REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

CARMEN COPPER CORPORATION,
Respondent.

CTA EB No. 2480
(CTA Case No. 10016)

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CARMEN COPPER CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 2515
(CTA Case No. 10016)

Present:

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

Promulgated:
JAN 10 2023 3:50 pm

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DECISION

REYES-FAJARDO, J.:

For action are Petitions for Review respectively filed by the Commissioner of Internal Revenue (CIR) docketed as CTA EB No. 2480 and by Carmen Copper Corporation (Carmen Copper) docketed as

CTA EB No. 2515, challenging the Decision[1] dated October 28, 2020 and the Resolution[2] dated May 17, 2021 in CTA Case No. 10016, whereby the Second Division (Court in Division) partially granted Carmen Copper's claim for refund of its unutilized excess input value-added tax (VAT) for the third quarter (3rd quarter) of taxable year (TY) 2016 for the period of July 1 to September 30, 2016, arising from Carmen Copper's domestic purchase of goods and services and importations attributable to its zero-rated sales, amounting to Ten Million Five Hundred Eighty-Five Thousand Six Hundred Eight and 98/100 Pesos (₱10,585,608.98).

Carmen Copper is a domestic corporation organized and existing under Philippine law. It is engaged in mining activities and the subsequent sale of minerals for domestic and foreign markets. It is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer and with the Board of Investments (BOI) as a New Producer of Copper Concentrate.[3]

On the other hand, the CIR is empowered to perform the duties of the said office, including, the power to decide, approve, and grant tax refunds or tax credits.[4]

On October 25, 2016, Carmen Copper filed its quarterly VAT returns (BIR Form 2550-Q) for the 3rd quarter of TY 2016 with the BIR, showing excess and unutilized input taxes of ₱48,244,448.10 attributable to its zero-rated transactions.[5]

On September 26, 2018, Carmen Copper filed an administrative claim for refund with the BIR VAT Credit Audit Division (VCAD) amounting to ₱48,422,448.10.[6]

On December 27, 2018, Carmen Copper received a letter dated December 12, 2018 from Assistant Commissioner of Internal Revenue (ACIR) Erlinda A. Simple, partially granting its claim for cash refund

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1 Penned by Associate Justice Jean Marie A. Bacorro-Villena with Associate Justice Juanito C. Castañeda, Jr., concurring; CTA EB 2480 Docket, pp. 22-48.

2 Penned by Associate Justice Jean Marie A. Bacorro-Villena with Associate Justice Juanito C. Castañeda, Jr., concurring; CTA EB 2480 Docket, pp.49-62.

3 *Decision dated October 28, 2020*, CTA Case No. 10016, p. 2.

4 *Id.*

5 *Id.*

6 *Id.*

in the total amount of ₱12,131,526.97 and denying the amount of ₱36,112,921.13.[7]

Carmen Copper filed a *Petition for Review* with the Court of Tax Appeals (CTA) on January 24, 2019 assailing the denied portion of its claim for refund in the amount of ₱36,112,921.13.[8]

On October 28, 2020, the Court in Division rendered the assailed Decision, the dispositive portion of which reads:

> **WHEREFORE,** with the foregoing, petitioner Carmen Copper Corporation's Petition for Review is **PARTIALLY GRANTED.** Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO REFUND** petitioner the amount of **₱10,585,608.98,** representing unutilized excess input Value-Added Tax (VAT) attributable to its zero-rated sales/receipts for the 3rd quarter of taxable year 2016.
>
> **SO ORDERED.**

On November 10, 2020, the CIR filed a *Motion for Partial Consideration (Re: Decision promulgated 28 October 2020)* with the Court in Division. On November 18, 2020, Carmen Copper filed a *Motion for Reconsideration (with Motion for Leave of Court to Reopen the Case for the Recall of a Witness)* with the Court in Division.

On May 17, 2021, the Court in Division rendered the assailed Resolution, denying the CIR and Carmen Copper's Motion for Partial Reconsideration and Motion for Reconsideration, respectively, the dispositive portion of which reads:

> **WHEREFORE,** with the foregoing premises considered, respondent's Motion for Partial Reconsideration (Re: Decision promulgated 28 October 2020) and petitioner's Motion for Reconsideration (with Motion for Leave of Court to Reopen the Case for the Recall of a Witness) are both **DENIED** for lack of merit.
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> **SO ORDERED.**

On June 15, 2021, the CIR filed a Petition for Review with the Court *En Banc* docketed as CTA EB No. 2480.

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7 *Id.*

8 *Petition for Review,* CTA Case No. 10016 Docket, Vol. I, pp. 10-21.

On July 15, 2021, Carmen Copper filed a Petition for Review with the Court *En Banc* docketed as CTA EB No. 2515.

In a Minute Resolution dated October 11, 2021, the Court *En Banc* consolidated CTA EB No. 2515 with CTA EB No. 2480 under Section 1, Rule 31 of the Revised Rules of Court.[9]

On January 10, 2022 the consolidated Petitions for Review were submitted for decision.[10]

CIR's Petition for Review (CTA EB No. 2480):

The CIR asserts that the Court in Division erred in ruling that Carmen Copper is entitled to a refund amounting to ₱10,585,608.98 representing unutilized excess input VAT attributable to its zero-rated sales. The CIR claims that the law requires that only creditable input taxes that are directly attributable to zero-rated sales may be refunded and that no attributability was established between the input tax on purchases and the zero-rated sales of Carmen Copper.

The CIR adds that since it rendered a decision in the administrative claim for refund of Carmen Copper, the Court in Division's jurisdiction is strictly appellate in nature and therefore, judicial review is confined to whether the denial was proper given the evidence submitted at the administrative level. Thus, the CIR points out that Carmen Copper may not submit documents to the Court the documents it did not submit at the administrative level.

Carmen Copper's Comment/Opposition:

In opposition, Carmen Copper avers that the matter of direct attributability between its input tax on purchases and zero-rated sales is irrelevant since it was not a basis for the denial of Carmen Copper's administrative claim and was never raised as an issue during trial. Further, whatever input taxes that were not attributable to zero-rated sales were already excluded from the amount granted by the Court in Division, therefore, the CIR's claim that the input taxes granted as a

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9 *Minute Resolution dated October 11, 2021*, CTA EB No. 2480 Docket, p. 66.

10 *Resolution promulgated on January 10, 2022*, CTA EB No. 2480 Docket, pp. 91-92.

valid claim for refund were not found to be attributable to zero-rated sales deserves scant consideration.

Congruent to the CIR's contention that the Court in Division's jurisdiction is confined to whether the denial was proper at the administrative level, Carmen Copper explains that its judicial appeal was specifically limited to the denied portion of its claim amounting to ₱36,112,921.13. It claims that the Court in Division transgressed its right to due process when it went beyond the issues brought to its jurisdiction. However, unlike the CIR's contention, Carmen Copper argues that documents not submitted at the administrative level may be submitted to the Court where the denial of the refund by the BIR is due to inaction of the BIR or when no express request for submission of the questioned documents was given to the taxpayer.

Carmen Copper's Petition for Review (CTA EB No. 2515):

Carmen Copper avers that since the CIR failed to give sufficient factual and legal reasons for the denial of the amount of ₱36,112,921.13 in its administrative claim, the CIR's denial letter must be rendered invalid and its claim for refund be deemed fully granted as a necessary consequence.

Carmen Copper also argues that the Court in Division should have ruled only on the specific issues disputed by the parties. It points out that the case was elevated to the Court in Division to appeal the partial denial of Carmen Copper's administrative refund and that there was no dispute that its sales were not paid for in foreign currency and accounted for under the rules of the Bangko Sentral ng Pilipinas (BSP).

It further posits that the requirement of proof that the sales be paid in foreign currency be accounted for under the rules and regulations of the BSP for purposes of zero-rating is not applicable to BOI-registered enterprises and that BOI-registered enterprises only need to prove the fact of actual exportation of goods.

It adds that the Court in Division erred in disallowing zero-rated sales pertaining to three (3) sales invoices[11] that were considered by the

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11 Exhibits "P-62-e", "P-63-t", and "P-63-u".

Court in Division to be outside the period covered by the refund claim, arguing that for revenue recognition, what should be controlling is the recording of the sales in the 3rd quarter of the 2016 VAT Return of Carmen Copper, and not the date of issuance of the sales invoice.

Carmen Copper claims that the Court in Division's allocation of the valid input taxes to the disallowed zero-rated sales is equivalent to treating the disallowed zero-rated sales as subject to 12% VAT (amounts to an assessment not covered by a letter of authority) and that such allocation is not applicable to 100% BOI-registered exporters.

Lastly, Carmen Copper asserts that the Court in Division erred in not allowing the recall of its witness. It points out that its motion to recall witness was only necessitated when the Court in Division ruled on new issues not disputed by the parties.

CIR's Comment/Opposition:

The CIR contends that Carmen Copper failed to discharge its burden of establishing its claim for refund.

The CIR avers that the Court in Division did not err in not recalling the ICPA to explain his report since the ICPA Report was already thoroughly considered in arriving at the assailed Decision. The additional evidence sought to be presented by Carmen Copper is neither newly discovered nor was omitted through inadvertence or mistake. Neither was it intended to correct evidence previously offered. Its purpose was rather to afford Carmen Copper full opportunity to present its case. However, to the CIR, Carmen Copper was accorded full opportunity to ventilate its case during trial. It argues that Carmen Copper is asking the Court in Division to reopen the trial, which according to jurisprudence, is only allowable before judgment has been rendered.

THE RULING OF THE COURT

The Petitions for Review are denied.

Jurisdiction of the Court

Both Petitions for Review filed by the CIR and Carmen Copper assert that since a decision on the refund claim of Carmen Copper was rendered at the administrative level, the Court in Division's jurisdiction is strictly appellate in nature. Therefore, judicial review is confined to whether the denial was proper given the evidence submitted at the administrative level. To the CIR, since the jurisdiction of the Court in Division is appellate in nature, documents not submitted at the administrative level may no longer be submitted with the Court.

Carmen Copper adds that the case was elevated to the Court in Division to appeal the partial denial of its administrative refund and there was no dispute that its sales were not paid for in foreign currency and accounted for under the rules of the BSP. Thus, its judicial appeal was specifically limited to the denied portion of its claim amounting to ₱36,112,921.13. It claims that it was not proper for the Court in Division to rule on undisputed matters of the refund claim, i.e., requirement of proof of inward remittance of foreign currency proceeds to substantiate the export sales of Carmen Copper.

The Court is not persuaded.

It must be emphasized that the CTA, being a court of record, the cases filed before it are litigated *de novo* and party litigants should prove every minute aspect of its case.[12] Thus, the Court is not precluded from accepting Carmen Copper's evidence assuming these were not presented at the administrative level.[13]

The case of *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*[14] is instructive:

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12 *Commissioner of Internal Revenue v. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

13 *Commissioner of Internal Revenue v. Philippine National Bank*, G.R. No. 180290, September 29, 2014.

14 G.R. Nos. 206079-80, January 17, 2018.

> The power of the Court of Tax Appeals to exercise its appellate jurisdiction does not preclude it from considering evidence that was not presented in the administrative claim in the Bureau of Internal Revenue. Republic Act No. 1125 states that the Court of Tax Appeals is a court of record:
>
> > Section 8. Court of record; seal; proceedings. - The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the forms of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence.
>
> As such, parties are expected to litigate and prove every aspect of their case anew and formally offer all their evidence. No value is given to documentary evidence submitted in the Bureau of Internal Revenue unless it is formally offered in the Court of Tax Appeals. Thus, the review of the Court of Tax Appeals is not limited to whether or not the Commissioner committed gross abuse of discretion, fraud, or error of law, as contended by the Commissioner. As evidence is considered and evaluated again, the scope of the Court of Tax Appeals' review covers factual findings.

Further, in *Commissioner of Internal Revenue v. Univation Motor Philippines,*[15] the Supreme Court pronounced that the taxpayer claimant may present new and additional evidence to the CTA to support its case for tax refund, to wit:

> The law creating the CTA specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence. The paramount consideration remains the ascertainment of truth. Thus, the CTA is not limited by the evidence presented in the administrative claim in the Bureau of Internal Revenue. The claimant may present new and additional evidence to the CTA to support its case for tax refund.
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> Cases filed in the CTA are litigated *de novo* as such, respondent should prove every minute aspect of its case by presenting, formally offering and submitting...to the Court of Tax Appeals all evidence...required for the successful prosecution of its administrative claim. Consequently, the CTA may give credence to all evidence presented by respondent, including those that may not

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15 G.R. No. 231581, April 10, 2019.

> have been submitted to the CIR as the case is being essentially decided in the first instance.

The power of the CTA to exercise its appellate jurisdiction does not preclude it from considering evidence that was not presented in the administrative claim. Accordingly, the Court in Division may give credence to all evidence presented by the taxpayer claimant, irrespective of whether the documents were submitted at the administrative level.

Carmen Copper also posits that the jurisdiction of the Court in Division was limited to the denied portion of its claim amounting to ₱36,112,921.13 at the administrative level. The Court disagrees.

Section 1, Rule 14 of the Revised Rules of the CTA provides:

> RULE 14
> JUDGMENT, ITS ENTRY AND EXECUTION
>
> ...
>
> **In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.**[16]

Drawing from the clear words of Section 1, Rule 14 of the Revised Rules of the CTA, the Supreme Court in *Commissioner of Internal Revenue v. Lancaster Philippines, Inc,*[17] which affirmed the authority of the CTA to rule on issues not raised by the parties:

> The above section [Section 1, Rule 14 of the Revised Rules of the CTA] is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA **even though the parties had not raised the same in their pleadings or memoranda.** The CTA *En Banc* was likewise correct in sustaining the CTA Division's view concerning such matter.

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16 Boldfacing supplied.

17 G.R. No. 183408, July 12, 2017 as cited in *San Carlos Solar Energy, Inc. v. Commissioner of Internal Revenue,* CTA Case No. 9576, February 3, 2021 and *Commissioner of Internal Revenue v. Lapanday Holdings Corp.,* CTA EB Case No. 1888 (CTA Case No. 8932), November 18, 2020.

In addition, *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue,*[18] instructs that a judicial claim before the CTA is a trial *de novo*, to wit:

> [A] review of the nature of a judicial claim before the CTA is in order. In *Atlas Consolidated Mining and Development Corporation v. CIR [Atlas]*, it was ruled –
>
> > ...First, a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an *appeal* by way of petition for review of a previous, unsuccessful administrative claim. Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency *a quo* did not have any reason to deny its claims. In this case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit. **Second, cases filed in the CTA are litigated *de novo*. Thus, a petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA. Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim.**[19]

The Court in Division was therefore justified in ruling on issues not disputed by the parties, i.e., requirement of proof of inward remittance of foreign currency proceeds to substantiate the export sales of Carmen Copper, the same being a related issue necessary to achieve an orderly disposition of the case.

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18 *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*, G.R. No. 207112, December 8, 2015 citing *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007.

19 Boldfacing supplied.

CIR's Petition for Review (CTA EB No. 2480)

Attributability

The CIR in its Petition for Review claims that the law requires that only creditable input taxes that are directly attributable may be refunded and that no attributability was established between the input tax on purchases and the zero-rated sales of Carmen Copper.

The Court does not agree.

Section 112(A) of the National Internal Revenue Code of 1997, as amended (NIRC) does not require that input taxes be directly attributable to the zero-rated sales of the claimant and only requires that the input taxes be attributable to the zero-rated sales. Input taxes whether directly or indirectly attributable to the claimant's zero-rated sales may be the subject of refund under Section 112(A) of the NIRC. Where the law does not distinguish, neither should we.[20]

Section 112(A) of the NIRC recognizes the situation wherein a claimant's input tax is not directly and entirely attributable to its zero-rated sales by allowing the proportionate allocation of the input taxes based on the total volume of sales.[21]

The CIR also failed to point out the specific items of input VAT which should have been denied. The CIR's bare allegations, unsubstantiated by evidence, are not equivalent to proof.[22] It may not overturn the findings of the Court in Division which were made through circumspect examination of the pieces of evidence adduced during the trial.[23]

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20 *Spouses Plopenio v. Department of Agrarian Reform*, G.R. No. 161090, July 4, 2012.

21 *Luzon Hydro Corporation v. Commissioner of Internal Revenue*, G.R. No. 188260, November 13, 2013 citing *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009.

22 *Rogelia R. Gatan and the Heirs of Bernardino Gatan, namely: Rizalino Gatan and Ferdinand Gatan v. Jesusa Vinarao, and Spouses Mildred Cabauatan and Nomar Cabauatan*, G.R. No. 205912, October 18, 2017.

23 *Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*, G.R. No. 188016, January 14, 2015.

Considering the foregoing, the Court in Division committed no reversible error in partially granting Carmen Copper's refund of unutilized excess input VAT for the 3rd quarter of TY 2016 arising from its domestic purchase of goods and services and importations attributable to zero-rated sales amounting to ₱10,585,608.98.

Findings of fact by the Court in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Court in Division are in the best position to analyze the documents presented by the parties.[24]

Carmen Copper's Petition for Review (CTA EB No. 2515)

At the outset, the Court finds no new and compelling averment by Carmen Copper in its Petition for Review. The arguments raised are mere rehash of its previous arguments and were sufficiently acted upon in the assailed Amended Decision and Resolution. In any event, Carmen Copper's arguments shall be discussed to bolster the ruling of the Court in Division.

The BIR's denial letter is valid.

Carmen Copper, in its Petition for Review, admits that there is no categorical requirement in the NIRC with respect to the form of denial letters in VAT refund claims. It claims that the CIR's denial letter lacks sufficient factual and legal bases to properly inform the taxpayer thus is non-compliant with the due process requirement under Section 228[25] of the NIRC.

The Court does not agree.

The Court in Division in the assailed Decision [26] and reiterated in the assailed Resolution,[27] aptly ruled to wit:

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24 *Id.* citing Sea-Land Service Inc. v. Court of Appeals, G.R. No. 122605, April 30, 2001.

25 SEC. 228. *Protesting of Assessment.* - ...The Taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise the assessment shall be void....

26 *Decision dated October 28, 2020,* CTA Case No. 10016, p. 10.

27 *Resolution dated May 17, 2021,* CTA Case No. 10016, p. 7.

Petitioner still insists that the denial letter by respondent is void for failing to state the factual and legal bases as mandated by TRAIN law.

At this juncture, We reiterate in affirmance our discussion in the assailed Decision:

...

> We are not convinced that the BIR's denial letter should be invalidated as petitioner so insisted. While the amendment in the TRAIN Law obligates the Commissioner to state the factual and legal basis for the denial of the refund claim, respondent's denial letter, although not as detailed as petitioner expected, could not be deemed as outright void. We do not find its brevity violative of petitioner's right to due process.
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> At any rate, even if We were to invalidate the denial letter, the same would not automatically result in the grant of petitioner's claim for refund. The Court conducts trial *de novo* and claimants for refund must prove every minute detail of their case. The Supreme Court in *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue [Atlas]* ruled:
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> ...
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> > Under Section 8 of RA 1125, the CTA is described as a court of record. As cases filed before it are litigated *de novo*, party litigants should prove every minute aspect of their cases. No evidentiary value can be given the purchase invoices or receipts submitted to the BIR as the rules on documentary evidence require that these documents must be formally offered before the CTA.

Harmonizing Paragraphs (1) and (5) of Section 106(A)(2)(a) of the NIRC

Carmen Copper claims that the Court in Division erred in citing only paragraph (1) of Section 106(A)(2)(a) of the NIRC as basis for

determining the zero-rated sales of Carmen Copper because there are other instances that would be considered as export sales.

Carmen Copper argues that its direct export sales are zero-rated based on paragraph (5) of Section 106(A)(2)(a) of the NIRC.

Paragraph (5) of Section 106(A)(2)(a) of the NIRC treats export sales of BOI-registered enterprises as VAT zero-rated, as can be found in the definition of 'export sales' under Executive Order (EO) No. 226, which requires in Article 23 thereof the actual shipment of goods from the Philippines to a foreign country. Thus, Carmen Copper argues that the required proof that the sales be paid in foreign currency duly accounted for under the rules and regulations of the BSP is not applicable to BOI-registered enterprises, which only need to prove the fact of actual exportation of goods.

The Court does not agree.

Paragraphs (1) and (5) of Section 106(A)(2)(a) provide:

> SEC. 106. Value-Added Tax on Sale of Goods or Properties. -
>
> (A) Rate and Base of Tax. -
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> ...
>
> (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);
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> ...

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

Contrary to Carmen Copper's position, Article 23 neither provides that proof of actual exportation is the only requirement nor does it provide that payment in foreign currency is not necessary in order for a sale to be considered an export sale.

Additionally, there is nothing in the NIRC that indicates that paragraph (1) of Section 106(A)(2)(a) does not cover actual export sales made by BOI-registered entities.[28]

In *Atlas*,[29] the Supreme Court held that the term 'export sales' is defined in the counterpart provision of Section paragraph (1) of 106(A)(2)(a) in the 1977 Tax Code and is more comprehensively defined in EO No. 226. Conversely, the definition of export sales under EO No. 226 which includes *"export products exported directly by a registered export producer"* contemplates export sales as defined in paragraph (1) of 106(A)(2)(a) of the NIRC, to wit:

> The Tax Code of 1977, as amended, gave a limited definition of export sales, to wit: "The sale and shipment or exportation 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, or foreign currency denominated sales." Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987 - which, in the years concerned (i.e., 1990 and 1992), governed enterprises registered with both the BOI and EPZA, provided a more comprehensive definition of export sales, as quoted below:
>
> > "ART. 23. "Export sales" shall mean the Philippine port F.O.B. value, determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer or the net selling price of export product sold by a registered export

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28 *Resolution dated May 17, 2021*, CTA Case No. 10016, p. 11.
29 G.R. Nos. 141104 & 148763, June 8, 2007.

> producer or to an export trader that subsequently exports the same...

The *Atlas* case thus illustrates that there is no inconsistency between paragraphs (1) and (5) of Section 106(A)(2)(a) of the NIRC.

It is established that a statute must be construed to be consistent with itself and to be harmonious with other laws on the same subject matter to form a complete, coherent, and intelligible system, as expressed in the maxim, "*interpretare et concordare legibus est optimus interpretandi.*"[30]

Therefore, harmonizing paragraphs (1) and (5) of Section 106(A)(2)(a)(1) of the NIRC and quoting the ruling of the Court in Division, We find that:

> [A]s long as there is an actual shipment of goods from the Philippines to a foreign country, **regardless of the incentive the exporter is enjoying**, it must be supported with a certificate of inward remittance or a bank-certified credit memo to show that it was paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP.[31]

Moreover, the non-requirement of proof that the sales were paid in foreign currency duly accounted for under the rules and regulations of the BSP under paragraph (5) of Section 106(A)(2)(a) pertains to export sales of a VAT-registered seller to a BOI-registered buyer as in the case of *Commissioner of Internal Revenue v. Filminera Resources Corporation (Filminera).*[32] In contrast, Carmen Copper is challenging the disallowed zero-rated sales to MRI Trading AG, a non-resident foreign corporation,[33] whose sales were supported by VAT sales invoices but cannot be properly traced to the certificate of inward remittance by the Court in Division.

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30 *La Suerte Cigar and Cigarette Factory v. Court of Appeals*, G.R. Nos. 125346, 136328-29, 144942, 148605, 158197, 165499, November 11, 2014 citing *Philippine Economic Zone Authority v. Green Asia Construction & Development Corporation*, G.R. No. 188866, October 19, 2011.

31 *Resolution dated May 17, 2021*, CTA Case No. 10016, p. 11. Boldfacing supplied.

32 G.R. No. 236325, September 16, 2020.

33 Exhibits "P-62-a" to "P-62-n".

Therefore, the Court in Division correctly required the proof of inward remittance for Carmen Copper's actual export sales pursuant to paragraph (1) of Section 106(A)(2)(a) and Section 112(A) of the NIRC and rightfully disallowed as zero-rated sales the sales of Carmen Copper which cannot be properly traced to the certificate of inward remittance amounting to ₱1,668,174,095.22.

The Court in Division correctly disallowed as zero-rated sales the sales with sales invoices issued outside the period of the claim.

Carmen Copper claims that the sales invoices dated outside the period of the claim[34] must not be disallowed for purposes of determining the amount of valid zero-rated sales since these pertain to its bill and hold sales. It argues that Philippine Accounting Standards (PAS) 18 require the recognition of revenue once there is a transfer of risks and rewards from the seller to the buyer even if the sales invoices are only issued in the subsequent period or periods. It adds that the rule on bill and hold in the mining industry requires that even if the invoice is not yet prepared, so long as the minerals are on hold at the port awaiting shipment, the revenues must already be recognized if the conditions prescribed by the accounting standards for recognition of revenues are already present. Lastly, it points out that the confusion was perhaps brought about by Carmen Copper using a 'provisional invoice' in its billings and emphasizes that whether covered by a provisional invoice or a final invoice, the relevant sale was regarded as sales in the books and VAT returns of Carmen Copper within the period of the claim.

The Court is not convinced.

A taxpayer must not only prove the existence of a zero-rated sale but also that the zero-rated sale was issued a valid invoice. In *Filminera,*[35] the Supreme Court explained that this requirement is in

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34 Exhibits "P-62-e", "P-63-t", and "P-63-u".

35 G.R. No. 236325, September 16, 2020 citing *Western Mindanao Power Corporation v. Commissioner of Internal Revenue,* G.R. No. 181136, June 13, 2012; *Microsoft Philippines, Inc.*

accordance with Sections 113(A) and (B)[36] and 237[37] of the NIRC, in relation to Section 4.113-1(B)[38] of Revenue Regulations No. 16-2005.

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v. Commissioner of Internal Revenue, G.R. No. 180173, April 6, 2011; *J.R.A. Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 171307, August 28, 2013.

36 SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* –

(A) Invoicing Requirements. – A VAT-registered person shall issue:
(1) A VAT invoice for every sale, barter or exchange of goods or properties; and
(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

(B) Information Contained in the VAT Invoice or VAT Official Receipt. – The following information shall be indicated in the VAT invoice or VAT official receipt:
(1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN); and
(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax. *Provided,* That:
(a) The amount of the tax shall be known as a separate item in the invoice or receipt;
(b) If the sale is exempt from value-added tax, the term *"VAT-exempt sale"* shall be written or printed prominently on the invoice or receipt;
(c) If the sale is subject to zero percent (0%) value-added tax, the term *"zero-rated sale"* shall be written or printed prominently on the invoice or receipt;
(d) If the sale involved goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be known on the invoice or receipt; *Provided,* That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.
(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and
(4) In case of sales in the amount of One thousand Pesos (₱1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client.

37 SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* –
(A) Issuance. – All persons subject to an internal revenue tax shall, at the point of each sale and transfer of merchandise or for services rendered valued at One hundred Pesos (₱100) or more, issue duly registered receipts or sales or commercial invoices, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: *Provided, however,* That where the receipt is issued to cover payment made as rentals, compensations, fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client: *Provided, further,* That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer Identification Number (TIN) of the purchaser.
...
The original of each receipt or invoice shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of three (3) years from the close of the taxable year in which such invoice or receipt was issued, while the duplicate shall be kept and preserved by the issuer, also in his place of business, for a like period...
...

38 (B) Information contained in VAT invoice or VAT official receipt. – The following information shall be indicated in VAT invoice or VAT official receipt:

In addition, in *Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue,*[39] the Supreme Court held that when a VAT taxpayer claims to have zero-rated sale of goods, it must substantiate the same with a sales invoice. In the same case, citing *Luzon Hydro Corporation v. Commissioner of Internal Revenue (Luzon Hydro),*[40] the Supreme Court affirmed the denial of a claim for refund or tax credit because the proof of the zero-rated sale consisted of secondary evidence like financial statements. The case of *Luzon Hydro* is instructive, to wit:

> Although the petitioner has correctly contended here that the sale of electricity by a power generation company like it should be subject to zero-rated VAT under Republic Act No. 9136, **its assertion that it need not prove its having actually made zero-rated sales of electricity be presenting the VAT official receipts and VAT returns cannot be upheld. It ought to be reminded that it could not be permitted to substitute such vital and material documents with secondary evidence like financial statements.**[41]

The requirement of substantiating zero-rated sale of goods with a sales invoice within the relevant taxing period is because of the concept of VAT and its collection through the tax credit method. The

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(1) A statement that the seller is a VAT-registered person, followed by his TIN;

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; Provided, That:

(a) The amount of tax shall be shown as a separate item in the invoice or receipt;

(b) If the sale is exempt from VAT, the term "VAT-exempt sale" shall be written or printed prominently on the invoice or receipt;

(c) If the sale is subject to zero percent (0%) VAT, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt;

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rate components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(3) In the case of sales in the amount of One thousand Pesos (P1,000.00) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client, shall be indicated in addition to the information required in (1) and (2) of this Section.

39 G.R. No. 191495, July 23, 2018.

40 G.R. No. 188260, November 13, 2013.

41 Boldfacing supplied.

Supreme Court in *Team Energy Corporation v. Commissioner of Internal Revenue*[42] explained the concept of VAT and the tax credit method, to wit:

> *Panasonic Communications Imaging Corp. v. Commissioner of Internal Revenue (Panasonic)* explained the concept of VAT and its collection through the tax credit method:
>
> > The VAT is a tax on consumption, an indirect tax that the provider of goods or services may pass on to his customers. **Under the VAT method of taxation, which is invoice-based, an entity can subtract from the VAT charged on its sales or outputs the VAT it paid on its purchases, inputs and imports.** For example, **when a seller charges VAT on its sale, it issues an invoice to the buyer, indicating the amount of VAT he charged.** For his part, if the buyer is also a seller subjected to the payment of VAT on his sales, he can use the invoice issued to him by his supplier to get a reduction of his own VAT liability. **The difference in tax shown on invoices passed and invoices received is the tax paid to the government. In case the tax on invoices received exceeds that on invoices passed, a tax refund may be claimed.**
> >
> > Under the 1997 NIRC, if at the end of a taxable quarter the seller charges output taxes equal to the input taxes that his suppliers passed on to him, no payment is required of him. It is when his output taxes exceed his input taxes that he has to pay the excess to the BIR. If the input taxes exceed the output taxes, however, the excess payment shall be carried over to the succeeding quarter or quarters. Should the input taxes result from zero-rated or effectively zero-rated transactions or from the acquisition of capital goods, any excess over the output taxes shall instead be refunded to the taxpayer.
>
> **Our VAT system is invoice-based, *i.e.*, taxation relies on sales invoices or official receipts.** A VAT-registered entity is liable to VAT, or the output tax at the rate of 0% or 10% (now 12%) on the

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42 *Team Energy Corporation (formerly: Mirant Pagbilao Corporation and Southern Energy Quezon, Inc.) v. Commissioner of Internal Revenue*, G.R. No. 197663, March 14, 2018 and *Republic of the Philippines represented by the Bureau of Internal Revenue v. Team Energy Corporation*, G.R. No. 197770, March 14, 2018 citing *Panasonic Communications Imaging Corporation of the Philippines (formerly Matsushita Business Machine Corporation of the Philippines) v. Commissioner of Internal Revenue*, G.R. No. 178090, February 8, 2010.

> gross selling price of goods or gross receipts realized from the sale of services....[43]

Here, Carmen Copper claims that the disallowed zero-rated sale are supported by a provisional invoice and recorded in its books and VAT returns within the period subject of the claim.

However, it is clear in the NIRC and its implementing rules and regulations and the above-cited cases that sale of goods must be evidenced by a sales invoice for tax purposes. It is the documentation used to compute the tax due to the government or amount that may be credited or refunded, *viz: "The difference in tax shown on invoices passed and invoices received is the tax paid to the government. In case the tax on invoices received exceeds that on invoices passed, a tax refund may be claimed."*[44]

Moreover, the provisional invoice issued by Carmen Copper does not suffice since it is only a supplementary document vis-à-vis the sales invoice which is a principal document, as defined under Revenue Regulations No. 18-2012,[45] which implements Section 237 of the NIRC, to wit:

> 2. **PRINCIPAL RECEIPTS / INVOICES -** for purposes of this regulations, it is a written account evidencing the sale of goods and/or services issued to customers in an ordinary course of business which necessary includes the following:
>
> 2.1 **VAT SALES INVOICE -** for purposes of Value Added Tax (VAT) pursuant to Section 106 of the NIRC, as amended, it is a written account evidencing the sale of goods and/or properties issued to customers in an ordinary course of business, whether cash sales or on account (credit) which shall be the basis of the output tax liability of the seller and the input tax claim of the buyer. Cash Sales Invoices and Charge Sales Invoices fall under this definition.

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43 Citations omitted. Boldfacing supplied.

44 *Panasonic Communications Imaging Corporation of the Philippines (formerly Matsushita Business Machine Corporation of the Philippines) v. Commissioner of Internal Revenue*, G.R. No. 178090, February 8, 2010.

45 Regulations in the Processing of Authority to Print (ATP) Official Receipts, Sales Invoices, and Other Commercial Invoices using the On-line ATP System and Providing for the Additional Requirements in the Printing Thereof, issued on December 28, 2012, published on January 3, 2013.

...

3. **SUPPLEMENTARY RECEIPTS / INVOICES** – for purposes of these are also known as **COMMERCIAL INVOICES**. It is a written account evidencing that a transaction has been made between the seller and the buyer of goods and/or services, forming part of the books of accounts of a business taxpayer for recording, monitoring and control purposes.

   It is a document evidencing delivery, agreement to sell or transfer of goods and services which includes but are not limited to delivery receipts, order slips, debit and/or credit memo, purchase order, job order, **provisional/temporary receipt,** acknowledgment receipt, collection receipt, cash receipt, bill of lading, billing statement, statement of account, and any other documents, by whatever name it is known or called, whether prepared manually (handwritten information) or pre-printed/pre-numbered loose-leaf (information typed using excel program or typewriter) or computerized as long as it is used in the ordinary course of business being issued to customers or otherwise.

   Supplementary receipts/invoices, for purposes of Value-Added Tax, are not valid proof to support the claim of Input Taxes by buyers of goods and/or services. [46]

Carmen Copper cannot insist that the recording of the related sale in its books covering the period of the claim even if the invoice is issued in the subsequent period or quarter in light of PAS 18 and the bill and hold method in the mining industry is sufficient basis for the zero-rated sale. As aptly ruled by the Court in Division, since a sales invoice must be dated and issued at the moment the buyer takes title since the sale has been consummated, regardless of the timing of actual delivery following Revenue Memorandum Circular No. 22-2006,[47] a bill and hold revenue recognition method would generally not result

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46 Boldfacing supplied.

47 Revenue Memorandum Circular No. 22-2006 (Clarifying Certain Issues Relating to the Implementation of the Increase in the VAT Rate from 10% to 12% on the Sale of Goods Pursuant to Republic Act No. 9337), provides:

   1. *Tax Treatment of Sale of Goods* – For the sale of goods, a value added tax (VAT) shall be imposed based on the gross sales for a given taxable period. Gross sales shall mean the **total sales from consummated transactions** whether paid or still payable or upon its accrual. Consummation of the transaction shall mean the delivery and acceptance of the goods with the corresponding **issuance of the sales invoice.** (Boldfacing supplied).

to a discrepancy between the invoice date and the recording date in petitioner's books.[48]

The Court notes the accounting standards applicable to Carmen Copper and its argument that there is a timing difference between revenue recognition and issuance of the invoice. However, it is established that in case of difference between the provisions of the NIRC and the rules and regulations implementing the same, on one hand, and the generally accepted accounting principles (GAAP) and the generally accepted accounting standards (GAAS), on the other hand, the provisions of the NIRC and the rules and regulations implementing the NIRC shall prevail.

The Supreme Court in *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*[49] elucidated, to wit:

> The NIRC, just like the tax laws in other jurisdictions, recognizes the important facility provided by generally accepted accounting principles and methods to the primary aim of tax laws to collect the correct amount of taxes....
>
> ...
>
> ...Revenue Memorandum Circular (RMC) No. 22-04, entitled *"Supplement to Revenue Memorandum Circular No. 44-2002 on Accounting Methods to be Used by Taxpayers for Internal Revenue Tax Purposes"* dated 12 April 2004, commands that where there is conflict between the provisions of the Tax Code (NIRC), including its implementing rules and regulations, on accounting methods and the generally accepted accounting principles, the former shall prevail. The relevant portion of RMC 22-04 reads:
>
> **II. Provisions of the Tax Code shall Prevail.**
>
> All returns required to be filed by the Tax Code shall be prepared always in conformity with the provisions of the Tax Code, and the rules and regulations implementing said Tax Code. Taxability of income and deductibility of expenses shall be determined strictly in accordance with the provisions of the Tax Code and the rules and regulations issued implementing said Tax Code. **In case of difference between the provisions of**

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48 *Resolution dated May 17, 2021*, CTA Case No. 10016, p. 9.
49 G.R. No. 183408, July 12, 2017.

> **the Tax Code and the rules and regulations implementing the Tax Code, on one hand, and the generally accepted accounting principles (GAAP) and the generally accepted accounting standards (GAAS), on the other hand, the provisions of the Tax Code and the rules and regulations issued implementing said Tax Code shall prevail.**[50]

Considering the foregoing, the Court in Division correctly disallowed as zero-rated sales of Carmen Copper those with sales invoices issued outside the period of the claim amounting to ₱345,720,843.55.

Refundable amount is limited to the percentage of substantiated zero-rated sales.

Carmen Copper argues that the allocation in the assailed Decision amounts to an assessment not covered by a letter of authority.

This is incorrect.

Section 112 (A) of the NIRC, as implemented by Section 4.112-1 of Revenue Regulations No. 16-2005, as amended, provides for the basis of the computation of the excess input VAT attributable to valid zero-rated sales as correctly made by the Court in Division, to wit:

> SEC. 112. Refunds or Tax Credits of Input Tax. -
>
> > *(A) Zero-rated or Effectively Zero-rated Sales.* - ... 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 transactions, **it shall be allocated proportionately on the basis of the volume of sales**....
>
> SEC. 4.112-1. Claims for Refund/Credit of Input Tax. -

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50 Boldfacing supplied.

> (a) Zero-rated and Effectively Zero-rated Sales of Goods, Properties or Services
>
> ...
>
> Where the taxpayer is engaged in both zero-rated or effectively zero-rated sales and in taxable (including sales subject to final withholding VAT) or exempt sales of goods, 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, **only the proportionate share of input taxes allocated to zero-rated or effectively zero-rat sales can be claimed for refund or issuance of a tax credit certificate.**[51]

In determining the ratio of Carmen Copper's valid zero-rated sales to the total zero-rated sales and applying the same to the excess valid input tax, the Court in Division merely followed Section 112 (A) of the NIRC and Section 4.112-1 of Revenue Regulations No. 16-2005, as amended, in order to calculate the refundable amount of Carmen Copper. Otherwise, the Court in Division will be disregarding the substantiation requirement of Carmen Copper's zero-rated sales, thereby negating its effect on the amount of input VAT claimed for refund.

Carmen Copper's invocation of *Commissioner of Internal Revenue v. Euro-Philippines Airlines Services, Inc.*[52] is misplaced and its assertion that the allocation made by the Court in Division is likewise devoid of merit. It must be emphasized that there was no computation of output VAT liability in the assailed Decision. There was no determination of amount due or in other words, an assessment, that was made in the assailed Decision. The allocation made by the Court in Division is not an 'assessment' as defined by the Supreme Court in *SMI-ED Philippines Technology, Inc. v. Commissioner of Internal Revenue,*[53] as: *"the determination of amounts due from a person obligated to make payments"* and in the context of national internal revenue collection, *"it refers [to] the determination of the taxes due from a taxpayer under the National Internal Revenue Code of 1997."*

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51 Boldfacing supplied.
52 G.R. No. 222436, July 23, 2019.
53 G.R. No. 175410, November 12, 2014.

Accordingly, the Court in Division did not err in determining the ratio of Carmen Copper's valid zero-rated sales to the total zero-rated sales and applying the same to the excess valid input tax to compute for the refundable amount of Carmen Copper.

Carmen Copper failed to justify its motion to recall witness.

The Court has discretion to grant leave for recall of a witness pursuant to Section 9, Rule 132 of the Rules of Court, to wit:

> Sec. 9. *Recalling witness.* – After the examination of a witness by both sides has been concluded, the witness cannot be recalled without leave of the court. The court will grant or withhold leave in its discretion, as the interests of justice may require.

In *Republic v. Sandiganbayan,*[54] the Supreme Court ruled that admission of additional evidence is addressed to the discretion of the Court and provided for circumstances when the remedy of reopening a case was allowed, to wit:

> After the parties have produced their respective direct proofs, they are allowed to offer rebutting evidence only, but it has been held, the court, for good reasons in the furtherance of justice, may permit them to offer evidence upon their original case, and its ruling will not be disturbed in the appellate court where no abuse of discretion appears. **So, generally, additional evidence is allowed when it is newly discovered, or where it has been omitted through inadvertence or mistake, or where the purpose of the evidences is to correct evidence previously offered.**[55]

The above circumstances warranting the grant of petitioner's motion to recall witness are not present in the instant case. As ruled by the Court in Division, it has already considered the ICPA Report in arriving at its Decision and Resolution.[56]

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54 *Republic of the Philippines v. The Hon. Sandiganbayan (Second Division), Ricardo C. Silverio, Ferdinand E. Marco (now substituted by his heirs), Imelda R. Marcos and Pablo P. Carlos, Jr. (now substituted by his heirs),* G.R. No. 159275, August 25, 2010.

55 *Id.* citing Jose Y. Feria and Maria Concepcion S. Noche, Civil Procedure Annotated, 2001 Edition, Vol. I, p. 574, citing *Testacy of Six Lopez, Jose S. Lopez v. Agustin Liboro,* G.R. No. L-1787, August 17, 1948. See also *Wainwright Rivera v. Honorable Associate Justices of the Fourth Division, Sandiganbayan, et al.,* G.R. No. 157824, January 17, 2005. Boldfacing supplied.

56 *Resolution dated May 17, 2021,* CTA Case No. 10016, p. 13.

Nevertheless, the Court is not bound by the findings of the ICPA, as provided in Section 3, Rule 13 of the Revised Rules of the CTA, to wit:

> SEC. 3. *Findings of independent CPA.* - The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents, and secondarily, by the independent CPA. **The findings and conclusions of the independent CPA may be challenged by the parties and shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification.**[57]

Carmen Copper cannot argue that its motion to recall the ICPA was necessitated by the Court in Division ruling on a matter not disputed by the parties. Since the CTA is a court of record, the cases filed before it are litigated *de novo* and party litigants should prove every minute aspect of its case.[58]

Considering the foregoing, the Court in Division committed no reversible error in partially granting Carmen Copper's input VAT refund attributable to its zero-rated sales for the 3rd quarter of taxable year 2016 amounting to ₱10,585,608.98 and denying Carmen Copper's Motion for Reconsideration (with Motion for Leave of Court to Reopen the Case for the Recall of a Witness filed on November 18, 2020.

WHEREFORE, premises considered, the Petition for Review filed by the CIR (CTA EB No. 2480) on June 15, 2021 is **DENIED.** The Petition for Review filed by Carmen Copper (CTA EB No. 2515) on July 15, 2021 is also **DENIED.** Accordingly, the Decision dated October 28, 2020 and the Resolution dated May 17, 2021 in CTA Case No. 10016 are **AFFIRMED.**

SO ORDERED.

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57 Boldfacing supplied.

58 *Commissioner of Internal Revenue v. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

MARIAN IVY F. REYES-FAJARDO
Associate Justice

WE CONCUR:

(With due respect, see Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

(With due respect, I join Dissenting Opinion of Presiding Justice Roman G. Del Rosario)
ERLINDA P. UY
Associate Justice

(With Concurring Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(With due respect, I join Dissenting Opinion of Presiding Justice Roman G. Del Rosario)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the consolidated cases were 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

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 2480** (CTA Case No. 10016)
- versus -	
CARMEN COPPER CORPORATION, Respondent.	

x - x

CARMEN COPPER CORPORATION, Petitioner,	**CTA EB No. 2515** (CTA Case No. 10016)
	Present: **DEL ROSARIO**, P.J., **UY**, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, and **CUI-DAVID**, **FERRER-FLORES**, JJ.
- versus -	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 10 2023 3:50pm

x - x

DISSENTING OPINION

DEL ROSARIO, P.J.:

With due respect, I withhold my assent to the *ponencia* which denies for lack of merit the Petition for Review filed by Carmen Copper Corporation (CCC).

Upon review and consistent with the position taken by the Court *En Banc* in **CTA EB No. 2428**, I submit that CCC's Petition for Review should be **partially granted** and the case be remanded to the Court in Division for the full determination of CCC's refundable amount.

I.

CCC is not required to prove that its direct export sales to foreign entities were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP since its sales are considered as export sales under Executive Order No. 226

Sections 106(A)(2)(a)(1) and (5) of the NIRC of 1997, as amended, provides:

> "SEC. 106. *Value-Added Tax on Sale of Goods or Properties.*
>
> (A) Rate and Base of Tax. - 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)**;
>
> x x x x x x x x x
>
> (5) **Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws**. x x x" (*Boldfacing supplied*)

The *ponencia* effectively rules that there is no distinction between paragraph (1) of Section 106(A)(2)(a) *and* paragraph (5) of the same Section anent the requirements that: (a) there be actual shipment of goods from the Philippines to a foreign country; and, (b) such shipment **must be supported by evidence showing that it was paid for in**

acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP. I humbly submit that this interpretation is inconsistent with what the law specifically provides.

Parenthetically, Section 106(A)(2)(a)(1) and Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, specifies two (2) different categories of "export sales". **When an exporter who is not registered with the Board of Investments (BOI)** sells and actually ships goods from the Philippines to a foreign country, such export sale falls under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, as this is the provision that applies to any and all kinds of exportations. However, **if the exporter is BOI-registered**, there is no necessity to prove that the shipment was paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP. This category of exportation falls under the definition of Article 23 of the Omnibus Investment Code (OIC), in relation to Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended.

Otherwise stated, the distinction between a BOI-registered exporter and a non-BOI registered exporter is provided for by the law itself. Reasonable classification is permitted by the Constitution, as one class may be treated differently from another where the groupings are based on reasonable and real distinctions.[1]

In Section 4.106-5(a)(5) of RR No. 16-2005, sales by a VAT-registered supplier to a BOI-registered manufacturer/producer whose products are 100% exported are also considered as export sales. *Commissioner of Internal Revenue vs. Filminera Resources Corporation*[2] also affirms that sales of a VAT-registered supplier to a BOI-registered enterprise are transactions considered as export sales under the OIC, thus, a zero-rated sale under Section 106 (A)(2)(a)(5) of the NIRC of 1997, as amended.

While Article 23 of the OIC treats the sale of a VAT-registered supplier to a BOI-registered enterprise (that is located in the Philippines) as an "export sale", it did not intend to mean that the sale of the same BOI-registered enterprise to a foreign buyer would not be considered as an "export sale".

Clearly, **sales by and to a BOI-registered enterprise** are transactions considered as export sales under the OIC, hence, subject to VAT at 0% under Section 106 (A)(2)(a)**(5)** of the NIRC of 1997, as

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[1] *Zomer Development Company, Inc. vs. Special Twentieth Division of the Court of Appeals, et al.*, G.R. No. 194461, January 7, 2020.
[2] G.R. No. 236325, September 16, 2020.

amended. When either the buyer or the seller is a BOI-registered export enterprise, the sales transaction falls under the ambit of Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended.

It is elementary rule in statutory construction that when the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.[3] **A reading of Section** 106(A)(2)(a)**(5) of the NIRC of 1997, as amended, shows that there is no requirement for the refund claimant to prove that the export sale was 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 BSP, as such requirement only exists in Section** 106(A)(2)(a)**(1) of the NIRC of 1997, as amended**.

This interpretation is likewise supported by **Section 112(A) of the NIRC of 1997**, as amended, which is the basis for CCC's refund claim of excess and unutilized input VAT. It 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)(1), (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." (*Boldfacing and underlining supplied*)

Evidently, for "export sales" falling under Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, there is no

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[3] *Commissioner of Internal Revenue vs. Philex Mining Corp.*, G.R. No. 230016, November 23, 2020.

requirement that the foreign currency proceeds thereof had been duly accounted for in accordance with the rules and regulations of the BSP.

In her Concurring Opinion, Associate Justice Ma. Belen M. Ringpis-Liban opines that "direct export sales" or the exportation of products directly by a BOI-registered export producer, are still covered by the requirement that the refund claimant must prove that the sale was paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended. However, as readily admitted in the said Opinion, direct exports of a BOI-registered export enterprise fall under Article 23 of the OIC, for which Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, is the applicable provision of law. **As oft-repeated, there is nothing in Section 106(A)(2)(a)(5) and Section 112(A) of the NIRC of 1997, as amended, which suggest, even remotely, that payment for export sales under the OIC must be in accordance with the rules and regulations of the BSP**. When the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation; there is only room for application.[4]

In sum, CCC proved that it is a BOI-registered enterprise under BOI Certificate of Registration No. 2006-158.[5] Thus, CCC's direct export sales to foreign entities being actual shipments of goods outside the Philippines, and CCC being a BOI-registered enterprise, qualify as "export sales" under Article 23 of the OIC and are VAT zero-rated under **Section** 106(A)(2)(a)**(5)** of the NIRC of 1997, as amended. CCC, as a BOI-registered enterprise, rightfully invoked **Section** 106(A)(2)(a)**(5)** of the NIRC of 1997, as amended, ***sans* necessity to present evidence anent the substantiation requirements for export sales required under Section** 106(A)(2)(a)**(1) of the NIRC of 1997, as amended**.

II.

CCC's zero-rated sales with VAT invoices dated outside the period of claim may be allowed

The *ponencia* rules that the Court in Division was correct in disallowing **VAT Invoices dated outside the period of claim** in accordance with Sections 113(A) and (B), and 237 of the NIRC of

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[4] *Cynthia S. Bolos vs. Danilo T. Bolos*, G.R. No. 186400, October 20, 2010.
[5] Exhibit "P-4", Division Docket, p. 293.

1997, as amended, in relation to Section 4.113-1(B) of RR No. 16-2005, as amended.

As pointed out by CCC in its Motion for Reconsideration of the assailed Resolution dated May 17, 2021 filed before the Court in Division:

> "x x x The use of provisional invoice in the mining industry is not unusual as the valuation of the minerals from the point of shipment to destination will necessarily change due to the impact of the elements to the mineral while on voyage as well as the market price. The actual value upon the minerals' arrival at the port of destination may either be lower or higher depending on these factors. Nevertheless, the ICPA sufficiently explained the mechanics of the billing system in the mining industry on the procedures it performed on review of the zero-rated sales on pages 3 to 4 of his ICPA Report. The issuance of a Final Invoice should also disabuse any suspicion that any adjustments to the provisional invoice is not captured in the books and the tax returns. As can be observed from the ICPA Report, whether covered by Provisional Invoice or Final Invoice, the same were regarded as sales in the books and in the VAT returns."[6]

CCC's contention finds support in the case of *Commissioner of Internal Revenue vs. Philex Mining Corporation*,[7] where the Court *En Banc* ruled that a VAT invoice dated outside the period is not fatal to the refund claim, in consideration of the system employed in the mining industry, to wit:

> "As correctly found by the Court in Division, it was established that the shipment date in the Bills of Lading and Provisional Invoices is the date of sale. **The Final Invoices bearing dates later than the dates of shipment does not remove the fact that the sales and actual shipment of goods from the Philippines to a foreign country, as contemplated under Section 106 (A)(2)(a)(1) of the National Internal Revenue Code (NIRC) of 1997, as amended, had actually transpired during the period of claim. The final invoices are merely additional evidence to support respondent's claimed zero-rated sales, having been issued by respondent in reference to sales transactions consummated during the period of claim**.
>
> As stated in the assailed Decision, aside from the provisional invoice issued by respondent upon shipment, a final invoice was issued after the contracting parties reached an agreement regarding the final settlement of weighs, assays and quotations or final value of the shipment which is done after arrival of the shipment at the port of loading. Thus, **the Final Invoices dated outside the period of claim do not cover separate sales transactions for different taxable periods, but actually relates to the sales transactions of**

[6] Division Docket, p. 406.
[7] CTA EB No. 1525 (CTA Case No. 8808), April 2, 2018.

> **respondent during the period of claim as indicated in the provisional invoices, bills of lading and export declarations**." (*Boldfacing supplied*)

Owing to the exigencies in the mining industry, VAT invoices are issued after the final determination of the quantity and price of the exported minerals, which may fall outside the period of claim. **As aforestated, the date appearing on the Bill of Lading, Airway Bill or export declarations, may be used by the Court to establish that the export sales occurred during the period of claim, and not rely solely on the date appearing on the VAT invoices**.

ALL TOLD, I *VOTE* to partially grant Carmen Copper Corporation's Petition for Review and remand the case to the Court in Division for the full determination of its refundable amount in accordance with the foregoing disquisition.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

CARMEN COPPER CORPORATION,
Respondent.

CTA EB NO. 2480
(CTA Case No. 10016)

x - x

CARMEN COPPER CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2515
(CTA Case No. 10016)

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

Promulgated:
JAN 10 2023 3:50 p

x- x

CONCURRING OPINION

RINGPIS-LIBAN, *J.*:

I concur with the *ponencia* that Carmen Copper is required to prove that its direct export sales to foreign entities were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas ("BSP").

The National Internal Revenue Code ("NIRC") of 1997, as amended, provides that export sales by value-added tax ("VAT") registered persons shall be subject to zero percent (0%) rate. Export sales is defined under Section 106(A)(2)(a)[1] as to include the following:

> "SEC. 106. **Value-Added Tax on Sale of Goods or Properties.** -
>
> xxx xxx xxx
>
> (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 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);
>
> (3) Sale of raw materials or packaging materials to export-oriented enterprise whose export sales exceed seventy percent (70%) of total annual production;
>
> (4) Sale of gold to the *Bangko Sentral ng Pilipinas* (BSP);

[1] Before the amendment of Republic Act (RA) No. 10963 or the TRAIN Law.

> (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..."

In relation thereto, Section 112 of the NIRC of 1997, as amended, allows the refund or tax credit of unutilized excess input VAT attributable to zero-rated or effectively zero-rated sales, subject to the condition that the acceptable foreign currency exchange proceeds had been duly accounted for in accordance with the rules and regulations of the BSP, in export sales falling under Sections 106(A)(2)(a)(1) and (2), to wit:

> "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)(1), (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."[2]

Carmen Copper argues that since its direct export sales are zero-rated based on Section 106(A)(2)(a)(5), and not under Sections 106(A)(2)(a)(1) and (2)

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[2] *Emphasis and underscoring supplied.*

of the NIRC of 1997, as amended, the requirement above need not be complied with.

At first glance, this may seem sound. However, a plain reading of the pertinent provisions of Executive Order ("EO") No. 226[3] show that export sales are classified into two (2) categories, the direct export sales and the constructive export sales. Articles 23 and 77(2) of EO No. 226 are reproduced hereunder:

> "ARTICLE 23. 'Export sales' shall mean the Philippine port F.O.B. value, determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of exports products exported directly by a registered export producer or the net selling price of export product sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same: Provided, That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents: *Provided, further*, That without actual exportation the following shall be considered constructively exported for purposes of this provision: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) sales to export processing zones; (3) sales to registered export traders operating bonded trading warehouses supplying raw materials used in the manufacture of export products under guidelines to be set by the Board in consultation with the Bureau of Internal Revenue and the Bureau of Customs; (4) sales to foreign military bases, diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products <u>whether paid for in foreign currency or not</u>: *Provided, further*, That export sales of registered export trader may include commission income: and *Provided, finally*, That exportation of goods on consignment shall not be deemed export sales until the export products consigned are in fact sold by the consignee.
>
> Sales of locally manufactured or assembled goods for household and personal use to Filipinos abroad and other non-residents of the Philippines as well as returning Overseas Filipinos under the Internal Export Program of the government and <u>paid for in convertible foreign currency inwardly remitted through the Philippine banking systems</u> shall also be considered export sales."[4]
>
> "ARTICLE 77. Tax Treatment of Merchandise in the Zone. —

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3 The Omnibus Investments Code of 1987, August 13, 1987.
4 *Underscoring supplied.*

xxx xxx xxx

(2) Merchandise purchased by a registered zone enterprise from the customs territory and subsequently brought into the zone, shall be considered as export sales and the exported thereof shall be entitled to the benefits allowed by law for such transaction."

From the foregoing, the classification of export sales (by the nature of the sales transaction) under EO No. 226 may be summarized as follows:

1) direct export sales
   a. exports products exported directly by a registered export producer; and
   b. sales of locally manufactured or assembled goods for household and personal use to Filipinos abroad and other non-residents of the Philippines as well as returning Overseas Filipinos under the Internal Export Program of the government.

2) constructive export sales
   a. export product sold by a registered export producer to another export producer or to an export trader that subsequently and actually exports the same;
   b. sales to bonded manufacturing warehouses of export-oriented manufacturers;
   c. sales to export processing zones
   d. sales to registered export traders operating bonded trading warehouses supplying raw materials used in the manufacture of export products under Board of Investment (BOI) guidelines;
   e. sales to foreign military bases, diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products; and
   f. merchandise purchased by a registered zone enterprise from the customs territory and subsequently brought into the zone.

The classification above is further supported by the inclusion of the phrase "whether paid for in foreign currency or not" to sales to foreign military bases, diplomatic missions and other agencies and/or instrumentalities granted tax immunities, which intimates that Congress intended to group the said sales as constructive export sales (notwithstanding the fact that they may be actually

directly exported), and be exempted from the BSP rules on foreign currency. Conversely, the inclusion of the phrase "paid for in convertible foreign currency inwardly remitted through the Philippine banking systems" to sales of locally manufactured or assembled goods for household and personal use to Filipinos abroad and other Filipino non-residents indicates their treatment as direct export sales.

Incidentally, the phrase "paid for in foreign currency" was not conjugated to "exports products exported directly by a registered export producer". And yet, it would be too much of a stretch to construe that Congress intended the absence of the said phrase on direct export sales. On the contrary, Congress may have been well aware the same is superfluous for direct export sales are necessarily paid using foreign currency.

Thus, it is inaccurate to say that the condition found in Section 112 of the NIRC of 1997, as amended, does not apply to export sales falling under Section 106(A)(2)(a)(5). The correct conclusion is that the BSP rules on foreign currency exchange is not required for constructive export sales under EO No. 226, but not those which constitute direct export sales.

Indeed, Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, clearly states that "the sale and actual shipment of goods from the Philippines to a foreign country" (*i.e.,* referring to direct export sales) should be paid for in acceptable foreign currency and accounted for in accordance with BSP rules. By adding Section 106(A)(2)(a)(5) in the enumeration of export sales under the Tax Code, the lawmakers in all likelihood acknowledged the existence of constructive export sales, and the inapplicability of using foreign currency on these transactions.

Interpretare et concordare leges legibus, est optimus interpretandi modus. The best method of interpretation is that which makes laws consistent with other laws. To say that direct export sales under Article 23 of EO No. 226 [and consequently Section 106(A)(2)(a)(5)] are exempt from BSP rules on foreign currency exchange, will contradict the provision of Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended. Hence, such interpretation should be frowned upon.

One final note. A Bill of Lading/Airway Bill is not sufficient proof of sale. In a Bill of Lading, the carrier acknowledges the receipt of the goods to be shipped by the shipper, and at the same time, the carrier agrees to transport and deliver the goods at a specified place to the consignee.[5] In real life applications, the shipper may or may not be the seller of the goods to be shipped, while the consignee may or may not be the buyer of the goods. Therefore, the bill of lading and the information/details therein may not reflect a particular sales transaction entered into by a seller and its buyer. The sale of goods between the buyer and

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[5] *See* Keng Hua Paper Products Co. Inc. v. Court of Appeals, G.R. No. 116863, February 12, 1998; Aniceto G. Saludo, Jr. v. Hon. Court of Appeals, G.R. No. 95536, March 23, 1992.

the seller is evidenced by a sales invoice[6] while only the actual shipment of said goods can be proved by Bills of Lading/Airway Bills.

From all the foregoing, I vote to **AFFIRM** the Decision dated October 28, 2020 and the Resolution dated May 17, 2021 in CTA Case No. 10016.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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6 *See* Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue, G.R. No. 191495. July 23, 2018.