# REPUBLIC OF THE PHILIPPINES
## *Court of Tax Appeals*
## QUEZON CITY

### *Third Division*

**MELCO RESORTS LEISURE (PHP) CORPORATION [Formerly MCE LEISURE (PHILIPPINES) CORPORATION doing Business under the name and style of City of Dreams Manila and COD Manila],**
*Petitioner,*

*-versus-*

**COMMISSIONER OF INTERNAL REVENUE,**
*Respondent.*

**CTA CASE NOS. 9582, 9667 & 9724**

Members:
**UY,** *Chairperson,*
**RINGPIS-LIBAN,** *and*
**MODESTO-SAN PEDRO,** *JJ.*

Promulgated:
MAY 23 2022
2:07 p.m.

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## DECISION

*MODESTO-SAN PEDRO, J.:*

### The Case

Before this Court are three (3) **PETITIONS FOR REVIEW**, filed on the following dates: a) 26 April 2017 (Docketed as Court of Tax Appeals ("CTA") Case No. 9582),[1] b) 25 August 2017 (Docketed as CTA Case No. 9667),[2] and c) 24 November 2017 (Docketed as CTA Case No. 9724)[3] **(collectively, "Petitions")**.

### The Parties

Petitioner **MELCO RESORTS LEISURE (PHP) CORPORATION** ("MELCO") is a corporation organized and existing under the laws of the Philippines with principal address at Asean Avenue corner Roxas Boulevard, Baranggay Tambo, Paranaque City 1701, Philippines. Its primary purpose is

[1] CTA Case No. 9582, Vol. 1, pp. 10-48.
[2] CTA Case No. 9667, pp. 10-48.
[3] CTA Case No. 9724, pp. 10-50.

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.[4]

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

## The Facts

Petitioner was incorporated with the Securities and Exchange Commission on 30 August 2012 under Company Registration No. CS201215883.[6] It is likewise registered with the BIR under Tax Identification Number 008-362-871-00000.[7]

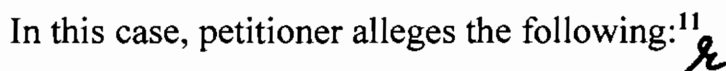
On 28 January 2013, petitioner, together with its co-licensees (MCE Holding (Philippines) Corporation, MCE Holdings No. 2 (Philippines) Corporation, SM Investments Corporation, Belle Corporation, and Premium Leisure and Amusement, Inc.) was granted a Provisional License for the establishment and operation of the City of Dreams Manila by the Philippine Amusement and Gaming Corporation ("PAGCOR").[8]

On 29 April 2015, PAGCOR issued petitioners and its co-licensees a Regular Gaming License for the operation of the City of Dreams Manila, with a validity period until 11 July 2033.[9]

On 30 May 2017, petitioner changed its corporate name from "MCE Leisure (Philippines) Corporation" to "Melco Resorts Leisure (PHP) Corporation." Subsequently, on 8 August 2017, PAGCOR issued an Amended Gaming License to reflect the change of petitioner's name but bearing the same period of validity.[10]

## PROCEEDINGS UNDER CTA CASE NO. 9582

In this case, petitioner alleges the following:[11]



[4] Exhibits "P-4" and "P-5", CTA Case No. 9582, Vol.2, pp. 878-903.
[5] CTA Case No. 9582, Vol. 1, p. 11; CTA Case No. 9667, p. 11; and CTA Case No. 9724, p. 11.
[6] Exhibits "P-4" and "P-5", CTA Case No. 9582, Vol.2, pp. 878-903.
[7] Exhibit "P-9", CTA Case No. 9582, Vol. 2, pp. 907-909.
[8] Exhibit "P-6", CTA Case No. 9582, Vol. 2, p. 904.
[9] Exhibit "P-7", CTA Case No. 9582, Vol. 2, p. 905.
[10] Exhibit "P-8", CTA Case No. 9582, Vol. 2, p. 906.
[11] Memorandum for the Petitioner, CTA Case No. 9582, Vol. 3, pp. 1102-1106.

"11. Petitioner's starting date for the filing of VAT returns or BIR Forms 2550-M and 2550-Q is on October 29, 2012, as indicated in its BIR Certificate of Registration.

12. However, petitioner started generating revenues (i.e., zero-rated sales) from its gaming operations during the 4th quarter of 2014 only, amounting to P313,987,520.57. The said revenues were reported as zero-rated sales pursuant to Section 108(B)(3) of the National Internal Revenue Code of 1997, as amended, ('1997 NIRC') in relation to Section 13 of PD 1869.

13. From the commencement of petitioner's pre-operating activities in the 1st quarter of taxable year 2013 through the 4th quarter of taxable year 2014, petitioner has accumulated a total amount of P1,749,591,929.24 representing excess or unutilized input VAT arising from petitioner's purchase 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.

14. Out of the total excess or unutilized input VAT incurred from the 1st quarter of taxable year 2013 to the 4th quarter of taxable year 2014, the amount P726,238,941.87 is attributable to petitioner's zero-rated sales, computed as follows:

| **Total Available Input Tax – January 1, 2013 to December 31, 2014** | | P1,749,591,929.24 |
|---|---|---|
| Less: | Output Tax Due for the 4th Quarter of 2014 | 10,201,816.66 |
| | Input Tax – Exempt Sales for the 4th Quarter of 2014 | 2,187,255.51 |
| | Input Tax – Capital Goods exceeding P1 million deferred for the 4th Quarter of 2014 for the succeeding period | 263,394,376.68 |
| | Input Tax – Vatable Sales from January 1, 2013 to December 31, 2014 | |
| **Accumulated Input VAT subject to Refund/Tax Credit** | | **P726,238,941.87** |

15. The amount of P726,238,941.87, representing the excess or unutilized input VAT attributable to zero-rated sales for the 4th quarter of 2014 was not applied against any output VAT liability of petitioner during the 4th quarter of 2014 and in the succeeding quarters. Petitioner, however, was not able to amend its VAT returns for the four quarters of taxable year 2015 as the BIR had already issued a Letter of Authority for the tax audit or investigation of the said year. However, the quarterly VAT returns for the fourth quarter of taxable year 2016 and the first quarter of 2017 were amended to reflect the deduction of the amount of P726,238,941.87, which is subject of CTA Case No. 9582.

16. On January 28, 2015, petitioner filed with the BIR through the Electronic Filing and Payment System ('EFPS'), its quarterly VAT return (BIR Form No. 2550-Q) for the 4th quarter of 2014. The said VAT return was amended on December 16, 2016 to indicate the column 'VAT Refund/TCC Claimed' (or line 23D) the amount P726,238,941.87 as

> deduction from the total available input tax, which is attributable to petitioner's zero-rated sales for the 4th quarter of 2014 and is subject of the instant claim for refund or tax credit.
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> 17. On December 23, 2016, petitioner through Sycip Gorres Velayo & Co. ('SGV & Co.') filed with the Large Taxpayers Service ('LTS') of the BIR an administrative claim for refund of the VAT attributable to its revenues from gaming operations, which were declared as zero-rated sales, for the 4th quarter of taxable year 2014 and, in the amount of P726,238,941.87. The input VAT covered by petitioner's foregoing administrative claim particularly arose from petitioner's purchases of capital goods, domestic purchase of goods (other than capital goods) and services, importations of goods (other than capital goods), and purchases of services rendered by non-residents.
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> 18. On March 31, 2017, petitioner received the denial of its claim for refund in the form of a Preliminary Assessment Notice ('PAN') issued by the LTS of the BIR, asserting that respondent 'cannot grant' petitioner's 'request for cash refund due to the provisions of Revenue Memorandum Circular No. 33-2013 dated April 17, 2013 wherein all licensees and contractors of PAGCOR are subject to Income Tax and Value Added Tax'. In view of this, respondent assessed petitioner deficiency VAT assessment plus interest and compromise penalty in the aggregate amount of P54,967,707.71 allegedly arising from its zero-rated sales of P313,987,520.57 for the 4th quarter of taxable year 2014.
>
> 19. Within thirty (30) days from receipt of the PAN, petitioner, on April 26, 2017, filed a petition for review with this Honorable Court, which petition was docketed as CTA Case No. 9582."

Following the admission of respondent's Answer on 19 September 2017,[12] Pre-Trial Conference ensued on 1 February 2018.[13] With the filing of the parties' Joint Stipulation of Facts and Issues,[14] the Pre-Trial Order was issued by the Court's First Division.[15]

Afterwards, petitioner filed a Motion for Consolidation with Motion for Postponement (of the Presentation of Witness and Commissioning of Independent Certified Public Accountant) on 2 April 2018.[16] In an Order, dated 4 April 2018, the Court's First Division granted the Motion for Postponement but held in abeyance the resolution of the Motion for Consolidation as the same was also pending before the Court's Second Division under CTA Case No. 9667 and CTA Case No. 9724.[17]

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[12] CTA Case No. 9582, Vol. 3, pp. 87-89.
[13] *Id.*, pp. 279-289.
[14] *Id.*, pp. 310-326.
[15] *Id.*, pp. 336-346.
[16] *Id.*, pp. 356-363.
[17] *Id.*, pp. 364-365.

On 15 May 2018, this Court's Second Division issued a Resolution granting the Motion for Consolidation filed for CTA Case Nos. 9667 and 9724.[18] Considering this, the Court's First Division similarly granted the Motion for Consolidation filed under CTA Case No. 9582 on 4 June 2018.[19] Hence, CTA Case Nos. 9667 and 9724 were consolidated with CTA Case No. 9582 with the Court's First Division as it bears the lowest case number.

**PROCEEDINGS UNDER CTA CASE NO. 9667**

On the other hand, petitioner alleged the following for this case:[20]

"35. In the 1st quarter of taxable year 2015, petitioner declared zero-rated sales amounting to P2,138,187,687.53. The said revenues were reported as zero-rated sales pursuant to Section 108(B)(3) of 1997 NIRC in relation to Section 13 of PD 1869.

36. In the 1st quarter of taxable year 2015, petitioner paid input taxes on its purchase 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 in the total amount of P231,915,861.16.

37. Out of the total input taxes incurred in the 1st quarter of taxable year 2015, the amount P94,103,351.52 is attributable to petitioner's zero-rated sales, computed as follows:

| | |
|---|---|
| Input tax allocated to zero-rated sales | P100,953,693.98 |
| Input tax directly attributable to zero-rated sales (gaming purchases) | 13,582,036.39 |
| Total available input tax attributable to zero-rated sales | P114,535,730.37 |
| Add (Deduct): | |
| Input tax on capital goods (exceeding 1 Million) allocated to zero-rated sales | (13,486,074.46) |
| Input tax on capital goods (exceeding 1 Million) directly attributable to zero-rated sales (gaming purchases) | (7,374,673.61) |
| Amortized input tax on capital goods (exceeding 1 Million) allocated to zero-rated sales | 482,880.49 |
| Amortized input tax on capital goods (exceeding 1 Million) directly attributable to zero-rated sales (gaming purchases) | 305,488.73 |
| **Accumulated Input VAT subject to Refund/Tax Credit** | **P94,103,351.52** |

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[18] *Id.*, pp. 366-369.
[19] *Id.*, pp. 374-376.
[20] Memorandum for the Petitioner, CTA Case No. 9582, Vol. 3, pp. 1107-1110

> 38. The amount of P94,103,351.52 representing the excess or unutilized input VAT attributable to zero-rated sales for the 1st quarter of 2015 was not applied against any output VAT liability of petitioner during the 1st quarter of 2015 and in the succeeding quarters.
>
> 39. The amount of P94,103,351.52 was no longer carried over in the 1st quarter of taxable year 2016, which shows the amount of P855,084,974.38 under 'Input Tax Carried Over from Previous Period' as net of P94,103,351.52. Petitioner was not able to amend its quarterly returns for the four quarters of taxable year 2015 because the BIR had already issued a Letter of Authority for the tax audit or investigation of the said year. However, the quarterly VAT return for the 1st quarter of taxable year 2016 and all returns subsequent thereto were amended to reflect the deduction of the amount of P94,103,351.52, which is the subject of CTA Case No. 9667.
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> 40. On March 30, 2017, petitioner, through SGV & Co., filed with the LTS of the BIR an administrative claim for refund for its excess or unutilized input VAT attributable to zero-rated sales for the 1st quarter of taxable year 2015 in the aggregate amount of P94,103,351.52. The input VAT covered by petitioner's administrative claim particularly arose from petitioner's 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.
>
> 41. The 120-day period of respondent to render a decision on petitioner's administrative claim for refund lapsed on July 28, 2017 without any decision being issued. Hence, on August 25, 2017, petitioner filed a petition for review appealing the BIR's inaction on petitioner's administrative claim for refund with the Honorable Court, which petition was docketed as CTA Case No. 9667."

Following the filing of respondent's Answer on 28 November 2017,[21] Pre-Trial Conference ensued on 18 January 2018.[22] With the filing of the parties' Joint Stipulation of Facts and Issues on 2 February 2018,[23] the Court's Second Division issued the Pre-Trial Order on 14 February 2018.[24]

On 21 February 2018, petitioner presented its witness, Jennett T. Salcedo, who underwent cross-examination.[25]

Subsequently, on 2 April 2018, petitioner filed a Motion for Consolidation with Motion for Postponement.[26] In a Resolution, dated 6 April 2018, the Court's Second Division granted the Motion for Postponement but required respondent to comment on the Motion for Consolidation.[27]

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[21] CTA Case No. 9667, pp. 61-68.
[22] *Id.*, pp. 183-184.
[23] *Id.*, pp. 188-197.
[24] *Id.*, pp. 204-210.
[25] *Id.*, pp. 211-212.
[26] *Id.*, pp. 221-227.
[27] *Id.*, pp. 228-229.

In a Records Verification Report issued by this Court's Judicial Records Division, the Court's Second Division was informed that, as of 7 May 2018, no comment was filed by respondent.[28] Hence, in a Resolution, dated 15 May 2018, the Court's Second Division granted petitioner's Motion for Consolidation. CTA Case No. 9667 was consolidated with CTA Case No. 9582 subject to the conformity by the Court's First Division.[29]

## PROCEEDINGS UNDER CTA CASE NO. 9724

Petitioner alleged the following for this case:[30]

"58. In the 2nd quarter of taxable year 2015, petitioner declared zero-rated sales amounting to P3,268,008,857.53. The said revenues were reported as zero-rated sales pursuant to Section 108(B)(3) of 1997 NIRC in relation to Section 13 of PD 1869.

59. In the 2nd quarter of taxable year 2015, petitioner paid input taxes on its purchase 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 in the total amount of P168,539,853.11.

60. Out of the total input taxes incurred in the 2nd quarter of taxable year 2015, the amount P77,157,618.61 is attributable to petitioner's zero-rated sales, computed as follows:

| | |
|---|---|
| Input tax on common purchases (allocated to zero-rated sales) | P83,159,944.05 |
| Input tax on gaming purchases | 10,281,905.97 |
| Total available input tax attributable to zero-rated sales | P93,441,850.02 |
| Less: | |
| Input tax on capital goods (exceeding 1 Million) related to common purchases allocated to zero-rated sales | (13,138,419.12) |
| Input tax on capital goods (exceeding 1 Million) directly attributable to zero-rated sales (gaming purchases) | (3,843,059.95) |
| Add: | |
| Amortized input tax on capital goods (exceeding 1 Million) related to common purchases allocated to zero-rated sales | 567,172.57 |
| Amortized input tax on capital goods (exceeding 1 Million) directly attributable to zero-rated sales (gaming purchases) | 130,075.08 |
| **Accumulated Input VAT subject to Refund/Tax Credit** | **P77,157,618.61** |

[28] *Id.*, p. 230.
[29] *Id.*, p. 231.
[30] Memorandum for the Petitioner, CTA Case No. 9582, Vol. 3, pp. 1110-1113

61. The amount of P77,157,618.61 representing the excess or unutilized input VAT attributable to zero-rated sales for the 2nd quarter of 2015 was not applied against any output VAT liability of petitioner during the 2nd quarter of 2015 and in the succeeding quarters.

62. The amount P77,157,618.61 was no longer carried over in the 1st quarter of taxable year 2017, which shows the amount of P625,550,432.36 under 'Input Tax Carried Over from Previous Period' as net of P77,157,618.61. Petitioner was not able to amend its quarterly returns for the four quarters of taxable year 2015 because the BIR had already issued a Letter of Authority for the tax audit or investigation of the said year. However, the quarterly VAT return for the 1st quarter of taxable year 2017 was amended to reflect the deduction of the amount of P77,157,618.61, which is the subject of CTA Case No. 9724.

63. On June 29, 2017, petitioner, through SGV & Co., filed with the LTS of the BIR an administrative claim for refund for its excess or unutilized input VAT attributable to zero-rated sales for the 2nd quarter of taxable year 2015 in the aggregate amount of P77,157,618.61. The input VAT covered by petitioner's administrative claim particularly arose from petitioner's 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.

41. The 120-day period of respondent to render a decision on petitioner's administrative claim for refund lapsed on October 27, 2017 without any decision being issued. Hence, on November 24, 2017, petitioner filed a petition for review with the Honorable Court, which petition was docketed as CTA Case No. 9724."

Following the filing of respondent's Answer on 5 March 2018,[31] Pre-Trial Conference ensured on 26 July 2018.[32]

## PROCEEDINGS AFTER THE CONSOLIDATION

On 15 August 2018, the parties filed a Consolidated Joint Stipulation of Facts and Issues,[33] which was approved by the Court's First Division in a Resolution, dated 3 September 2018.[34]

In an Order, dated 21 September 2018, the consolidated cases were transferred to this Court (*i.e.*, Third Division),[35] and on 12 October 2018, a Pre-Trial Order for the consolidated cases was issued.[36]

[31] CTA Case No. 9724, pp. 63-70.
[32] *Id.*, pp. 443-445.
[33] CTA Case No. 9582, Vol. 1, pp. 451-472.
[34] *Id.*, pp. 502-503.
[35] *Id.*, p. 537.
[36] *Id.*, pp. 538-552.

Petitioner once again presented its witness, Jennett T. Salcedo, on 21 February 2019,[37] along with its other witnesses Rafael B. Taladtad, Jr. on 11 April 2019[38] and ICPA Madonna Mia S. Dayego on 7 May 2019.[39]

For his part, respondent presented his lone witness, Revenue Officer Cristina Lati on 27 August 2020.[40]

Following the filing of the parties' Memoranda on 15 December 2020[41] and 18 March 2021,[42] respectively, this Court submitted the instant case for Decision.[43]

Hence, this Decision.

## The Assigned Errors

The issue to be resolved in the present case is:[44]

> **WHETHER PETITIONER IS ENTITLED TO A REFUND OR TAX CREDIT CERTIFICATE ("TCC") OF ITS EXCESS AND UNUTILIZED INPUT VAT IN THE AMOUNT OF PHP897,499,912.00 ARISING FROM ITS ALLEGED 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, ALLEGEDLY ATTRIBUTABLE TO ITS SALES DERIVED FROM ITS GAMING OPERATIONS DULY LICENSED BY THE PAGCOR FROM THE 4$^{TH}$ QUARTER OF TAXABLE YEAR 2014 TO THE 2$^{ND}$ QUARTER OF TAXABLE YEAR 2015.**

## Arguments of the Parties

Petitioner presented the following arguments:[45]

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[37] CTA Case No. 9582, Vol. 2, pp. 553-555.
[38] *Id.*, pp. 570-572.
[39] *Id.*, pp. 706-708.
[40] CTA Case No. 9582, Vol. 3, pp. 1066-1068.
[41] *Id.*, pp. 1089-1097.
[42] *Id.*, pp. 1100-1149.
[43] *Id.*, pp. 1150-1151.
[44] See Pre-Trial Order, CTA Case No. 9582, Vol. 1, pp. 540-541.
[45] See Memorandum for the Petitioner, CTA Case No. 9582, Vol. 3, pp. 1118-1146.

1. Petitioner, as a PAGCOR licensee, is entitled to the refund or tax credit of its excess or unutilized input Value Added Tax ("VAT") attributable to its revenues from gaming operations, which are declared as zero-rated sales, for the 4th quarter of taxable year 2014 and the 1st and 2nd quarters of taxable year 2015.

2. Petitioner had zero-rated sales, and incurred input taxes attributable to such zero-rated sales, in the 4th quarter of taxable year 2014 and the 1st and 2nd quarters of taxable year 2015, and the input taxes subject to the present claim have not been applied against any output VAT.

3. In any case, assuming *arguendo* that petitioner's revenue from gaming operations are not zero-rated sales, petitioner, as PAGCOR licensee, is nonetheless exempt from VAT, including indirect VAT under ***Presidential Decree No. 1869, as amended, ("PD 1869")***. Hence, petitioner is entitled to the refund or tax credit of input VAT erroneously or illegally passed on to, and collected from, petitioner for purchases attributable to gaming revenues.

4. Petitioner is allowed to claim a tax refund or issuance of TCC as ***PD 1869*** clearly grants PAGCOR and its licensees, to which the economic burden of the tax is shifted, an exemption from both direct and indirect taxes, such as VAT.

5. Petitioner timely filed its claim for refund or issuance of TCC of its input VAT attributable to zero-rated sales arising from the 4th quarter of taxable year 2014 and the 1st and 2nd quarters of taxable year 2015, pursuant to ***Section 112 (A) of the National Internal Revenue Code, as amended ("NIRC")***.

On the other hand, respondent counter-alleged the following:[46]

1. Under ***Section 112 of the NIRC*** and ***Section 4.112-1 of Revenue Regulation No. 16-2005, as amended ("RR 16-05")***, only VAT-registered persons whose sales of goods, properties, or services are zero-rated or effectively zero rated may apply for the issuance of a tax credit certificate or refund of input tax attributable to such sales. In addition to this, ***Section 106 of the NIRC*** provides the list of sales subject to zero-percent VAT. Petitioner's sales transaction are not among those considered as zero-rated transactions.

2. Under ***Revenue Memorandum Circular No. 33-2013 ("RMC 33-13")***, the gaming income of petitioner is subject to corporate income tax. In addition to this, ***Section 13 (2) (a) of PD 1869*** provides that PAGCOR is further subjected to a franchise tax of 5% of the gross revenue or

[46] See Memorandum for the Respondent, *id.*, pp. 1090-1094.

earnings it derives from its operations and licensing of gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools, and other related operations. Hence, petitioner, being a licensee and contractee of PAGCOR, is subject to income tax and VAT.

3. Even assuming that petitioner's income is subject to VAT zero-rating, its claim for refund still cannot be given due course. Petitioner must prove compliance with ***Section 4.112-1 of RR 16-05***, which states that a VAT-registered person whose sales of goods, properties, or services are zero-rated or effectively zero-rated may apply for the issuance of TCC/refund of input tax attributable to such sale, but that the input tax that may be subject to the claim shall exclude the portion of input tax that has been applied against the output tax, and that the application should be filed within two (2) years after the close of the taxable quarter when such sales were made.

4. In order to be entitled to a refund or issuance of a TCC of input VAT due or paid attributable to zero-rated or effectively zero-rated sales, petitioner must prove compliance with the following requisites:

   a. That there must be zero-rated or effectively zero-rated sales;
   b. That input taxes were incurred or paid;
   c. That such input taxes are directly attributable to zero-rated or effectively zero-rated sales;
   d. That input taxes were not applied against any output VAT liability; and
   e. That the claim for refund was filed within the two-year prescriptive period.

5. Further, results of the investigation and examination of petitioner's accounting records and other documents submitted to respondent showed that it is not entitled to the VAT refund for the 4th quarter of taxable year 2014. On the contrary, petitioner was found liable for deficiency VAT in the amount of Php54,976,707.71.

6. The alleged excess/unutilized input VAT of petitioner in the total amount of Php726,238,941.87 cannot be refunded for it is the accumulation of input tax from 2013 to 2014. Hence, it failed to meet the prescriptive period for refund for each and every quarter. The amount being refunded came from the accumulation of input taxes from 1 January 2013 to 30 September 2014, which has already prescribed.

7. Further, verification disclosed that the excess input tax applied for refund was shown as a deduction in the 4th Quarterly Amended VAT Return. After petitioner amended its return on 16 December 2016, its net payable was reduced from Php1,422,390,098.11 to

Php747,569,898.50 which should be carried forward to the succeeding quarter that is, the 1st quarterly VAT return of taxable year 2015.

8. However, upon verifying the 1st quarterly VAT Return for taxable year 2015, it was found that petitioner failed to amend the same. The 1st Quarterly VAT Return of petitioner for taxable year 2015 showed that the "IT Carried Over from the Previous Quarter" amounted to Php1,421,592,437.75 and not the Php747,569,898.50 per the 4th Quarterly Amended Return. This showed that the amount to be refunded for taxable year 2014 was reverted back and formed part of the amount stated in "IT Carried Over from Previous Quarter."

9. Time and again, it has been held that the right of taxation cannot easily be surrendered, statutes granting tax exemption are considered as derogation of sovereign authority. Hence, the same are construed strictly against the grantee and liberally in favor of the government.

## The Ruling of the Court

This Court resolves to **DENY** the **Petitions** for lack of merit.

### Requisites for claiming input VAT.

The provision that governs claims for refund of unutilized input VAT is ***Section 112 (A) and (C) of the NIRC,*** which reads:

> "SEC. 112. Refunds or Tax Credits of Input Tax. -
>
> (A) Zero-Rated or Effectively Zero-Rated Sales. -Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(l), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: Provided, finally, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
>
> (B) ...

> (C) Period within which Refund or Tax Credit of Input Taxes shall be Made. - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."

Based on the foregoing, the following requisites must be complied with by the taxpayer-applicant to successfully obtain an input VAT refund/credit:[47]

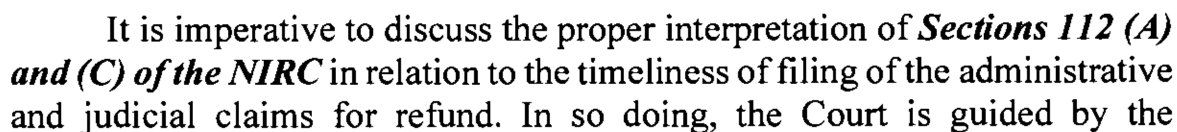
1. The taxpayer-claimant is VAT registered;
2. The taxpayer-claimant is engaged in zero-rated or effectively zero-rated sales;
3. There are creditable input taxes due or paid attributable to the zero-rated or effectively zero-rated sales;
4. This input tax has not been applied against the output tax; and
5. The application and the claim for a refund have been filed within the prescribed period.

At this juncture, it must be emphasized that cases filed before the CTA are litigated *de novo*.[48] As such, parties are expected to litigate and prove every minute aspect of their case anew by presenting, formally offering, and submitting to the CTA all evidence required for the successful prosecution of its claim.[49] Consequently, petitioner must competently establish its claim for input VAT refund or tax credit following the foregoing requisites.

**Petitioner timely filed its administrative and judicial claims for refund.**

The Court shall first determine petitioner's compliance with the fifth requisite, that is, that the application and claim for refund have been filed within the prescribed period.

It is imperative to discuss the proper interpretation of ***Sections 112 (A) and (C) of the NIRC*** in relation to the timeliness of filing of the administrative and judicial claims for refund. In so doing, the Court is guided by the



[47] Commissioner of Internal Revenue v. Toledo Power Co., G.R. Nos. 195175 & 199645, 10 August 2015; *See also* Commissioner of Internal Revenue v. Filminera Resources Corporation, G.R. No. 236325, 16 September 2020.
[48] Commissioner of Internal Revenue v. Univation Motor Philippines, Inc., G.R. No. 231581, 10 April 2019.
[49] *Id.*; Philippine Airlines, Inc. v. Commissioner of Internal Revenue, G.R. No. 206079-80 and 206309, 17 January 2018.

pronouncement in ***Commissioner of Internal Revenue v. Mindanao 1 Geothermal Partnership***, which outlined the mandate of the provisions as follows:

> "The precise mandate of these provisions has been the subject of many Supreme Court decisions such as the *Atlas Consolidated Mining and Dev't. Corp. v. CIR, CIR v. Mirant Pagbilao Corp.*, and *CIR v. San Roque Power Corp.* cases. The jurisprudence interpreting Section 112 was further summarized by the Court in *Silicon Philippines, Inc. v. CIR:*
>
> A. Two-Year Prescriptive Period
>
> 1. It is only the administrative claim that must be filed within the two-year prescriptive period. *(Aichi)*
>
> 2. The proper reckoning date for the two-year prescriptive period is the close of the taxable quarter when the relevant sales were made. *(San Roque)*
>
> 3. The only other rule is the Atlas ruling, which applied only from 8 June 2007 to 12 September 2008. Atlas states that the two-year prescriptive period for filing a claim for tax refund or credit of unutilized input VAT payments should be counted from the date of filing of the VAT return and payment of the tax. *(San Roque)*
>
> B. 120+30-Day Period
>
> 1. The taxpayer can file an appeal in one of two ways:
>
> (1) file the judicial claim within thirty days after the Commissioner denies the claim within the 120-day period, or (2) file the judicial claim within thirty days from the expiration of the 120-day period if the Commissioner does not act within the 120-day period.
>
> 2. The 30-day period always applies, whether there is a denial or inaction on the part of the CIR.
>
> 3. As a general rule, the 30-day period to appeal is both mandatory and jurisdictional. *(Aichi and San Roque)*
>
> 4. As an exception to the general rule, premature filing is allowed only if filed between 10 December 2003 and 5 October 2010, when BIR Ruling No. DA-489- 03 was still in force. *(San Roque)*
>
> 5. Late filing is absolutely prohibited, even during the time when BIR Ruling No. DA-489-03 was in force. *(San Roque)*"

To summarize, the refund of unutilized input VAT attributable to zero-rated or effectively zero-rated sales must be administratively filed with the BIR within two (2) years counted from the close of the taxable quarter when the relevant sales were made. Meanwhile, the judicial claim for refund must be filed in Court within 30 days from either: (1) receipt of respondent's decision, which must be rendered within the 120-day period to resolve; or (2)

after the expiration of the 120-day period, in which case, the claim is deemed denied.

The input VAT refund subject of the instant case pertains to sales made by petitioner during the 4th quarter of taxable year 2014 and the 1st and 2nd quarters of taxable year 2015. Considering this, the administrative claims for input VAT refund should have been filed by petitioner on the following dates:

| Taxable Quarter | Close of Taxable Quarter | Final Day to File Administrative Claim |
|---|---|---|
| 4th Quarter of 2014 | 31 December 2014 | 31 December 2016 |
| 1st Quarter of 2015 | 31 March 2015 | 31 March 2017 |
| 2nd Quarter of 2015 | 30 June 2015 | 30 June 2017 |

Petitioner filed its administrative claims on the following the dates:

| Taxable Quarter | Date When Administrative Claim was Filed |
|---|---|
| 4th Quarter of 2014 | 23 December 2016[50] |
| 1st Quarter of 2015 | 30 March 2017[51] |
| 2nd Quarter of 2015 | 29 June 2017[52] |

Consequently, petitioner timely filed its administrative claims for refund.

After the filing of these administrative claims for input VAT refund, respondent is then given a one hundred twenty-day period ("120-day period") within which to decide the said claims. If respondent issues a decision adversarial to the taxpayer, the latter is then given thirty (30) days from receipt of such decision within which to file an appeal before the CTA. On the other hand, if respondent fails to issue a decision on the administrative claim, the said claim is deemed denied. Hence, the taxpayer is duty bound to file an appeal before the CTA within thirty (30) days from the expiration of the 120-day period. Applying the foregoing, respondent had the following periods within which to decide petitioner's administrative claims:

[50] Exhibits "P-2", "P-3", and "P-3-1", CTA Case No, 9582, Vol. 2, pp. 870-877.
[51] Exhibits "P-14", "P-15", and "P-15-1", *id.*, pp. 972-979.
[52] Exhibits "P-16", "P-17", and "P-17-1", *id.*, pp. 980-987.

| Taxable Quarter | Date When Administrative Claim was Filed | Last Day Allowed for Respondent to Decide on the Administrative Claim |
|---|---|---|
| 4th Quarter of 2014 | 23 December 2016 | 22 April 2017 |
| 1st Quarter of 2015 | 30 March 2017 | 28 July 2017 |
| 2nd Quarter of 2015 | 29 June 2017 | 27 October 2017 |

Following this, petitioner had until the following dates within which to appeal before the CTA:

| Taxable Quarter | Date When Respondent's Decision was Received or Last Day Allowed for Respondent to Decide on the Administrative Claim (whichever comes first) | Last Day Allowed for Petitioner to File Judicial Claim Before the CTA |
|---|---|---|
| 4th Quarter of 2014 | 31 March 2017[53] | 1 May 2017[54] |
| 1st Quarter of 2015 | 28 July 2017 | 28 August 2017[55] |
| 2nd Quarter of 2015 | 27 October 2017 | 27 November 2017[56] |

Hence, petitioner timely filed its judicial claims before the CTA on the following dates:

| Taxable Quarter | Date When Judicial Claim was Filed |
|---|---|
| 4th Quarter of 2014 | 26 April 2017[57] |
| 1st Quarter of 2015 | 25 August 2017[58] |
| 2nd Quarter of 2015 | 24 November 2017[59] |

Considering these, the Court finds that petitioner timely filed both its administrative claims and judicial claims for input VAT refund pertaining to its sales during the 4th quarter of taxable year 2014 and the 1st and 2nd quarters of taxable year 2015.

[53] Exhibit "P-1", *id.*, pp. 868-869.
[54] 30 April 2017 fell on a Sunday.
[55] 27 August 2017 fell on a Sunday.
[56] 26 November 2017 fell on a Sunday.
[57] CTA Case No, 9582, Vol. 1, p. 10.
[58] CTA Case No, 9667, Vol. 1, p. 10.
[59] CTA Case No, 9724, Vol. 1, p. 10.

**Petitioner is VAT-registered.**

As shown by its BIR Certificate of Registration, petitioner is a VAT-registered taxpayer with TIN 008-362-871-000.[60]

**As a PAGCOR licensee, petitioner is entitled to exemption from VAT.**

The Court finds that petitioner is VAT exempt pursuant to ***Section 109 (1) (K) of the NIRC***, which provides the following:

> "SEC. 109. *Exempt Transactions.* - (1) Subject to the provisions of Subsection (2) hereof, **the following transactions shall be exempt from the value-added tax:**
>
> xxx xxx xxx
>
> (K) **Transactions which are exempt under** international agreements to which the Philippines is a signatory or under **special laws,** except those under Presidential Decree No. 529;"
> (Emphasis, Ours.)

The special law which makes petitioner VAT exempt is ***PD 1869.***

Petitioner, as a licensee of PAGCOR,[61] enjoys tax exemptions similarly granted to the latter under its charter, ***PD 1869. Section 13 of PD 1869*** provides:

> "SEC. 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 or otherwise, as well as any form of charges, fees or levies, **shall inure to the benefit of and extend to corporation(s),**

[60] Exhibit "P-9", Dockets for CTA Case No, 9582, Vol. 2, p. 907.
[61] Exhibit "P-7", *id.*, p. 905.

**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.**

The fee or remuneration of foreign entertainers contracted by the Corporation or operator in pursuance of this provision shall be free of any tax.

xxx xxx xxx."

(Emphasis, Ours.)

Based on the above cited provision, PAGCOR is exempt from the payment of any tax, whether national or local, including VAT, except for a franchise tax at the rate of five percent (5%) of the gross revenues or earnings derived from its operations.

Further, this tax exemption inures to the benefit of and extends to: a) corporations, associations, agencies, or individuals with whom PAGCOR or the operator has any contractual relationship in connection with the operations of the casinos pursuant to ***PD 1869***; and b) to those receiving compensation or other remuneration from PAGCOR or the operator as a result of essential facilities furnished and/or technical services rendered to PAGCOR or the operator. Hence, petitioner, as a PAGCOR licensee, is likewise entitled to this tax exemption.

Moreover, in ***The Commissioner of Internal Revenue vs. Acesite (Philippines) Hotel Corporation***,[62] the Supreme Court categorically ruled that PAGCOR licensees, such as petitioner, are VAT exempt. In said case, the High Court provided that the extension of the VAT exemption to PAGCOR's licensees is to ensure that no VAT can be passed on to PAGCOR. The said case provides:

**"VAT exemption extends to Acesite**

Thus, while it was proper for PAGCOR not to pay the 10% VAT charged by Acesite, the latter is not liable for the payment of it as it is exempt in this particular transaction by operation of law to pay the indirect tax. Such exemption falls within the former Section 102 (b) (3) of the 1977 Tax Code, as amended (now Sec. 108 [b] [5] of R.A. 8424), which provides:

> Section 102. Value-added tax on sale of services- (a) Rate and base of tax- There shall be levied, assessed and collected, a value-added tax equivalent to 10% of gross receipts derived by any person engaged in the sale of services ... ; Provided, that the

[62] G.R. No. 147295, 16 February 2007; also cited in Philippine Amusement and Gaming Corporation (PAGCOR) vs. The Commissioner of Internal Revenue, et al. / Commissioner of Internal Revenue vs. Philippine Amusement and Gaming Corporation (PAGCOR), G.R. Nos. 210689-90 and 210704 & 210725, 22 November 2017.

following services performed in the Philippines by VAT-registered persons shall be subject to 0%.

xxx xxx xxx

(b) Transactions 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 (0%) rate.

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

However, before PAGCOR or any of its licensees can enjoy the tax exemption provided under ***PD 1869***, the five percent (5%) franchise tax must first be paid. This was stressed in the case of ***Bloomberry Resorts and Hotels, Inc. vs. Bureau of Internal Revenue***,[63] which provides, to wit:

"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.**

xxx xxx xxx

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

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

within the purview of the aforesaid section, is not subject to corporate income tax."
(Emphasis, Ours.)

Records reveal that petitioner has paid the five percent (5%) franchise tax.[64] Consequently, it is VAT-exempt.

**Only those engaged in zero-rated or effectively zero-rated sales can apply for input VAT refund**

***Section 112 (A) of the NIRC*** clearly provides that only VAT-registered persons **whose sales are zero-rated or effectively zero-rated** may apply for input VAT refund.

While it has been shown that petitioner is exempt from VAT as a result of it being a PAGCOR licensee, the same does not automatically mean that its sales are subject to VAT zero-rating. VAT zero-rating is different from VAT exemption.

Being VAT exempt means that no VAT, either the twelve percent (12%) or the zero-percent (0%) rate, is imposed at all for the subject sales transaction. On the other hand, engaging in VAT zero-rated transactions means that a sale is subjected to the zero percent (0%) VAT rate. The distinction was well explained by the High Court in ***Contex Corporation v. Hon. Commissioner of Internal Revenue***,[65] to wit:

> "At this juncture, it must be stressed that the VAT is an indirect tax. As such, the amount of tax paid on the goods, properties or services bought, transferred, or leased may be shifted or passed on by the seller, transferor, or lessor to the buyer, transferee or lessee. Unlike a direct tax, such as the income tax, which primarily taxes an individual's ability to pay based on his income or net wealth, an indirect tax, such as the VAT, is a tax on consumption of goods, services, or certain transactions involving the same. The VAT, thus, forms a substantial portion of consumer expenditures.
>
> Further, in indirect taxation, there is a need to distinguish between the liability for the tax and the burden of the tax. As earlier pointed out, the amount of tax paid may be shifted or passed on by the seller to the buyer. What is transferred in such instances is not the liability for the tax, but the tax burden. In adding or including the VAT due to the selling price, the seller remains the person primarily and legally liable for the payment of the tax. What is shifted only to the intermediate buyer and ultimately to the final purchaser is the burden of the tax. Stated differently, a seller who is directly and legally liable for payment of an indirect tax, such as the VAT on goods or services is not necessarily the person who ultimately bears the burden of

[64] Exhibits "P-205" and "P-205-1 to P-205-19", Universal Serial Bus Drive submitted with the ICPA Report for CTA Case Nos. 9582, 9667, & 9724.
[65] G.R. No. 151135, 2 July 2004.

the same tax. It is the final purchaser or consumer of such goods or services who, although not directly and legally liable for the payment thereof, ultimately bears the burden of the tax.

Exemptions from VAT are granted by express provision of the Tax Code or special laws. Under VAT, the transaction can have preferential treatment in the following ways:

**(a) VAT Exemption. An exemption means that the sale of goods or properties and/or services and the use or lease of properties is not subject to VAT (output tax) and the seller is not allowed any tax credit on VAT (input tax) previously paid. This is a case wherein the VAT is removed at the exempt stage (i.e., at the point of the sale, barter or exchange of the goods or properties).**

**The person making the exempt sale of goods, properties or services shall not bill any output tax to his customers because the said transaction is not subject to VAT. On the other hand, a VAT-registered purchaser of VAT-exempt goods/properties or services which are exempt from VAT is not entitled to any input tax on such purchase despite the issuance of a VAT invoice or receipt.**

**(b) Zero-rated Sales. These are sales by VAT-registered persons which are subject to 0% rate, meaning the tax burden is not passed on to the purchaser. A zero-rated sale by a VAT-registered person, which is a taxable transaction for VAT purposes, shall not result in any output tax. However, the input tax on his purchases of goods, properties or services related to such zero-rated sale shall be available as tax credit or refund in accordance with these regulations.**

**Under Zero-rating, all VAT is removed from the zero-rated goods, activity or firm. In contrast, exemption only removes the VAT at the exempt stage, and it will actually increase, rather than reduce the total taxes paid by the exempt firm's business or non-retail customers. It is for this reason that a sharp distinction must be made between zero-rating and exemption in designating a value-added tax."**
(Emphasis and Underscoring, Ours.)

Indeed, VAT zero-rating and VAT exemption are wholly different from each other, especially with respect to their respective tax consequences. Under VAT zero-rating, the effects of the VAT system on the particular zero-rated transaction are totally nullified because the zero-rated sales do not result in any output VAT liability and, at the same time, the taxpayer-claimant who engaged in the zero-rated sales may claim refund of the input VAT passed on to it by its suppliers on its purchases attributable to its zero-rated sales. Simply put, both the tax liability to pay the output VAT on the sales and the tax burden as a result of shouldering the input VAT on the purchases are removed in favor of the taxpayer-claimant engaged in zero-rated sales.

On the other hand, under VAT exemption, a taxpayer engaging in VAT exempt transactions is simply exempt from paying an output VAT on its sales. The tax burden as a result of shouldering the input VAT on purchases is not removed at all, considering that ***Section 112 (A) of the NIRC*** mandates that only taxpayer-claimants who engage in zero-rated sales or effectively zero can claim input VAT refund. Thus, a VAT exempt taxpayer ends up paying and shouldering more VAT than one engaged in zero-rated sales.

In fact, to highlight the difference of VAT exempt transactions from VAT-zero rated or effectively zero-rated transactions, the framers of the ***NIRC*** took time and effort to separately list which transactions are considered VAT exempt and which are zero-rated or effectively zero-rated.

For zero-rated or effectively zero-rated transactions, the same were listed down under ***Sections 106 (A) (2)***[66] and ***108 (B)***[67] ***of the NIRC.***

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[66] SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* –

xxx xxx xxx

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

*(a) Export Sales.* - The term "*export sales*" means:

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(2) Sale and delivery of goods to:

(3) Sale of raw materials or packaging materials to a nonresident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods and paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(4) Sale of raw materials or packaging materials to export-oriented enterprise whose export sales exceed seventy percent (70%) of total annual production;

(5) Those considered export sales under Executive Order NO. 226, otherwise known as the "Omnibus Investment Code of 1987", and other special laws; and

(6) The sale of goods, supplies, equipment and fuel to persons engaged in international shipping or international air transport operations: Provided, That the goods, supplies, equipment and fuel shall be used for international shipping or air transport operations.

Provided, That subparagraphs (3), (4), and (5) hereof shall be subject to the twelve percent (12%) value-added tax and no longer be considered export sales subject to zero percent (0%) VAT rate upon satisfaction of the following conditions:

(1) The successful establishment and implementation of an enhanced VAT refund system that grants refunds of creditable input tax within ninety (90) days from the filing of the VAT refund application with the Bureau: Provided, That, to determine the effectivity of item no. 1, all applications filed from January 1, 2018 shall be processed and must be decided within ninety (90) days from the filing of the VAT refund application; and

(2) All pending VAT refund claims as of December 21, 2017 shall be fully paid in cash by December 31, 2019.

Provided, That the Department of Finance shall establish a VAT refund center in the Bureau of Internal Revenue (BIR) and in the Bureau of Customs(BOC) that will handle the processing and granting of cash refunds of creditable input tax.

An amount equivalent to five percent (5%) of the total VAT collection of the BIR and the BOC from the immediately preceding year shall be automatically appropriated annually and shall be treated as a special account in the General Fund or as trust receipts for the purpose of funding claims for VAT refund: Provided, That any unused fund, at the end of the year shall revert to the General Fund.

Provided, further, That the BIR and the BOC shall be required to submit to the Congressional Oversight Committee on the Comprehensive Tax Reform Program (COCCTRP) a quarterly report of all pending claims for refund and any unused fund.

(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.

(c) Sales to offshore gaming licensees subject to gaming tax under Section 125-A of this Code.

[67] 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:

(1) Processing, manufacturing or repacking goods for other persons doing business outside of the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services. Are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance wuth the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(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;

(4) Services rendered to persons engaged m international shipping or international air transport operations, including leases of property for use thereof;

On the other hand, the VAT exempt transactions were provided for under ***Section 109 of the NIRC.***[68]

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(5) Services performed by subcontractors and/ or contractors in processing, converting or manufacturing goods or an enterprise whose export sales exceed seventy percent (70%) of total annual production.
(6) Transport of passengers and cargo by air or sea vessels from the Philippines to a foreign country, and
(7) Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels.

[68] SEC. 109. *Exempt Transactions.* –
(1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax.
(A) Sale or importation of agricultural and marine food products in their original state, livestock and poultry of or king generally used as, or yielding or producing foods for human consumption; and breeding stock and genetic materials therefor.
Products classified under this paragraph shall be considered in their original state even if they have undergone the simple processes of preparation or preservation for the market, such as freezing, drying, salting, broiling, roasting, smoking or stripping. Polished and/or husked rice, corn grits, raw cane sugar and molasses, ordinary salt and copra shall be considered in their original state;
(B) Sale or importation of fertilizers; seeds, seedlings and fingerlings; fish, prawn, livestock and poultry feeds, including ingredients, whether locally produced or imported, used in the manufacture of finished feeds (except specialty feeds for race horses, fighting cocks, aquarium fish, zoo animals and other animals generally considered as pets);
(C) Importation of personal and household effects belonging to the residents of the Philippines returning from abroad and nonresident citizens coming to resettle in the Philippines: Provided, That such goods are exempt from customs duties under the Tariff and Customs Code of the Philippines;
(D) Importation of professional instruments and implements, tools of trade, occupation or employment, wearing apparel, domestic animals, and personal and household effects belonging to persons coming to settle in the Philippines or Filipinos or their families and descendants who are now residents or citizens of other countries, such parties hereinafter referred to as overseas Filipinos, in quantities and of the class suitable to the profession, rank or position of the persons importing said items, for their own use and not for barter or sale, accompanying such persons, or arriving within a reasonable time: Provided, That the Bureau of Customs may, upon the production of satisfactory evidence that such persons are actually coming to settle in the Philippines and the goods are brought from their former place of abode, exempt such goods from payment of duties and taxes: Provided, further, That the vehicles, vessels, aircrafts, machineries and other similar goods for use in manufacture, shall not fall within this classification and shall therefore be subject to duties, taxes and other charges;
(E) Services subject to percentage tax under Title V;
(F) Services by agricultural contract growers and milling for others of palay into rice, corn into grits and sugar cane into raw sugar;
(G) Medical, dental, hospital and veterinary services except those rendered by professionals;
(H) Educational services rendered by private educational institutions, duly accredited by the Department of Education(DepED), the Commission on Higher Education (CHED), the Technical Education and Skills Development Authority (TESDA) and those rendered by government educational institutions;
(I) Services rendered by individuals pursuant to an employer-employee relationship;
(J) Services rendered by regional or area headquarters established in the Philippines by multinational corporations which act as supervisory, communications and coordinating centers for their affiliates, subsidiaries or branches in the Asia-Pacific Region and do not earn or derive income from the Philippines;
(K) Transactions which are exempt under international agreements to which the Philippines is a signatory or under special laws, except those under Presidential Decree No. 529;
(L) Sales by agricultural cooperatives duly registered with the Cooperative Development Authority to their members as well as sale of their produce, whether in its original state or processed form, to non-members; their importation of direct farm inputs, machineries and equipment, including spare parts thereof, to be used directly and exclusively in the production and/or processing of their produce;
(M) Gross receipts from lending activities by credit or multi-purpose cooperatives duly registered with the Cooperative Development Authority;
(N) Sales by non-agricultural, non- electric and non-credit cooperatives duly registered with the Cooperative Development Authority: Provided, That the share capital contribution of each member does not exceed Fifteen thousand pesos (P15,000) and regardless of the aggregate capital and net surplus ratably distributed among the members;
(O) Export sales by persons who are not VAT-registered;
(P) Sale of real properties not primarily held for sale to customers or held for lease in the ordinary course of trade or business or real property utilized for low-cost and socialized housing as defined by Republic Act No. 7279, otherwise known as the Urban Development and Housing Act of 1992, and other related

In the instant case, the records are bereft of any showing that petitioner is engaged in zero-rated or effectively zero-rated transactions, as provided under ***Sections 106 (A) (2) and 108 (B) of the NIRC.*** This is fatal to petitioner's cause and bars it from claiming refund of input VAT.

As petitioner is simply VAT exempt and has not been shown to be engaged in any of the zero-rated or effectively zero-rated transactions, it cannot claim refund of its input VAT. Instead, the input VAT passed on by

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laws, residential lot valued at One million pesos (P1,500,000) and below, house and lot, and other residential dwellings valued at Two million five hundred thousand pesos (P2,500,000) and below: Provided, That beginning January 1, 2021, the VAT exemption shall only apply to sale of real properties not primarily held for sale to customers or held for lease in the ordinary course of trade or business, sale of real property utilized for socialized housing as defined by Republic Act No. 7279, sale of house and lot, and other residential dwellings with the selling price of not more than Two million pesos (P2,000,000): Provided, further, That every three (3) years thereafter, the amount herein stated shall be adjusted to its present value using the Consumer Price Index, as published by the Philippine Statistics Authority (PSA);

(Q) Lease of a residential unit with a monthly rental not exceeding Fifteen thousand pesos (₱15,000);

(R) Sale, importation, printing or publication of books, and any newspaper, magazine, journal, review bulletin, or any such educational reading material covered by the UNESCO Agreement on the Importation of Educational, Scientific and Cultural Materials, including the digital or electronic format thereof: Provided, That the materials enumerated herein are not devoted principally to the publication of paid advertisements;

(S) Transport of passengers by international carriers;

(T) Sale, importation or lease of passenger or cargo vessels and aircraft, including engine, equipment and spare parts thereof for domestic or international transport operations;

(U) Importation of fuel, goods and supplies by persons engaged in international shipping or air transport operations: Provided, That the fuel, goods, and supplies shall be used for international shipping or air transport operations;

(V) Services of bank, non-bank financial intermediaries performing quasi-banking functions, and other non-bank financial intermediaries;

(W) Sale or lease of goods and services to senior citizens and persons with disability, as provided under Republic Act Nos. 9994 (Expanded Senior Citizens Act of 2010) and 10754 (An Act Expanding the Benefits and Privileges of Persons With Disability), respectively;

(X) Transfer of property pursuant to Section 40(C)(2) of the NIRC, as amended;

(Y) Associations dues, membership fees, and other assessments and charges collected by homeowners' associations and condominium corporations;

(Z) Sale of gold to the Banko Sentral ng Pilipinas (BSP);

(AA) Sale of or importation of prescription drugs and medicines for:

(i) Diabetes, high cholesterol, and hypertension beginning January 1, 2020; and

(ii) Cancer, mental illness, tuberculosis, and kidney diseases beginning January 1, 2021.
Provided, That the DOH shall issue a list of approved drugs and medicines for this purpose within sixty (60) days from the effectivity of this Act; and

(BB) Sale or importation of the following beginning January 1, 2021 to December 31, 2023:

(i) Capital equipment, its spare parts and raw materials, necessary for the production of personal protective equipment components such as coveralls, gown, surgical cap, surgical mask, N-95 mask, scrub suits, goggles and face shield, double or surgical gloves, dedicated shoes, and shoe covers, for COVID-19 prevention; and

(ii) All drugs, vaccines and medical devices specifically prescribed and directly used for the treatment of COVID-19; and

(iii) Drugs for the treatment of COVID-19 approved by the Food and Drug Administration (FDA) for use in clinical trials, including raw materials directly necessary for the production of such drugs: *Provided,* That the Department of Trade and Industry (DTI) shall certify that such equipment, spare parts or raw materials for importation are not locally available or insufficient in quantity, or not in accordance with the quality or specification required: *Provided, further,* That for item (ii), within sixty (60) days from the effectivity of this Act, and every three (3) months thereafter, the Department of Health (DOH) shall issue a list of prescription drugs and medical devices covered by this provision: *Provided, finally,* That the exemption claimed under this subsection shall be subject to post audit by the Bureau of Internal Revenue or the Bureau of Customs as may be applicable.

(CC) Sale or lease of goods or properties or the performance of services other than the transactions mentioned in the preceding paragraphs, the gross annual sales and/or receipts do not exceed the amount of Three million pesos (P3,000,000.00).

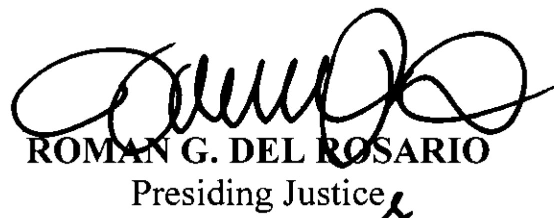
## ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

**ERLINDA P. UY**
Associate Justice
Chairperson

## CERTIFICATION

Pursuant to *Article VIII, Section 13 of the Constitution* and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court.



**ROMAN G. DEL ROSARIO**
Presiding Justice