

SECOND DIVISION

[G.R. NO. 147295, February 16, 2007]

**THE COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS.
ACESITE (PHILIPPINES) HOTEL CORPORATION, RESPONDENT.**

DECISION

VELASCO, JR., J.:

The Case

Before us is a Petition for Review on Certiorari^[1] under Rule 45 of the Rules of Court, assailing the November 17, 2000 Decision^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 56816, which affirmed the January 3, 2000 Decision^[3] of the Court of Tax Appeals (CTA) in CTA Case No. 5645 entitled *Acesite (Philippines) Hotel Corporation v. The Commissioner of Internal Revenue* for Refund of VAT Payments.

The Facts

The facts as found by the appellate court are undisputed, thus:

Acesite is the owner and operator of the Holiday Inn Manila Pavilion Hotel along United Nations Avenue in Manila. It leases 6,768.53 square meters of the hotel's premises to the Philippine Amusement and Gaming Corporation [hereafter, PAGCOR] for casino operations. It also caters food and beverages to PAGCOR's casino patrons through the hotel's restaurant outlets. For the period January (sic) 96 to April 1997, Acesite incurred VAT amounting to P30,152,892.02 from its rental income and sale of food and beverages to PAGCOR during said period. Acesite tried to shift the said taxes to PAGCOR by incorporating it in the amount assessed to PAGCOR but the latter refused to pay the taxes on account of its tax exempt status.

Thus, PAGCOR paid the amount due to Acesite minus the P30,152,892.02 VAT while the latter paid the VAT to the Commissioner of Internal Revenue [hereafter, CIR] as it feared the legal consequences of non-payment of the tax. However, Acesite belatedly arrived at the conclusion that its transaction with PAGCOR was subject to zero rate as it was rendered to a tax-exempt entity. On 21 May 1998, Acesite filed an administrative claim for refund with the CIR but the latter failed to resolve the same. Thus on 29 May 1998, Acesite filed a petition with the Court of Tax Appeals [hereafter, CTA] which was decided in this wise:

As earlier stated, Petitioner is subject to zero percent tax pursuant to Section 102 (b)(3) [now 106(A)(C)] insofar as its gross income from rentals and sales to PAGCOR, a tax exempt

entity by virtue of a special law. Accordingly, the amounts of P21,413,026.78 and P8,739,865.24, representing the 10% EVAT on its sales of food and services and gross rentals, respectively from PAGCOR shall, as a matter of course, be refunded to the petitioner for having been inadvertently remitted to the respondent.

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

Total amount per claim	30,152,892.02	
Less Prescribed amount (Exhs A, X, & X-20)		
January 1996	P 2,199.94	
February 1996	26,205.04	
March 1996	70,338.42	98,743.40
		P30,054,148.64
		VVVVVVVVVVVVVV

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

SO ORDERED.^[4]

The Ruling of the Court of Appeals

Upon appeal by petitioner, the CA affirmed *in toto* the decision of the CTA holding that PAGCOR was not only exempt from direct taxes but was also exempt from indirect taxes like the VAT and consequently, the transactions between respondent Acesite and PAGCOR were "effectively zero-rated" because they involved the rendition of services to an entity exempt from indirect taxes. Thus, the CA affirmed the CTA's determination by ruling that respondent Acesite was entitled to a refund of PhP 30,054,148.64 from petitioner.

The Issues

Hence, we have the instant petition with the following issues: (1) whether PAGCOR's tax exemption privilege includes the indirect tax of VAT to entitle Acesite to zero percent (0%) VAT rate; and (2) whether the zero percent (0%) VAT rate under then Section 102 (b)(3) of the Tax Code (now Section 108 (B)(3) of the Tax Code of

1997) legally applies to Acesite.

The petition is devoid of merit.

In resolving the first issue on whether PAGCOR's tax exemption privilege includes the indirect tax of VAT to entitle Acesite to zero percent (0%) VAT rate, we answer in the affirmative. We will however discuss both issues together.

PAGCOR is exempt from payment of indirect taxes

It is undisputed that P.D. 1869, the charter creating PAGCOR, grants the latter an exemption from the payment of taxes. Section 13 of P.D. 1869 pertinently provides:

Sec. 13. *Exemptions.* –

x x x x

(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.

x x x x

(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), association(s), agency(ies), or individual(s) with whom the Corporation or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise** and to those receiving compensation or other remuneration from the Corporation or operator as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator. (Emphasis supplied.)

Petitioner contends that the above tax exemption refers only to PAGCOR's direct tax liability and not to indirect taxes, like the VAT.

We disagree.

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