory taxpayer.' This distinction between statutory taxpayer and the purchaser who assumes the tax burden when the costs of the taxes are passed on to it as part of the purchase price is material to understand the 'exemption' granted under Section 135 governing excise taxes."[49]

Based on the foregoing, it was still the buyer who paid the tax to the government. The purchaser-claimant did not pay any tax, but the cost of goods or services paid was higher, because an extra amount was paid to the seller to cover the latter's obligation to the government as the statutory taxpayer.

In such a case, the proper recourse is for the purchaser-claimant to go against the seller who had shifted the output VAT to it, and not claim a refund from the government because the purchaser-claimant was not the one who paid the VAT.

---

[49] *Emphasis and underscoring supplied.*

The *second* school of thought is *PAL v. CIR*. We echo the court *a quo*'s ruling in the Assailed Decision that in the said case, "the Supreme Court categorically ruled that, in general, only the statutory taxpayer has the legal personality to file a claim for refund except for taxpayers that are clearly and unequivocally conferred with indirect tax exemption by a special law".

Otherwise stated, as an exception to the general rule, the purchaser-claimant is given the right to claim a tax refund or credit (even if it only bears the economic burden of the applicable tax) when the law confers upon it an exemption from both direct or indirect taxes.

We differ however with the Second Division's conclusion. The case of *PAL v. CIR* is applicable in the case at bar. In that case, Philippine Airlines ("PAL") was granted a refund of excise taxes added to the purchase price it paid for the purchased aviation fuel from Caltex. This is because PAL's franchise grants it the option to pay the basic corporate income tax or two percent (2%) franchise tax, in lieu of all other taxes, duties, royalties, registration, license, and other fees. The pertinent portion of the decision reads:

> "In this case, PAL's franchise grants it an exemption from both direct and indirect taxes on its purchase of petroleum products. Section 13 thereof reads:
>
> > SEC. 13. In consideration of the franchise and rights hereby granted, the grantee [PAL] shall pay to the Philippine Government during the life of this franchise whichever of subsections (a) and (b) hereunder will result in a lower tax:
> >
> > (a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or
> >
> > (b) A franchise tax of two per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or nontransport operations; provided, that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax.
> >
> > The tax paid by the grantee under either of the above alternatives shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees

> and charges of any kind, nature, or description, imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future, including but not limited to the following:
>
> 1. All taxes, duties, charges, royalties, or fees due on local purchases by the grantee of aviation gas, fuel, and oil, whether refined or in crude form, and whether such taxes, duties, charges, royalties, or fees are directly due from or imposable upon the purchaser or the seller, producer, manufacturer, or importer of said petroleum products but are billed or passed on the grantee either as part of the price or cost thereof or by mutual agreement or other arrangement; provided, that all such purchases by, sales or deliveries of aviation gas, fuel, and oil to the grantee shall be for exclusive use in its transport and nontransport operations and other activities incidental thereto;
>
> 2. All taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations by the grantee of aircraft, engines, equipment, machinery, spare parts, accessories, commissary and catering supplies, aviation gas, fuel, and oil, whether refined or in crude form and other articles, supplies, or materials; provided, that such articles or supplies or materials are imported for the use of the grantee in its transport and transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price; (Emphasis and underscoring supplied)
>
> xxx xxx xxx

Based on the above-cited provision, PAL's payment of either the basic corporate income tax or franchise tax, whichever is lower, shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges, except only real property tax. The phrase 'in lieu of all other taxes' includes but is not limited to taxes that are 'directly due from or imposable upon the purchaser or the seller, producer, manufacturer, or importer of said petroleum products but are billed or passed on the grantee either as part of the price or cost thereof or by mutual agreement or other arrangement.' In other words, in view of PAL's payment of either the basic corporate income tax or

> franchise tax, whichever is lower, PAL is exempt from paying: (a) taxes directly due from or imposable upon it as the purchaser of the subject petroleum products; and (b) the cost of the taxes billed or passed on to it by the seller, producer, manufacturer, or importer of the said products either as part of the purchase price or by mutual agreement or other arrangement. **Therefore, given the foregoing direct and indirect tax exemptions under its franchise, and applying the principles as above-discussed, PAL is endowed with the legal standing to file the subject tax refund claim, notwithstanding the fact that it is not the statutory taxpayer as contemplated by law.**"[50]

Similarly with PAL, Petitioner, as PAGCOR licensee, is as discussed above conferred with both direct and indirect tax exemption by special law, as the privileges afforded PAGCOR inures to its benefit. Therefore, as an exception to the general rule, Petitioner can claim a refund of the portion of the VAT, its suppliers added to the purchase price of goods and services.

We now resolve whether or not petitioner was able to timely and properly file its claim for refund.

Not all the administrative and judicial claims were timely filed

It is well settled that the following must be complied with, in order to prove that the administrative and judicial claims were timely filed, under 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 (2) years from the date of payment of the tax or penalty;[51]

2) That, if denied or not acted upon within said period, the petition for refund be filed with the CTA within thirty (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;[52] and

---

[50] *Emphasis supplied.*

[51] Commissioner of Internal Revenue v. Victorias Milling Co., Inc., et al., G.R. No. L-24108, January 3, 1968.

[52] Allison J. Gibbs, et al. v. Collector of Internal Revenue, et al., G.R. No. L-13453, February 29, 1960.

3) The claim for refund must be a categorical demand for reimbursement.[53]

It must be noted however that there are two (2) types of input VAT in Petitioner's claim for refund, *one* is the input VAT on its local purchases of goods and services where Petitioner is not the statutory taxpayer, and *another* as regards its importations and purchase of services rendered by non-residents where Petitioner is the statutory taxpayer. In the former, Petitioner's suppliers were the ones who filed the VAT return and paid the VAT; while in the latter, Petitioner was the one who remitted the VAT to the government.

In the first instance, it cannot be determined whether Petitioner timely filed its claim for refund. The law is categorical in stating that the prescriptive period starts from the payment of the tax. Applying *PAL v. CIR*, the date of filing of the VAT returns of its suppliers commences the two-year period within which within Petitioner may file its claim for refund, since the latter is not the statutory taxpayer but its suppliers.

In the case at bar however, Petitioner counted the two-year period from the date of filing of its monthly VAT return for January on February 22, 2017.[54] This is erroneous. As stated earlier, Petitioner's suppliers were the ones who paid the VAT to the government; and as such, the date of their filing and payment will be the start of the two-year prescriptive period. Moreover, there is no record of any proof of date of the suppliers' filing and payment of VAT returns (which comprises the passed-on VAT being refunded). Therefore, this Court cannot determine whether Petitioner's refund claim of input VAT on its local purchases of goods and services is timely filed.

As for the second situation, We agree with the Second Division when it ruled in the Assailed Decision that only the VAT importation and VAT on services rendered by non-residents for February were timely filed, to wit:

> "With respect to the first, second, and third requisites, petitioner's administrative and judicial claims for refund of erroneously paid VAT on importation for the 1st quarter of TY 2017 and on services rendered by non-residents (directly attributable and related to its gaming license) for the month of February 2017 were timely filed, as shown by the table below:

QUARTER	WHEN PAID or REMITTED	LAST DAY OF THE 2-YEAR	WHEN ADMINISTRATIVE CLAIM WAS FILED	WHEN PETITION

[53] Commissioner of Internal Revenue v. Rosemarie Acosta, as represented by Virgilio A. Abogado, G.R. No. 154068, August 03, 2007.

[54] Docket, Petition for Review, Statement of Facts, paragraphs 13 to 20, pp. 12-14.

		PRESCRIPTIVE PERIOD		FOR REVIEW WAS FILED
VAT on importation directly related to its gaming license				
First quarter	03/13/2017	03/13/2019	11/23/2018	02/20/2019
VAT on services rendered by non-residents directly related to its gaming license				
First quarter - January	02/10/2017	02/10/2019	11/23/2018	02/20/2019
First quarter- February	03/10/2017	03/10/2019	11/23/2018	02/20/2019

On the other hand, the claim for refund or credit on the VAT paid on services rendered by non-residents for the month of January 2017 (directly attributable and related to its gaming license) had already prescribed considering that the two-year prescriptive period, ended on 10 February 2019 (from its filing on 10 February 2017) while the Petition for Review covering the same period was filed only on 20 February 2019."[55]

Petitioner is entitled to a refund amounting to Php9,737.00

Having found that the VAT importation and VAT on services rendered by non-residents for January were timely filed, We affirm the Second Division's judgment that on the whole, Respondent, according to the documents presented, was only able to prove that it is entitled to a refund in the amount of Php9,737.00 representing the VAT on its importation of goods other than capital goods.

Considering all these pronouncements and there being no reversible error committed by the court *a quo*, We find no cogent reason to reverse or modify the Assailed Decision and Assailed Resolution.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED** for lack of merit. The Decision dated September 07, 2021 and the Resolution dated July 19, 2022 of the Second Division in the case docketed as CTA Case Nos. 10029 and 10052 are **AFFIRMED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[55] *Id.*, Decision, pp. 811-812.

WE CONCUR:

I concur in the result, see Separate Concurring Opinion
ROMAN G. DEL ROSARIO
Presiding Justice

I join Presiding Justice's Separate Concurring Opinion
CATHERINE T. MANAHAN
Associate Justice

With Concurring and Dissenting Opinion
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

I concur in the result, I join Presiding Justice's Separate Concurring Opinion
MARIAN IVY F. REYES-FAJARDO
Associate Justice

With Concurring Opinion
LANEE S. CUI-DAVID
Associate Justice

I concur in the result and I join Presiding Justice's Separate Concurring Opinion
CORAZON G. FERRER-FLORES
Associate Justice

I join the Presiding Justice's Separate Concurring Opinion
HENRY S. ANGELES
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,	**CTA EB No. 2670** (CTA Case Nos. 10029 & 10052)
- versus -	Present: **DEL ROSARIO,** *P.J.*, **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** and **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 09 2024 4:28pm

x- -x

SEPARATE CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur in the denial of the Petition for Review.

I wish to point out, however, a different legal reasoning why petitioner is not entitled to the total amount of refund being sought.

In *The Commissioner of Internal Revenue vs. Acesite (Philippines) Hotel Corporation* ("*Acesite*"),[1] the Supreme Court held that the tax exemption privilege of the Philippine Amusement and Gaming Corporation (PAGCOR) under Section 13 of Presidential Decree No. 1869, as amended, or the PAGCOR Charter, extends to entities or individuals dealing with the latter.

The ruling in *Acesite* would be confirmed by the Supreme Court in *Bloomberry Resorts and Hotels, Inc. vs. Bureau of Internal Revenue, Represented by Commissioner Kim S. Jacinto-Henares*

[1] G.R. No. 147295, February 16, 2007.

("*Bloomberry*"),[2] where it was categorically ruled that "licensees of PAGCOR, upon payment of the 5% franchise tax, shall likewise be exempted from all other taxes[.]"

Bloomberry would again be applied in *Commissioner of Internal Revenue vs. Travellers International Hotel Group, Inc.* ("*Travellers*"),[3] and, in the more recent case of *Saint Wealth Ltd., et al. vs. Bureau of Internal Revenue, et al.* ("*Saint Wealth*"),[4] where the Supreme Court *En Banc* echoed the ruling in *Bloomberry* that the tax exemption of the PAGCOR, upon payment of the 5% franchise tax, inures to the benefit of **PAGCOR licensees**.

Considering that petitioner is a licensee of PAGCOR, the tax exemption privileges granted under Section 13(2)(b) of the PAGCOR Charter inures to the benefit of petitioner. Thus, 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.

It must be noted, however, that contrary to the *ponencia*'s discussion, *Saint Wealth* did not categorically or explicitly abandon or overturn the ruling in *Thunderbird Pilipinas Hotels and Resorts, Inc. vs. Commissioner of Internal Revenue* ("*Thunderbird*").[5] Indeed, Section 4(3), Article VIII of the Constitution provides that it is the Supreme Court, sitting *en banc*, which has the authority to modify or reverse a doctrine or principle of law laid down in a previous case. Although it is the Supreme Court, sitting *en banc,* which promulgated the decision in *Saint Wealth*, nowhere in said decision did the Supreme Court rule that *Thunderbird* had been abandoned or overturned. In fact, *Thunderbird* was not mentioned in the said decision at all.

Thunderbird may be reconciled with the cases of *Bloomberry, Travellers*, and *Saint Wealth* because the former has a different factual milieu compared with the latter cases. *Thunderbird* involved a taxable year prior to the effectivity of Republic Act (RA) No. 9487 in 2007, which amended the PAGCOR Charter. Prior to RA No. 9487, PAGCOR was not allowed to issue licenses to private casino operators, but with the enactment of the amendatory law, PAGCOR had now been authorized to do so. Considering that the facts in *Bloomberry, Travellers* and *Saint Wealth* all involved licensees who

---

[2] G.R. No. 212530, August 10, 2016.
[3] G.R. No. 255487, May 3, 2021.
[4] G.R. Nos. 252965 and 254102, December 7, 2021.
[5] G.R. No. 211327, November 11, 2020.

were authorized by PAGCOR after the enactment of RA No. 9487, the precedent in *Thunderbird* was clearly inapplicable.

Moreover, the discussion in the *ponencia* of the so-called two (2) schools of thought with regard to the proper party who can claim a refund is inappropriate. In the cases cited, *i.e.*, *Silkair (Singapore) Pte. Ltd. vs. Commissioner of Internal Revenue*[6] and *Philippine Airlines vs. Commissioner of Internal Revenue*,[7] the tax involved is not VAT but excise tax. Admittedly, both VAT and excise tax are indirect taxes, such that the cost of the tax or its economic burden may be shifted or passed on to the purchaser of the goods or services.[8]

The similarity, however, ends there. VAT is imposed on "[a]ny person who, in the course of trade or business, sells barters, exchanges, leases goods or properties, renders services, and any person who imports goods,"[9] while excise tax is imposed on certain enumerated "goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition and to things imported as well as services performed in the Philippines."[10] In VAT, the tax passed on to the VAT-registered purchaser of goods or services is designated and separated as "input tax" of said purchaser, which is creditable against its "output tax",[11] while in excise tax, no set-off mechanism exists as the tax is only incorporated in the purchase price which forms part of the cost of goods. Said the Supreme Court in *Diageo Philippines, Inc. vs. Commissioner of Internal Revenue*:[12]

> "Unlike the law on Value Added Tax which allows the subsequent purchaser under the tax credit method to refund or credit input taxes passed on to it by a supplier, no provision for excise taxes exists granting non-statutory taxpayer like Diageo to claim a refund or credit. It should also be stressed that when the excise taxes were included in the purchase price of the goods sold to Diageo, the same was no longer in the nature of a tax but already formed part of the cost of the goods."

The final distinction rests on the treatment of sales made to VAT-exempt entities. Section 108(B)(3) of the NIRC of 1997, as amended, provides that sales made to an entity exempt from payment of VAT under special laws is considered a zero-rated transaction for which the seller may claim a refund of the input tax on such sale, but in excise

---

[6] G.R. No. 173594, February 6, 2008.
[7] G.R. No. 198759, July 1, 2013.
[8] *Commissioner of Internal Revenue vs. Philippine Long Distance Telephone Company*, G.R. No. 140230, December 15, 2005.
[9] Sec. 105, NIRC of 1997, as amended.
[10] Sec. 129, NIRC of 1997, as amended.
[11] Sec. 110(A)(3), NIRC of 1997, as amended.
[12] G.R. No. 183553, November 12, 2012.

tax, there is no such similar provision in the NIRC of 1997, as amended.

Verily, the *ponencia's* discussion on the proper party who can claim a refund of indirect tax is inapplicable in this case considering that VAT and excise tax operate on different legal paradigms.

The Supreme Court has declared, in *Malayan Insurance Company, Inc. vs. St. Francis Square Realty Corporation, et seq.*,[13] 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 <u>becomes part of their acquisition cost of the asset or operating expense</u>**." (*Boldfacing and underscoring supplied*)

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

The analogous case of *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue*[14] is illustrative. There, the refund claimant is an entity located in an economic zone (ecozone). Under the NIRC of 1997, as amended, sales made to an ecozone entity is considered as "constructive exports" subject to zero percent (0%) VAT since the ecozone is a separate customs territory. Thus, the erroneous shifting of the VAT to the ecozone entity cannot be subject of a refund claim against the government, but may be claimed against the suppliers who erroneously passed on the VAT. As held by the Supreme Court:

---

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

> "x x x As such, the purchases of goods and services by the petitioner that were destined for consumption within the ECOZONE should be free of VAT; hence, no input VAT should then be paid on such purchases, rendering the petitioner not entitled to claim a tax refund or credit. **Verily, if the petitioner had paid the input VAT, the CTA was correct in holding that the petitioner's proper recourse was not against the Government but against the seller who had shifted to it the output VAT** following RMC No. 42-03, which provides:
>
> x x x
>
> We should also take into consideration the nature of VAT as an indirect tax. Although the seller is statutorily liable for the payment of VAT, the amount of the tax is allowed to be shifted or passed on to the buyer. However, reporting and remittance of the VAT paid to the BIR remained to be the seller/supplier's obligation. **Hence, the proper party to seek the tax refund or credit should be the suppliers, not the petitioner**." (*Boldfacing supplied*)

Similarly in this case, the erroneous shifting of VAT to petitioner, which otherwise should have been subjected to zero percent (0%) VAT, cannot be a subject of a refund claim, but petitioner's recourse should be against the suppliers who ought not have passed on the VAT.

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"[15] mistakenly paid to the government within the context of Section 229 of the NIRC of 1997, as amended.

Anent the refund in the amount of ₱9,737.00 representing the VAT paid on importation of goods other than capital goods, I agree that petitioner is entitled to such claim. Under Section 107(A) of the NIRC of 1997, as amended, it is the importer who is liable to pay the VAT. As discussed, petitioner enjoys tax exemption privileges under Section 13(2)(b) of the PAGCOR Charter, thus it is exempt from payment of VAT. Accordingly, as the importer who directly paid the VAT, petitioner may be granted the refund of the said amount.

ALL TOLD, I *CONCUR* in the result.

ROMAN G. DEL ROSARIO
Presiding Justice

---

[15] 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,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2670
(CTA Case Nos. 10029 & 10052)

Present:

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

Promulgated:
JAN 09 2024 4:28 pm

x - x

CONCURRING AND DISSENTING OPINION

BACORRO-VILLENA, J.:

I concur in the denial of the present Petition for Review for lack of merit. However, I wish to maintain the grounds relied upon by the Court's Second Division in finding that herein petitioner is not entitled to the refund of the passed-on input value-added tax (**VAT**) on its local purchases for the 1st and 2nd quarters of the taxable year (**TY**) 2017, namely: (**1**) it is not the statutory taxpayer with legal personality to file such refund claim; and, (**2**) Section 13(2)(b)[1] of Presidential Decree (**PD**) No. 1869, or the Philippine Amusement

[1] **SEC. 13.** *Exemptions.* —
…
(2) *Income and Other Taxes.* — …
…
(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

and Gaming Corporation (**PAGCOR**) Charter, as amended, does not clearly and unequivocally grant an indirect tax exemption in favor of petitioner, as a PAGCOR licensee.

As to the **first ground**, I join our Presiding Justice Roman G. Del Rosario in his Separate Concurring Opinion, therein stating that the *ponencia*'s discussion of the so-called two (2) schools of thought as regards the proper party who can claim a refund of indirect tax is inappropriate considering that, in the cases cited therein, *i.e.*, *Silkair (Singapore) Pte, Ltd. v. Commissioner of Internal Revenue*[2] (**Silkair**) and *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*[3] (**PAL**), the tax involved is not VAT but excise tax.

The notable distinctions between VAT and excise tax are: (1) **as to the set-off mechanism**, the VAT passed-on to the buyer or purchaser of goods and services is designated and separated as "input tax" of the said buyer or purchaser and is creditable against its "output tax", while no such mechanism exists for excise tax because it is only incorporated in the purchase price that forms part of the cost of the excisable articles; and, (2) **as to the treatment of sales made to VAT-exempt entities**, there is no provision similar to Sections 106(A)(2)(b)[4] and 108(B)(3)[5] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, whereby sales made to an entity exempt from payment of VAT under special laws is considered a zero-rated transaction for which the seller or service provider may claim a refund of the input VAT on such sale.

To my mind, the foregoing distinctions between VAT and excise tax further support the Second Division's ruling that what should apply to the instant case is the **general rule** under *Silkair* and *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue*[6] (**Coral Bay**), *i.e.*, the proper party to question or seek a refund of the passed-on input VAT on its local

---

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)

2 G.R. No. 173594, 06 February 2008.

3 G.R. No. 198759, 01 July 2013.

4 **SEC. 106**. *Value-Added Tax on Sale of Goods or Properties*. —
(A) *Rate and Base of Tax*. — ...
...
(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
...
(b) **Sales to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory **effectively subjects such sales to zero rate**. (Emphasis supplied.)

5 **SEC. 108**. *Value-Added Tax on Sale of Services and Use or Lease of Properties*. —
...
(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 supplied.)

6 G.R. No. 190506, 13 June 2016.

purchases are still its suppliers upon whom the law imposes the tax and who paid and remitted the same to the government even if they shifted the burden thereof to petitioner, and not the exception established in *PAL, i.e.*, the non-statutory taxpayer may file a refund claim (even if it only bears the economic burden of the applicable tax) when the law confers upon it an exemption from both direct or indirect taxes.

Accordingly, the erroneous shifting of 12% VAT to petitioner, which otherwise should be subjected to 0% VAT, cannot be the subject of a refund claim against the government and petitioner's sole recourse would be to demand reimbursement from its local suppliers for the VAT it paid on its purchases.

As to the **second ground**, I wish to emphasize that, besides the above-noted distinctions between VAT and excise tax, reliance on *PAL* to exempt the instant case from the general rule is untenable because Section 13(2)(b)[7] of the PAGCOR Charter, as amended, does not clearly and unequivocally grant an indirect tax exemption to PAGCOR licensees such as herein petitioner.

As explained in the Second Division's Decision dated 07 September 2021[8] (**Assailed Decision**), Section 13(2)(b) of the PAGCOR Charter, as amended, which states that "...**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" could hardly be considered as an unmistakable grant of indirect tax exemption in petitioner's favor, so as to make it similarly situated as in *PAL*.

To clarify, in *PAL*, the Supreme Court merely settled that since PAL's tax exemption privileges, granted under its legislative franchise, cover both direct and indirect taxes, PAL is endowed with the legal standing to file a claim for refund of 'excise taxes' imposed on its purchases of petroleum products from Caltex Philippines, Inc. (**Caltex**), notwithstanding the fact that it is not the statutory taxpayer as contemplated by law, *viz*:[9]

---

7 Supra at note 1.
8 Division Docket, Volume II, pp. 782-814.
9 Supra at note 3; Citations omitted, emphasis, italics and underscoring in the original text and supplied.

...

In this relation, Section 204(c) of the NIRC states that it is the statutory taxpayer which has the legal personality to file a claim for refund. Accordingly, in cases involving excise tax exemptions on petroleum products under Section 135 of the NIRC, the Court has consistently held that it is the statutory taxpayer who is entitled to claim a tax refund based thereon and not the party who merely bears its economic burden.

For instance, in the *Silkair* case, Silkair (Singapore) Pte. Ltd. (Silkair Singapore) filed a claim for tax refund based on Section 135(b) of the NIRC as well as Article 4(2) of the Air Transport Agreement between the Government of the Republic of the Philippines and the Government of the Republic of Singapore. The Court denied Silkair Singapore's refund claim since the tax exemptions under both provisions were conferred on the statutory taxpayer, and not the party who merely bears its economic burden. As such, it was the Petron Corporation (the statutory taxpayer in that case) which was entitled to invoke the applicable tax exemptions and not Silkair Singapore which merely shouldered the economic burden of the tax. As explained in *Silkair*:

> **The proper party to question, or seek a refund of, an indirect tax is the statutory taxpayer, the person on whom the tax is imposed by law and who paid the same even if he shifts the burden thereof to another**. Section 130(A)(2) of the NIRC provides that "[u]nless otherwise specifically allowed, the return shall be filed and the excise tax paid by the manufacturer or producer before removal of domestic products from place of production." Thus, Petron Corporation, not Silkair, is the statutory taxpayer which is entitled to claim a refund based on Section 135 of the NIRC of 1997 and Article 4(2) of the Air Transport Agreement between RP and Singapore.
>
> Even if Petron Corporation passed on to Silkair the burden of the tax, the additional amount billed to Silkair for jet fuel is not a tax but part of the price which Silkair had to pay as a purchaser.

However, the abovementioned rule should not apply to instances where the law clearly grants the party to which the economic burden of the tax is shifted an exemption from both direct and indirect taxes. In which case, the latter must be allowed to claim a tax refund even if it is not considered as the statutory taxpayer under the law. Precisely, this is the peculiar circumstance which differentiates the *Maceda* case from *Silkair*.

To elucidate, **in *Maceda*, the Court upheld the National Power Corporation's (NPC) claim for a tax refund since its own charter specifically granted it an exemption from both direct and indirect taxes**, *viz*:

> ...[T]he Court rules and declares that the oil companies which supply bunker fuel oil to NPC have to pay the taxes imposed upon said bunker fuel oil sold to NPC. By the very nature of indirect taxation, the economic burden of such taxation is expected to be passed on through the channels of commerce to the user or consumer of the goods sold. **Because, however, the NPC has**

> **been exempted from both direct and indirect taxation, the NPC must be held exempted from absorbing the economic burden of indirect taxation**. This means, on the one hand, that the oil companies which wish to sell to NPC absorb all or part of the economic burden of the taxes previously paid to BIR, which they could shift to NPC if NPC did not enjoy exemption from indirect taxes. This means also, on the other hand, that the NPC may refuse to pay the part of the "normal" purchase price of bunker fuel oil which represents all or part of the taxes previously paid by the oil companies to BIR. **If NPC nonetheless purchases such oil from the oil companies — because to do so may be more convenient and ultimately less costly for NPC than NPC itself importing and hauling and storing the oil from overseas — NPC is entitled to be reimbursed by the BIR for that part of the buying price of NPC which verifiably represents the tax already paid by the oil company-vendor to the BIR**.

Notably, the Court even discussed the *Maceda* ruling in *Silkair*, highlighting the relevance of the exemptions in NPC's charter to its claim for tax refund:

> Silkair nevertheless argues that it is exempt from indirect taxes because the Air Transport Agreement between RP and Singapore grants exemption "from the same customs duties, inspection fees and other duties or taxes imposed in the territory of the first Contracting Party." **It invokes *Maceda v. Macaraig, Jr.* which upheld the claim for tax credit or refund by the National Power Corporation (NPC) on the ground that the NPC is exempt even from the payment of indirect taxes.**
>
> Silkair's argument does not persuade. In *Commissioner of Internal Revenue v. Philippine Long Distance Telephone Company*, this Court clarified the ruling in *Maceda v. Macaraig, Jr., viz*:
>
> > It may be so that in *Maceda vs. Macaraig, Jr.*, the Court held that an exemption from "*all taxes*" granted to the National Power Corporation (NPC) under its charter includes both direct and indirect taxes. But far from providing PLDT comfort, *Maceda* in fact supports the case of herein petitioner, the correct lesson of *Maceda* being that an exemption from "all taxes" excludes indirect taxes, **unless the exempting statute, like NPC's charter, is so couched as to include indirect tax from the exemption**. Wrote the Court:
> >
> > > ...However, the amendment under Republic Act No. 6395 enumerated the details covered by the exemption. Subsequently, P.D. 380, made even more specific the details of the exemption of NPC to cover, among others, ***both direct and indirect taxes*** on all petroleum products used in its operation. Presidential Decree No. 938 [NPC's amended charter] amended the tax exemption by simplifying the same law in general terms. It succinctly exempts NPC from "all forms of taxes, duties[,] fees..."
> > >
> > > The use of the phrase "all forms" of taxes demonstrates the intention of the law to give NPC all the tax exemptions it has been enjoying before...
> > >
> > > ...

> **It is evident from the provisions of P.D. No. 938 that its purpose is to maintain the tax exemption of NPC from *all forms* of taxes including indirect taxes as provided under R.A. No. 6395 and P.D. 380 if it is to attain its goals.**

> **The exemption granted under Section 135(b) of the NIRC of 1997 and Article 4(2) of the Air Transport Agreement between RP and Singapore cannot, without a clear showing of legislative intent, be construed as including indirect taxes. Statutes granting tax exemptions must be construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority, and if an exemption is found to exist, it must not be enlarged by construction.**

Based on these rulings, it may be observed that the propriety of a tax refund claim is hinged on the kind of exemption which forms its basis. **If the law confers an exemption from both direct or indirect taxes, a claimant is entitled to a tax refund even if it only bears the economic burden of the applicable tax. On the other hand, if the exemption conferred only applies to direct taxes, then the statutory taxpayer is regarded as the proper party to file the refund claim.**

In this case, PAL's franchise grants it an exemption from both direct and indirect taxes on its purchase of petroleum products. Section 13 thereof reads:

> SEC. 13. In consideration of the franchise and rights hereby granted, the grantee [PAL] shall pay to the Philippine Government during the life of this franchise whichever of subsections (a) and (b) hereunder will result in a lower tax:
>
> (a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or
>
> (b) A franchise tax of two per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or nontransport operations; provided, that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax.
>
> The tax paid by the grantee under either of the above alternatives shall be **in lieu of all other taxes**, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description, imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future, **including but not limited** to the following:
>
> 1. All taxes, duties, charges, royalties, or fees due on local purchases by the grantee of aviation gas, fuel, and oil, whether refined or in crude form, and whether such taxes, duties, charges, royalties, or fees are **directly due from or imposable upon the purchaser or the seller, producer, manufacturer, or importer of said petroleum products but are billed or passed on the grantee either as part of the price or cost thereof or by mutual agreement or other arrangement**; provided, that all such

> purchases by, sales or deliveries of aviation gas, fuel, and oil to the grantee shall be for exclusive use in its transport and nontransport operations and other activities incidental thereto;
>
> 2. All taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations by the grantee of aircraft, engines, equipment, machinery, spare parts, accessories, commissary and catering supplies, aviation gas, fuel, and oil, whether refined or in crude form and other articles, supplies, or materials; provided, that such articles or supplies or materials are imported for the use of the grantee in its transport and transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price[.]
>
> ...
>
> Based on the above-cited provision, PAL's payment of either the basic corporate income tax or franchise tax, whichever is lower, shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges, except only real property tax. The phrase "in lieu of all other taxes" includes but is not limited to taxes that are "directly due from or imposable upon the purchaser *or* the seller, producer, manufacturer, or importer of said petroleum products but are billed or passed on the grantee either as part of the price or cost thereof or by mutual agreement or other arrangement." ***In other words, in view of PAL's payment of either the basic corporate income tax or franchise tax, whichever is lower, PAL is exempt from paying: (a) taxes directly due from or imposable upon it as the purchaser of the subject petroleum products; and (b) the cost of the taxes billed or passed on to it by the seller, producer, manufacturer, or importer of the said products either as part of the purchase price or by mutual agreement or other arrangement.*** **Therefore, given the foregoing direct and indirect tax exemptions under its franchise, and applying the principles as above-discussed, PAL is endowed with the legal standing to file the subject tax refund claim, notwithstanding the fact that it is not the statutory taxpayer as contemplated by law.**
>
> ...

Indeed, applying the foregoing by analogy to PAGCOR itself, since the PAGCOR Charter, as amended, grants it an exemption from both "direct" and "indirect" taxes, PAGCOR is in a position akin to that of PAL. Consequently, PAGCOR also has the legal standing to file a refund claim, even in situations where it is not the statutory taxpayer.

However, I submit that the same cannot be said of PAGCOR's contractees and licensees because the exemption which inures to the benefit of and extends to them, as provided in Section 13(2)(b)[10] of the PAGCOR Charter, as amended, only covers "direct" taxes for which they are statutorily liable. On this note, the Supreme Court's declaration in *Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue*[11] (**Bloomberry**), *i.e.*, "all

---

10 Supra at note 1.
11 G.R. No. 212530, 10 August 2016.

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," only meant that PAGCOR's contractees and licensees are exempt from "direct" taxes to prevent any "indirect" tax, like VAT, from being shifted to PAGCOR. It is important to note that such declaration could not have meant to place PAGCOR contractees and licensees in the same footing as PAGCOR in terms of entitlement to "indirect" tax exemption as that would certainly go beyond what is contemplated in the PAGCOR Charter, as amended.

Let me elucidate.

Firstly, as to the nature and coverage of the tax exemption granted under Section 13(2)(b)[12] of the PAGCOR Charter, as amended, vis-à-vis PAGCOR, on the one hand, and its contractees and licensees, on the other, the Supreme Court's disquisition in *Thunderbird Pilipinas Hotels and Resorts, Inc. v. Commissioner of Internal Revenue*[13] (**Thunderbird**) is enlightening, to wit:

> ...
>
> We are not unmindful of *Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue*, which declared that under Section 13(2)(b), all contractees and licensees of PAGCOR are likewise exempt from all other taxes, including corporate income tax, on earnings realized from the operation of casinos.
>
> ...
>
> *Bloomberry, however*, is not squarely congruent with this case. The facts in *Bloomberry* occurred after amendments to Presidential Decree No. 1869 were introduced by Republic Act No. 9487, which took effect in 2007. This case, on the other hand, pertains to petitioner's tax liabilities for taxable year 2006.
>
> **Republic Act No. 9487, in amending Presidential Decree No. 1869, not only extended PAGCOR's franchise to operate casinos for another 25 years, but also granted PAGCOR the authority to license casinos and other gaming operations. Thus, although not specifically mentioned or explained, *Bloomberry* may have been resolved in light of this amendatory law.**
>
> 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

---

12 Supra at note 1.

13 G.R. No. 211327, 11 November 2020; Citations omitted, italics in the original text and emphasis supplied.

> 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 86 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 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[.]"
> ...

Based on the foregoing, since Republic Act (**RA**) No. 9487, the amendatory law that allowed PAGCOR to issue licenses to private casinos, did not expressly provide that tax exemptions extend to PAGCOR licensees, there is no clear and unequivocal grant of tax exemption to PAGCOR licensees *per se*, much less an "indirect" tax exemption.

I also note that, as correctly pointed out by our Presiding Justice Roman G. Del Rosario in his Separate Concurring Opinion, *Saint Wealth* did not categorically or explicitly abandon or overturn the ruling in *Thunderbird*. In fact, *Thunderbird* may be reconciled with the cases of *Bloomberry, Commissioner of Internal Revenue v. Travellers International Hotel Group, Inc.*[14] (**Travellers**) and *Saint Wealth Ltd. v. Bureau of Internal Revenue, et al.*[15]

---

[14] G.R. No. 255487 (Notice), 03 May 2021.
[15] G.R. No. 252965, 07 December 2021.

(**Saint Wealth**) in this wise: *Thunderbird* is applicable when the PAGCOR licensee involved was authorized by PAGCOR before the enactment of RA 9487 in 2007; whereas, *Bloomberry*, *Travellers* and *Saint Wealth* apply to PAGCOR licensees authorized thereafter. As such, *Thunderbird* is still a binding precedent and aptly sheds light on the nature and coverage of the tax exemption extended to PAGCOR licensees.

Notwithstanding the Supreme Court's ruling in *Bloomberry*, cited in *Travellers* and *Saint Wealth*, that PAGCOR's licensees shall likewise be exempted from all other taxes, including corporate income tax realized from the operation of casinos, still this cannot be construed to confer upon PAGCOR licensees an exemption from "indirect" taxes such as VAT without a clear language in Section 13(2)(b)[16] of the PAGCOR Charter, as amended, to that effect. The phrase "any tax, income or otherwise, as well as any form of charges, fees or levies" in Section 13(2)(b) can only reasonably construed to cover "direct" taxes for which PAGCOR's contractees and licensees are statutorily liable. To extend the said exemption to "indirect" taxes would certainly go beyond what is contemplated in the PAGCOR Charter, as amended, and tantamount to the proscribed enlargement of an exemption by construction.

Secondly, unlike PAGCOR, there is no equivalent tax exemption extended to entities or individuals dealing with PAGCOR licensees in casino operations as to place PAGCOR licensees in the same footing as PAGGOR itself.

As held in *The Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation*[17] (**Acesite**), by extending the tax exemption to entities or individuals dealing with PAGCOR in casino operations, the legislature is exempting PAGCOR from being liable to "indirect" taxes, *viz*:

> ...
>
> A close scrutiny of the above provisos clearly gives PAGCOR a blanket exemption to taxes with no distinction on whether the taxes are direct or indirect. We are one with the CA ruling that PAGCOR is also exempt from indirect taxes, like VAT, as follows:
>
> > Under the above provision [Section 13 (2) (b) of P.D. 1869], the term 'Corporation' or operator refers to PAGCOR. Although the law does not specifically mention PAGCOR's exemption from indirect taxes, **PAGCOR is undoubtedly exempt from such taxes because the law exempts from taxes persons or entities contracting with PAGCOR in casino operations**. Although, differently worded, the provision clearly exempts PAGCOR from indirect taxes. **In fact, it goes one step further by granting tax exempt status to persons dealing with PAGCOR in casino**

---

16 Supra at note 1.
17 G.R. No. 147295, 16 February 2007.

> **operations.** The unmistakable conclusion is that PAGCOR is not liable for the P30,152,892.02 VAT and neither is Acesite as the latter is effectively subject to zero percent rate under Sec. 108 B (3). R.A. 8424.
>
> Indeed, by extending the exemption to entities or individuals dealing with PAGCOR, the legislature clearly granted exemption also from indirect taxes. It must be noted that the indirect tax of VAT, as in the instant case, can be shifted or passed to the buyer, transferee, or lessee of the goods, properties, or services subject to VAT. Thus, by extending the tax exemption to entities or individuals dealing with PAGCOR in casino operations, it is exempting PAGCOR from being liable to indirect taxes.
>
> ...

To be clear, under the PAGCOR Charter, as amended, PAGCOR contractees and licensees are exempt from "direct" taxes (*i.e.*, output VAT on sales to PAGCOR) only because PAGCOR is exempt from "indirect" taxes (*i.e.*, input VAT on PAGCOR's local purchases). Since there is no provision therein similarly extending the tax exemption to entities or individuals dealing with PAGCOR licensees *per se*, PAGCOR licensees cannot be placed in the same footing as PAGCOR in terms of entitlement to "indirect" tax exemption without a clear language to that effect.

It cannot be over-emphasized that tax exemption represents a loss of revenue to the government and must, therefore, not rest on vague inference.[18] When claimed, it must be strictly construed against the taxpayer who must prove that he falls under the exception. And 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, and that, unless the privilege is limited to the very terms of the statute the favor would be extended beyond what was meant.[19]

All told, I vote to deny the present Petition for Review for lack of merit and affirm the Second Division's Decision dated 07 September 2021 and Resolution dated 19 July 2022.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

---

18 *Commissioner of Internal Revenue v. Philippine Long Distance Company*, G.R. No. 140230, 15 December 2005.

19 *San Pablo Manufacturing Corporation v. Commissioner of Internal Revenue*, G.R. No. 147749, 22 June 2006; *Lung Center of the Philippines v. Quezon City and Constantino P. Rosas, in his capacity as City Assessor of Quezon City*, G.R. No. 144104, 29 June 2004.

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. 2670
(CTA Case No. 10029 & 10052)

Present:

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

Promulgated:

JAN 09 2024 4:28 P

x- -x

CONCURRING OPINION

CUI-DAVID, J.:

I concur with the *Decision* of my esteemed colleague, Associate Justice Ma. Belen M. Ringpis-Liban.

Primarily, I write this opinion to express my concurrence on the ponencia's ruling that petitioner made an erroneous tax payment and that *Philippine Airlines, Inc. v. Commissioner of Internal Revenue (PAL* case*)*[1] applies to the instant case.

First, I join the ponencia in ruling that the licensees and contractees of Philippine Amusement and Gaming Corporation (PAGCOR), including petitioner herein, are exempt from direct and indirect taxes. Consistent with the Court *En Banc's* ruling

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

in a case involving the same parties,[2] the Supreme Court pronouncements in *Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue*[3] and *Saint Wealth Ltd. v. Bureau of Internal Revenue*[4] all support the conclusion of the ponencia that the exemption of PAGCOR as provided in Section 13 of PD No. 1869 likewise extends to petitioner herein. Accordingly, sales to petitioner are effectively zero-rated in relation to Section 108(B)(3) of the NIRC of 1997, as amended, while sales by petitioner are exempt pursuant to Section 109(1)(K) of the NIRC of 1997, as amended.

Being an entity exempt from direct and indirect taxes, petitioner should not have shouldered the VAT burden shifted by its suppliers. When its suppliers shifted VAT to petitioner, petitioner then made erroneous tax payments.

Indeed, ordinarily, when VAT is shifted to a VAT-exempt entity, the VAT-exempt entity will bear the cost, *i.e.*, capitalize the amount of passed-on VAT as part of the cost of the asset that it has acquired, and ultimately not be able to claim the tax credit. This treatment of passed-on VAT is consistent with the pronouncement of the Supreme Court in *Malayan Insurance Co., Inc. v. St. Francis Square Realty Corp (Malayan Insurance case).*[5] However, it is my humble opinion that such a general rule does not apply to petitioner, being an exempt entity by virtue of a special law, particularly PD No. 1869. The ruling in the *Malayan Insurance* case does not apply to passed-on VAT when the sale should have been effectively zero-rated. To rule otherwise would be to allow passing VAT to entities exempt by virtue of special laws or international agreements and effectively render nugatory the preferential exemption extended to these entities.

For purposes of its gaming operations, petitioner is an exempt party as defined in *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*,[6] to wit:

> An exempt party, on the other hand, is a person or entity granted VAT exemption under the Tax Code, a special law or an international agreement to which the Philippines is a signatory, and by virtue of which its taxable transactions become exempt from the VAT. **Such party is also not subject**

[2] CTA *EB* No. 2608 (CTA Case No. 9811).
[3] G.R. No. 212530, August 10, 2016, 792 SCRA 751-768.
[4] G.R. Nos. 252965 & 254102, December 7, 2021.
[5] G.R. Nos. 198916-17 & 198920-21, January 11, 2016, 776 PHIL 477-540.
[6] G.R. No. 153866, February 11, 2005, 491 PHIL 317-351.

> **to the VAT but may be allowed a tax refund of or credit for input taxes paid, depending on its registration as a VAT or non-VAT taxpayer**. [*Emphasis and underscoring supplied.*]

An exempt party is to be differentiated from exempt transactions, where passed-on VAT attributable or allocable to such exempt transactions is absorbed by the entity as cost or expense. An exempt party is likewise differentiated from a non-VAT registered taxpayer since the latter likewise absorbs passed-on VAT as a cost or expense.

Accordingly, it is my considered view that, indeed, petitioner's payment of VAT on its purchases, which should have been effectively zero-rated under PD No. 1869 in relation to Section 108(B)(3) of the NIRC of 1997, as amended, is **erroneous**. In that respect, I concur with the ponencia.

I likewise concur with the ponencia in its application of the *PAL case*.

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

I submit that the distinction between excise taxes and VAT is inconsequential, for both were shifted to an exempt entity, *i.e.*, herein petitioner. I further submit that the mechanism of passed-on VAT being claimed as an input tax credit and offset against output tax as opposed to excise tax, which has no such mechanism, is likewise inconsequential. The critical similarity is that both taxes may be shifted, and both taxes should *not* have been shifted to an entity exempt by virtue of special law, in this case, petitioner, pursuant to PD No. 1869.

As interpreted by the Supreme Court in the *PAL case*, the two-year period is counted **from the date of payment**, *i.e.*, from the **date of the filing of the VAT return of its suppliers that erroneously passed VAT to petitioner**. This Court

adheres to the pronouncement of the Supreme Court. The principle of *stare decisis* enjoins adherence by lower courts to doctrinal rules established by this Court in its final decisions. It is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument. Basically, it is a bar to any attempt to relitigate the same issues, necessary for two simple reasons: economy and stability. In our jurisdiction, the principle is entrenched in Article 8 of the Civil Code.[7]

With the foregoing, I join the *ponencia* in denying the *Petition for Review.*

LANEE S. CUI-DAVID
Associate Justice

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