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**THIRD DIVISION**

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **September 2, 2020**, which reads as follows:*

**“G.R. No. 222954 (Commissioner of Internal Revenue v. Waterfront Mactan Casino Hotel, Inc.).** – This Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 assails the Decision<sup>2</sup> dated September 15, 2015 and the Resolution<sup>3</sup> dated February 9, 2016 of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. EB No. 1060, which affirmed the Decision<sup>4</sup> dated May 31, 2013 of the CTA Special Second Division cancelling the value-added tax (VAT) assessment against Waterfront Mactan Casino Hotel, Inc. (WMCHI) for lack of legal basis.<sup>5</sup>

**Facts of the Case**

The Commissioner of Internal Revenue (CIR) issued Letter of Authority No. 200700007009<sup>6</sup> for the examination of books of accounts and other accounting records for all internal revenue taxes of WMCHI for taxable year January 1, 2006 to December 31, 2006. Thereafter, a Preliminary Assessment Notice<sup>7</sup> was issued by the CIR on March 16, 2009 followed by a Formal Letter of Demand<sup>8</sup> and Audit Result/Assessment Notice<sup>9</sup> dated January 5, 2010 covering deficiency tax on compensation, withholding on compensation and VAT for an aggregate amount of ₱22,148,164.71.<sup>10</sup>

<sup>1</sup> *Rollo*, pp. 35-49.

<sup>2</sup> Penned by Associate Justice Lovell R. Bautista, with the concurrence of Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda Jr., Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas, and Ma. Belen M. Ringpis-Liban; id. at 8-27.

<sup>3</sup> Id. at 74-76.

<sup>4</sup> Penned by Associate Justice Cielito N. Mindaro-Grulla, with the concurrence of Associate Justices Juanito C. Castañeda Jr., and Caesar A. Casanova; id. at 139-158.

<sup>5</sup> Id. at 157.

<sup>6</sup> Id. at 84.

<sup>7</sup> Id. at 85-86.

<sup>8</sup> Id. at 93-94.

<sup>9</sup> Id. at 96-99.

<sup>10</sup> Id. at 94.

In a Letter<sup>11</sup> to Commissioner dated June 24, 2010, WMCHI manifested that it already paid the assessments for deficiency withholding tax on compensation and income tax through e-payment facility. As to the deficiency VAT, WMCHI informed the CIR that it initially charged Philippine Amusement and Gaming Corporation (PAGCOR) with output tax but the latter disputed it based on PAGCOR's claim that it is VAT exempt.<sup>12</sup>

The factual basis of the deficiency VAT assessment of the CIR was the income payments received by WMCHI from PAGCOR that were not subjected to VAT.

On July 30, 2010, the CIR issued a Final Decision on Disputed Assessment<sup>13</sup> (FDDA) informing WMCHI that its protest was duly reconsidered but maintained that the latter's claim for VAT-exempt sales to PAGCOR has no legal basis. WMCHI was further informed that the assessment should be paid immediately and that the decision of the CIR is final. Because of this, WMCHI filed its Petition for Review<sup>14</sup> to the CTA on January 31, 2011.

In its Answer,<sup>15</sup> the CIR raised that PAGCOR is not exempt from the payment of income tax and VAT. Hence, it was error for WMCHI to not charge the income payments it received from PAGCOR with VAT.<sup>16</sup> The CIR also alleged that the protest letter sent by WMCHI dated June 24, 2010 did not state the applicable laws, rules and regulations or jurisprudence on which it is based rendering it without force and effect and making the assessment final, executory, and demandable.<sup>17</sup>

### **Ruling of the CTA**

On May 31, 2013, the CTA in Division rendered its Decision<sup>18</sup> granting the petition and cancelling the VAT assessment against WMCHI for lack of legal basis.<sup>19</sup>

The CTA in Division held that Presidential Decree No. 1869 or the PAGCOR Charter exempts it from the assessment or collection of tax. Such privilege is also extended to corporations with whom PAGCOR has contractual relationship with such as WMCHI.<sup>20</sup> The elimination of PAGCOR's exemption under Section 27 of the National Internal Revenue Code pertains only to corporate income tax. It doesn't cover PAGCOR's

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11 Id. at 100.  
12 Id.  
13 Id. at 100-102.  
14 Id. at 103-106.  
15 Id. at 115-137.  
16 Id. at 116-131.  
17 Id. at 131-136.  
18 Supra note 4.  
19 *Rollo*, p. 157.  
20 Id. at 148-149.

exemption from VAT.<sup>21</sup> This issue on exemption was finally settled by no less than this Court in *PAGCOR v. BIR*,<sup>22</sup> where it was held that PAGCOR shall be exempt from VAT. Since PAGCOR is exempt from VAT, WMCHI's transactions with PAGCOR are subject to 0% VAT.<sup>23</sup>

The CTA in Division further found that contrary to the assertion of the CIR that the protest letter of WMCHI dated June 24, 2010 was invalid because it did not state the facts, law and jurisprudence to support the same, WMCHI's protest letter was valid. The CTA in Division observed that even the CIR in his FDDA acknowledged that the letter was indeed in the form of a protest.<sup>24</sup>

The CTA in Division also noted that in the Memorandum prepared by the BIR itself recommending the issuance of the FDDA, it was specified that "[WMCHI] has submitted a protest letter and other supporting documents to contest the audit findings no. 4 and 5 per [Formal Letter of Demand (FLD)] last June 24, 2010."<sup>25</sup> The language and tenor of the FDDA and the BIR Memorandum unequivocally demonstrate that the BIR confirmed the filing of WMCHI's protest. The FDDA also stated that WMCHI has no remaining recourse but to file a petition to the CTA.<sup>26</sup>

On reconsideration,<sup>27</sup> the CTA in Division still granted the petition.<sup>28</sup>

Insisting the assessment was in order and the protest void, the CIR filed its Petition for Review<sup>29</sup> to the CTA *En Banc*.

In its September 15, 2015 Decision,<sup>30</sup> the CTA *En Banc* denied the petition for review filed by the CIR.

The CTA *En Banc* agreed with the findings of the CTA in Division that WMCHI validly protested the CIR's FLD. The CTA *En Banc* added that in the protest letter, WMCHI stated the following: (1) that it paid the assessment notice with Assessment Notice Ref. Numbers 123-WC-20-2006-2009-09-070-for withholding tax on compensation, and 123-IT-30-2006-2009-07-069-for income tax deficiency, by e-payment facility on June 16, 2010; and (2) that its VAT, the output tax being charged against PAGCOR, was subject to a pending legal issue on exemption. The CTA *En Banc* is convinced that WMCHI provided the facts in its protest letter when it stated the type of tax, reference numbers, and amount paid. It also provided the basis in law of its

<sup>21</sup> Id. at 150.

<sup>22</sup> 660 Phil. 636 (2011).

<sup>23</sup> Id. at 657-659; *rollo*, pp. 151-152.

<sup>24</sup> *Rollo*, pp. 153-154.

<sup>25</sup> Id. at 155.

<sup>26</sup> Id. at 154-157.

<sup>27</sup> Id. at 159-164.

<sup>28</sup> Resolution dated August 16, 2013 of the CTA; penned by Associate Justice Cielito N. Mindaro-Grulla, with the concurrence of Associate Justices Juanito C. Castañeda, Jr., and Caesar A. Casanova; id. at 167-168.

<sup>29</sup> Id. at 169-182.

<sup>30</sup> *Supra* note 2.

payment through e-payment under Revenue Regulation No. 9-2002. Hence, the requisites for a valid protest are present.<sup>31</sup>

Further, the CTA *En Banc* debunked the claim of the CIR that WMCHI failed to submit relevant documents within 60 days from filing of the administrative protest which makes the protest invalid. The CTA observed that the CIR did not specify the relevant supporting documents which are pertinent to WMCHI's protest; hence, it is unjust to charge WMCHI with failing to submit documents when the CIR has not specified what those documents are.<sup>32</sup>

The CTA *En Banc* also concurred with the CTA in Division that at any rate, WMCHI's transactions with PAGCOR are subject to 0% VAT as settled with finality by this Court in *PAGCOR v. BIR*.<sup>33</sup>

The CIR moved for reconsideration<sup>34</sup> which the CTA *En Banc* denied.<sup>35</sup>

Undaunted, the CIR filed this Petition for Review on *Certiorari* under Rule 45 reiterating its argument that the protest letter sent by WMCHI was invalid for failure to state the facts, law, and jurisprudence from which the protest was based. The invalidity of the protest made the FLD final and demandable.<sup>36</sup>

WMCHI filed its Comment<sup>37</sup> reiterating that the CIR even acknowledged the validity of its protest letter in the FDDA later on issued denying the same.<sup>38</sup> The Office of the Solicitor General manifested that it shall no longer file a Reply.<sup>39</sup>

### Ruling of the Court

After a perusal of the records of the case, this Court resolves to deny the Petition for Review on *Certiorari* for failure of the CIR to show that the CTA *En Banc* committed a reversible error in concluding that the protest letter filed by WMCHI was valid.

Under Section 3.1.5 of RR No. 12-99, "[t]he taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect."

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<sup>31</sup> *Rollo*, pp. 18-22.

<sup>32</sup> *Id.* at 22.

<sup>33</sup> *Supra* note 22; *rollo*, pp. 23-26.

<sup>34</sup> *Rollo*, pp. 77-82.

<sup>35</sup> *Supra* note 3.

<sup>36</sup> *Rollo*, pp. 42-47.

<sup>37</sup> *Id.* at 226-231.

<sup>38</sup> *Id.* at 229.

<sup>39</sup> *Id.* at 250-252.

The protest letter<sup>40</sup> dated June 24, 2010 submitted by WMCHI states the following:

This is in connection with your Audit Result/Assessment Notice we received from your office last June 8, 2010 for the year ended December 31, 2006.

We would like to inform you that we have paid already through e-payment facility the following assessment notice with their corresponding reference number and amount.

x x x x

For Assessment Notice -123-VT-20-2006-2009-09-071 amounting to P22,105,068.86, we would like to inform you that we **initially charged Pagcor with output tax**, but they **disputed it based from their claims that they are vat-exempt, they furnished us copy of the Court Order OSJ Case #2004-1 declaring Pagcor is exempted from all taxes which was also submitted to your office.** Presently, Pagcor has pending issue on the legality of their exemption.

x x x x<sup>41</sup> (Emphasis supplied)

We agree with the CTA in Division and CTA *En Banc* that the above-quoted protest letter is valid and in order. Accordingly, WMCHI specifically stated that it initially charged PAGCOR with output tax but the latter disputed it on the ground that it is exempt from VAT. Court Order OSJ Case No. 2004-1, which was furnished by PAGCOR to WMCHI, was also forwarded by the latter to the CIR. This is the legal basis presented by WMCHI for its protest to the VAT assessment issued against it by the CIR. These are sufficient statements of facts and law for which the protest is anchored.

Additionally, the CIR, in the FDDA denying the protest and the Memorandum recommending the FDDA, acknowledged the protest filed by WMCHI.

**WHEREFORE**, the Petition for Review on *Certiorari* is **DENIED**. The Decision dated September 15, 2015 and the Resolution dated February 9, 2016 of the Court of Tax Appeals in C.T.A EB Case No. 1060 are **AFFIRMED**.

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<sup>40</sup> Id. at 100.

<sup>41</sup> Id.

**SO ORDERED.”**

By authority of the Court:

*MisD C Batt*  
**MISAELO DOMINGO C. BATTUNG III**  
*Division Clerk of Court* *12/23/2020*

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