REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

OCEANAGOLD (PHILIPPINES), INC.,
Respondent.

CTA *EB* NO. 2552
(CTA Case Nos. 9207, 9277 & 9416)

x==============================x

OCEANAGOLD (PHILIPPINES), INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 2571
(CTA Case Nos. 9207, 9277 & 9416)

Members:

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

Promulgated:
MAY 12 2023 4:25 pm

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DECISION

CUI-DAVID, J.:

This resolves the following:

(i) *Petition for Review* filed on December 9, 2021 by the Commissioner of Internal Revenue ("**CIR**") in CTA *EB*

No. 2552 seeking that the *Amended Decision* dated February 3, 2021, [1] ("**assailed *Decision***") and *Resolution* dated October 21, 2021, [2] ("**assailed *Resolution***") rendered by the Court in Division be reversed and set aside, and a new one be entered denying the entire claim for refund; and,

(ii) *Petition for Review* filed on March 18, 2022 by Oceanagold (Philippines), Inc. ("**Oceanagold**") in CTA *EB* No. 2571 likewise seeking that the assailed *Amended Decision* and *Resolution* be reversed and set aside and that judgment be rendered declaring Oceanagold as entitled to refund or issuance of tax credit certificate ("**TCC**") in the aggregate amount of ₱163,882,577.17, or the reduced amount of ₱130,543,596.41 as recommended by the Independent Certified Public Accountant ("**ICPA**"), representing its unutilized input Value Added Tax ("**VAT**") attributable to zero-rated sales for the 3rd and 4th Quarters of the taxable year ("**TY**") 2013 and 1st Quarter of TY 2014.

The dispositive portions of the assailed *Amended Decision* and *Resolution* are as follows:

***Amended Decision* dated February 3, 2021**

> "**WHEREFORE,** premises considered, respondent's Motion for Partial Reconsideration (Re: Decision promulgated on June 24 [sic] 2020) is **DENIED** for lack of merit. On the other hand, petitioner's Motion for Reconsideration (of the Decision dated July 24, 2020) is **PARTIALLY GRANTED**.
>
> Accordingly, the dispositive portion of the Decision dated July 24, 2020, is hereby amended to read as follows:
>
> > "**WHEREFORE**, in light of the foregoing considerations, the [*Petition*] *for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is **DIRECTED TO REFUND** to petitioner the amount of **₱32,319,333.57**, representing the latter's unutilized excess input VAT arising from its domestic purchases and importation of goods (other than capital goods), domestic purchases of services, and purchases of capital goods which are

[1] Penned by Associate Justice Ma. Belen M. Ringpis-Liban with the concurrence of Associate Justices Erlinda P. Uy and Maria Rowena Modesto-San Pedro.
[2] *Id.*

attributable to zero-rated sales for the 3rd and 4th quarters of TY 2013 and 1st quarter of TY 2014.

SO ORDERED.'

SO ORDERED."[3]

***Resolution* dated October 21, 2021**

"**WHEREFORE**, premises considered petitioner's Motion for Reconsideration [of Amended dated February 3, 2021] (sic) with Motion to Present Additional Evidence and respondent's Motion for Partial Reconsideration (Re: Amended Decision promulgated February 3, 2021) are both **DENIED** for lack of merit.

SO ORDERED."[4]

THE PARTIES

The CIR is the duly appointed Commissioner of Internal Revenue vested with the authority to act as such, including, *inter alia,* the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code ("**NIRC**"), or other laws or portions thereof administered by the Bureau of Internal Revenue ("**BIR**").[5] He holds office at the BIR National Office Building, Diliman, Quezon City.[6]

Oceanagold is a corporation organized and existing under the laws of the Philippines with office address at 2nd Floor Carlos J. Valdes Building, 108 Aguirre Street, Legaspi Village, 1229 Makati City, Philippines.[7]

Oceanagold was formerly known as "Australasian Philippines Mining, Inc." before the change in its corporate name to "OceanaGold (Philippines), Inc." effective April 28, 2007. It is engaged in large-scale exploration, development, and utilization of mineral resources such as gold, silver, and copper.[8] It is a VAT-registered taxpayer with a BIR Certificate

[3] CTA *EB* No. 2552, *EB* Docket, p. 35.
[4] *Id.*, p. 44.
[5] CTA *EB* No. 2552, *EB* Docket, p. 2; Section 4, NIRC of 1997, as amended.
[6] *Id.*, p. 2.
[7] Pre-Trial Order, CTA Case No. 9207, Division Docket, Vol. 3, p. 1678; CTA *EB* No. 2571, *EB* Docket, p.7.
[8] CTA *EB* No. 2571, *EB* Docket, p. 275.

of Registration No. OCN 8RC0000048136 with Taxpayer's Identification Number ("**TIN**") 004-870-171-000.[9]

THE FACTS

Oceanagold is engaged in the zero-rated sale of minerals such as gold and copper during the 3rd and 4th Quarters of TY 2013 and 1st Quarter of TY 2014.[10]

It filed three (3) administrative claims for refund or issuance of TCC with the Excise Large Taxpayers Audit Division ("**ELTAD**") I of the BIR for its unutilized input VAT attributable to zero-rated sales for the following periods, to wit:

PERIOD	DATE FILED	TOTAL AMOUNT CLAIMED
3rd Quarter, TY 2013[11]	June 29, 2015	₱ 191,613,645.17
4th Quarter, TY 2013[12]	September 30, 2015	171,044,944.03
1st Quarter, TY 2014[13]	March 28, 2016	63,632,822.81
TOTAL		₱ 426,291,412.01

In relation to the administrative claim for refund or issuance of TCC for its unutilized input VAT attributable to zero-rated sales for the *3rd Quarter of TY 2013*, Oceanagold received, on December 16, 2015, a Letter dated December 15, 2016, from ELTAD I of the BIR partially granting its administrative application for input VAT refund in the aggregate amount of ₱104,490,532.68, to wit:[14]

> Relative thereto, please be informed that after verification of the documents you submitted to support the said claim, the amount of PESOS: ONE HUNDRED FOUR MILLION FOUR HUNDRED NINETY THOUSAND FIVE HUNDRED THIRTY-TWO PESOS & 68/100 (₱104,490,532.68) was recommended for issuance of Tax Credit Certificate, computed as follows:

PARTICULAR	BIR	BOC	TOTAL
Total Applied for TCC	₱166,814,242.83	₱24,799,402.64	₱191,613,645.17
Less: Disallowance	73,033,941.15	14,089,171.64	87,123,112.79
NET REFUNDABLE AMOUNT	₱ 93,780,301.68	₱10,710,231.00	₱104,490,532.68

[9] CTA *EB* No. 2571, *EB* Docket, p. 282.
[10] *Petition for Review*, CTA *EB* No. 2571, *EB* Docket, p.11.
[11] Exhibits "P-31" to "P-31.3", CTA Case No. 9207, Division Docket, Vol. 3, pp. 2345-2353.
[12] Exhibits "P-32" to "P-32.3", *Id.*, pp. 2354-2362.
[13] Exhibits "P-47" to "P-47.3", *Id.*, pp. 2530-2536.
[14] Pre-Trial Order, *Id.*, p. 1678.

In relation to the administrative claim for refund or issuance of a tax credit certificate for its unutilized input VAT attributable to zero-rated sales for the *4th Quarter of TY 2013*, Oceanagold received, on February 3, 2016, a *Letter* from ELTAD I of the BIR partially granting its application for input VAT refund in the aggregate amount of ₱102,745,127.18, to wit:[15]

> Relative thereto, please be informed that after verification of the documents you submitted to support the said claim, the amount of PESOS: ONE HUNDRED TWO MILLION SEVEN HUNDRED FORTY-FIVE THOUSAND ONE HUNDRED TWENTY SEVEN PESOS & 18/100 (₱102,745,127.18) was recommended for issuance of Tax Credit Certificate, computed as follows:

PARTICULAR	BIR	BOC	TOTAL
Total Applied for TCC	₱149,006,517.00	₱22,038,427.03	₱171,044,944.03
Less: Disallowance	64,011,914.82	4,287,902.03	68,299,816.85
NET REFUNDABLE AMOUNT	₱84,994,602.18	₱17,750,525.00	₱102,745,127.18

In relation to the administrative claim for refund or issuance of tax credit for its unutilized input VAT attributable to zero-rated sales for the *1st Quarter of TY 2014*, Oceanagold received, on July 7, 2016, a Letter dated June 30, 2016 from ELTAD I partially granting its application for input VAT refund in the aggregate amount of ₱55,173,175.28, to wit:[16]

> Relative thereto, please be informed that after verification of the documents you submitted to support the said claim, the amount of PESOS: FIFTY FIVE MILLION ONE HUNDRED SEVENTY THREE THOUSAND ONE HUNDRED SEVENTY FIVE & 28/100 only (₱55,173,175.28) was recommended for issuance of Tax Credit Certificate, computed as follows:

PARTICULAR	BIR	BOC	TOTAL
Total Applied for TCC	₱36,266,633.81	₱27,366,189.00	₱63,632,822.81
Less: Disallowance	8,396,064.53	63,583.00	8,459,647.73
NET REFUNDABLE AMOUNT	₱27,870,569.28	₱27,302,606.00	₱55,173,175.28

[15] *Id.*, pp. 1678-1679.
[16] *Id.*, p. 1679.

On November 24, 2015, Oceanagold filed a *Petition for Review* before the Court in Division docketed as **CTA Case No. 9207**, which sought the refund or tax credit of ₱163,882,577.17, representing its unutilized input VAT attributable to zero-rated sales for the 3rd Quarter of TY 2013.[17] The case was initially raffled to the Court's First Division.

On February 26, 2016, Oceanagold filed another *Petition for Review* before the Court in Division, docketed as **CTA Case No. 9277**, which sought the refund or tax credit of ₱68,299,816.85, representing its unutilized input VAT attributable to zero-rated sales for the 4th Quarter of TY 2013.[18] The case was initially raffled to the Court's First Division.

On April 8, 2016, Oceanagold filed, in CTA Case No. 9207, an *Omnibus Motion: A. To Admit Attached Amended Petition for Review; B. To Consolidate CTA Case Nos. 9207 and 9277; and C. To Defer Pre-Trial Conference.*[19] On the same date, it filed, in CTA Case No. 9277, a *Motion to Consolidate CTA Case Nos. 9207 and 9277.*[20]

In the *Resolution* dated April 14, 2016, the Court ordered the CIR to file his *Comment* on Oceanagold's *Omnibus Motion* within ten (10) days from notice thereof. However, despite notice, the CIR failed to file his *Comment.*

The Court in Division issued a *Resolution* dated May 30, 2016, granting the *Motions to Consolidate* filed by Oceanagold in CTA Case Nos. 9207 and 9277, and the *Motion to Admit Attached Amended Petition for Review* and *Motion to Defer Pre-Trial Conference* in CTA Case No. 9207.[21]

The CIR filed an *Amended Answer* on June 15, 2016,[22] which the Court in Division noted in its *Resolution* dated June 21, 2016.[23]

The CIR filed a *Consolidated Pre-Trial Brief* on July 7, 2016,[24] which the Court in Division noted in its *Minute Resolution* dated July 11, 2016.[25]

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[17] CTA Case No. 9207, Division Docket, Vol. 1, pp. 10-78.
[18] CTA Case No. 9277, Division Docket, pp. 10-89.
[19] CTA Case No. 9207, Division Docket, Vol. 1, pp. 98-174.
[20] CTA Case No. 9277, Division Docket, pp. 104-107.
[21] CTA Case No. 9207, Division Docket, Vol. 1, pp. 185-186.
[22] *Id.*, pp. 187-192.
[23] *Id.*, p. 196.
[24] *Id.*, pp. 197-200.
[25] *Id.*, p. 202.

On August 5, 2016, Oceanagold filed a third *Petition for Review* before the Court in Division, docketed as **CTA Case No. 9416**, which sought the refund or tax credit of ₱8,459,647.53, representing its unutilized input VAT attributable to zero-rated sales for the 1st Quarter of TY 2014.[26]

On August 26, 2016, Oceanagold filed, in CTA Case Nos. 9207 and 9277, an *Omnibus Motion: A. To Consolidate CTA Case Nos. 9207 and 9277 with CTA Case No. 9416; and B. To Defer Pre-Trial Conference.*[27] On the same date, it filed, in CTA Case No. 9416, a *Motion to Consolidate.*[28]

On September 1, 2016, the Court in Division granted, in CTA Case No. 9416, Oceanagold's *Motion to Consolidate.*[29] On the same date, it filed its *Pre-Trial Brief for Petitioner.*[30]

On September 2, 2016, the Court in Division granted Oceanagold's *Omnibus Motion: A. To Consolidate CTA Case Nos. 9207 and 9277 with CTA Case No. 9416; and B. To Defer Pre-Trial Conference.*[31]

With regard to CTA Case No. 9416, the CIR filed a *Motion to Admit Attached Answer* on September 29, 2016,[32] which the Court in Division granted in its *Resolution* dated October 14, 2016.[33] Thus, the attached *Answer* was admitted.

On October 25, 2016, the CIR filed a *Consolidated Pre-Trial Brief*[34] and a *Compliance* elevating the BIR Records,[35] which the Court in Division noted in a *Minute Resolution* dated November 3, 2016.[36]

Oceanagold filed its *Consolidated Pre-Trial Brief for Petitioner* on November 18, 2016.[37]

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[26] CTA Case No. 9416, Division Docket, pp. 10-82.
[27] CTA Case No. 9207, Division Docket, Vol. 1, pp. 204-208.
[28] CTA Case No. 9416, Division Docket, pp. 86-90.
[29] *Id.*, p. 94.
[30] CTA Case No. 9207, Division Docket, Vol. 1, pp. 210-226.
[31] CTA Case No. 9207, Division Docket, Vol. 2, pp. 819-820.
[32] *Id.*, pp. 829-840.
[33] *Id.*, pp. 847-848.
[34] *Id.*, pp. 849-852.
[35] *Id.*, pp. 854-856.
[36] *Id.*, p. 858.
[37] *Id.*, pp. 875-894.

The Pre-Trial Conference was held on November 24, 2016,[38] and the parties filed their *Joint Stipulation of Facts and Issues* on December 13, 2016,[39] which the Court in Division approved on December 22, 2016.[40]

The *Pre-Trial Order* was issued on January 19, 2017.[41]

Thereafter, the trial of the consolidated cases ensued.

Oceanagold presented both documentary and testimonial evidence. It offered the testimonies of (1) Josefina Mallari, its Finance Manager;[42] and (2) Edward L. Roguel, the Court-commissioned ICPA.[43]

On August 10, 2017, Oceanagold filed its *Formal Offer of Evidence* (**"FOE"**),[44] and the CIR filed a *Comment* thereon on August 18, 2017.[45]

The Court in Division resolved Oceanagold's FOE in its *Resolution* dated December 1, 2017.[46] Disagreeing with some of the Court in Division's denial of exhibits, it filed, on December 20, 2017, an *Omnibus Motion: I. For Partial Reconsideration (of the Resolution dated December 1, 2017); II. To Note Various Manifestations, Corrections, and Clarifications; and III. To Set Commissioner's Hearing.*[47]

Sans the CIR's comment on the *Omnibus Motion*,[48] the Court in Division granted, in a *Resolution* dated March 27, 2018, Oceanagold's *Motions to Note Various Manifestations, Corrections, and Clarifications and to Set Commissioner's Hearing.*[49]

In a *Resolution* dated July 5, 2018, the Court in Division granted Oceanagold's *Motion for Partial Reconsideration (of the Resolution dated December 1, 2017)*, thereby admitting in evidence certain exhibits it previously offered.[50]

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[38] CTA Case No. 9207, Division Docket, Vol. 3, pp. 1629-1631.
[39] *Id.*, pp. 1641-1661.
[40] *Id.*, p. 1665.
[41] *Id.*, pp. 1677-1699.
[42] Exhibits "P-50" to "P-50.1", CTA Case No. 9207, Division Docket, Vol. 2, pp. 903-933.
[43] Exhibits "P-52" to "P-50.1", CTA Case No. 9207, Division Docket, Vol. 3, pp. 1760-1763.
[44] CTA Case No. 9207, Division Docket, Vol. 3, pp. 1792-1832.
[45] *Id.*, pp. 2627-2629.
[46] CTA Case No. 9207, Division Docket, Vol. 4, pp. 2640-2643.
[47] *Id.*, pp. 2679-2687.
[48] *Id.*, p. 2695.
[49] *Id.*, pp. 2703-2704.
[50] *Id.*, pp. 2713-2716.

For his part, the CIR likewise presented both documentary and testimonial evidence. He offered the testimonies of (1) Revenue Officer ("**RO**") Cletofel V. Parungao and (2) RO Rona B. Marcellano.[51]

The CIR filed a FOE on September 10, 2018.[52] Oceanagold filed its *Comment* thereon on September 28, 2018.[53]

In the *Order* dated October 1, 2018, the consolidated cases were transferred from the First Division to the Third Division.[54]

In a *Resolution* dated January 29, 2019, the Court in Division admitted respondent's exhibits.[55]

On March 22, 2019, within the extended period,[56] Oceanagold filed its *Memorandum*,[57] while the CIR filed his *Memorandum*, also within the extended period,[58] on March 28, 2019.[59] In a *Resolution* dated April 2, 2019,[60] the consolidated cases were submitted for decision.

In the *Decision* dated July 24, 2020,[61] the Court in Division partially granted the *Petitions for Review*.[62] The dispositive portion reads:

> **WHEREFORE,** in light of the foregoing considerations, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, [the CIR] is **DIRECTED TO REFUND** [Oceanagold] the amount of ₱27,434,794.00, representing the latter's unutilized excess input VAT arising from its domestic purchases and importation of goods (other than capital goods), domestic purchases of services, and purchases of capital goods which are attributable to zero-rated sales for the 3rd and 4th quarters of TY 2013 and 1st Quarter of TY 2014.
>
> **SO ORDERED.**

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[51] Exhibit "R-8", CTA Case No. 9207, Division Docket, Vol. 4, pp. 2657-2660.
[52] CTA Case No. 9207, Division Docket, Vol. 4, pp. 2729-2733.
[53] *Id.*, pp. 2735-2737.
[54] *Id.*, p. 2739.
[55] *Id.*, pp. 2743-2744.
[56] *Id.*, p. 2791.
[57] *Id.*, pp. 2754-2788.
[58] *Id.*, p. 2750.
[59] *Id.*, pp. 2793-2799.
[60] *Id.*, p. 2802.
[61] *Id.*, pp. 2810-2869.
[62] CTA *EB* No. 2571, *EB* Docket, pp. 48-107.

On September 8, 2020, Oceanagold filed a *Motion for Reconsideration [of the Decision dated July 24, 2020]*.[63] The CIR likewise filed a *Motion for Partial Reconsideration (Re: Decision promulgated June 24, 2020)* on September 9, 2020.[64]

In a *Resolution* dated September 17, 2020, the Court in Division ordered the parties to file their respective comments to the Motions for Reconsideration/Partial Reconsideration.[65]

On October 19, 2020, Oceanagold filed its *Comment/Opposition*,[66] and the CIR filed his *Opposition*.[67]

The Court in Division rendered the assailed *Amended Decision* on February 3, 2021,[68] with the following dispositive portion:

> **WHEREFORE**, premises considered, [the CIR's] Motion for Partial Reconsideration (Re: Decision promulgated on June 24, 2020) is **DENIED** for lack of merit. On the other hand, [Oceanagold's] Motion for Reconsideration (of the Decision dated July 24, 2020) is **PARTIALLY GRANTED**.
>
> Accordingly, the dispositive portion of the Decision dated July 24, 2020, is hereby amended to read as follows:
>
> > "**WHEREFORE**, in light of the foregoing considerations, the Petitions for Review is **PARTIALLY GRANTED**. Accordingly, [the CIR] is **DIRECTED TO REFUND** to [Oceanagold] the amount of ₱32,319,333.57, representing the latter's unutilized excess input VAT arising from its domestic purchases and importation of goods (other than capital goods), domestic purchases of services, and purchases of capital goods which are attributable to zero-rated sales for the 3rd and 4th quarters of TY 2013 and 1st Quarter of TY 2014.
> >
> > **SO ORDERED**."
>
> **SO ORDERED**.

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[63] *Id.*, pp. 2870-2897.
[64] *Id.*, pp. 2899-2908.
[65] *Id.*, p. 2911.
[66] *Id.*, pp. 2912-2925.
[67] *Id.*, pp. 2927-2931.
[68] *Id.*, pp. 2934-2951.

Undaunted, the CIR filed, on February 24, 2021, a *Motion for Partial Reconsideration (Re: Amended Decision promulgated February 3, 2021).*[69]

On March 2, 2021, Oceanagold filed a *Motion for Reconsideration [of Amended Decision dated February 3, 2021] with Motion to Present Additional Evidence.*[70]

In separate *Resolutions* dated March 3, 2021[71] and March 10, 2021,[72] the Court in Division ordered the parties to submit their respective comments on the CIR's *Motion for Partial Reconsideration* and Oceanagold's *Motion for Reconsideration with Motion to Present Additional Evidence.*

Oceanagold filed its *Comment/Opposition* on June 21, 2021.[73] However, the CIR failed to file his comment per Records Verification dated June 28, 2021.

Resolving the *Motions for Reconsideration*, the Court in Division promulgated the Assailed *Resolution* dated October 21, 2021,[74] with the following dispositive portion:

> **WHEREFORE**, premises considered [Oceanagold's] Motion for Reconsideration [of Amended [Decision] or (sic) dated February 3, 2021] with Motion to Present Additional Evidence and the [CIR's] Motion for Partial Reconsideration (Re: Amended Decision promulgated February 3, 2021) are both **DENIED** for lack of merit.
>
> **SO ORDERED**.

PROCEEDINGS BEFORE THE COURT *EN BANC*

On December 9, 2021, the CIR filed a *Petition for Review* before the Court *En Banc*,[75] docketed as **CTA *EB* No. 2552**.

In a *Resolution* dated February 15, 2022,[76] the Court ordered Oceanagold to file its comment/opposition on the CIR's *Petition for Review.*

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[69] *Id.*, pp. 2952-2961.
[70] *Id.*, pp. 2963-2989.
[71] *Id.*, p. 2992.
[72] *Id.*, p. 2994.
[73] *Id.*, pp. 2995-3003.
[74] *Id.*, pp. 3007-3014.
[75] CTA *EB* No. 2552, *EB* Docket, pp. 1-17.
[76] *Id.*, pp. 46-47.

On March 3, 2022, Oceanagold filed its *Comment* on the CIR's *Petition for Review*.[77] On even date, it filed a *Motion for Extension of Time to File Petition for Review*,[78] which the Court granted in a *Minute Resolution* dated March 4, 2022,[79] giving it until March 19, 2022 within which to file its petition.

On March 18, 2022, Oceanagold filed its *Petition for Review*,[80] docketed as **CTA *EB* No. 2571**.

In a *Minute Resolution* dated March 21, 2022, the Court resolved to consolidate CTA *EB* Nos. 2552 and 2571.[81]

In a *Resolution* dated April 8, 2022, the Court noted Oceanagold's *Comment* on the CIR's *Petition for Review* in CTA *EB* No. 2552 and ordered the CIR to file a comment/opposition to Oceanagold's *Petition for Review* in CTA *EB* No. 2571.[82]

The CIR filed a *Comment* on Oceanagold's *Petition for Review* on April 20, 2022,[83] which the Court noted in its *Resolution* dated May 13, 2022,[84] submitting for decision the consolidated cases.

THE ISSUES

The CIR forwards a singular issue to be resolved by the Court *En Banc* in his *Petition for Review*:

> The Court in Division erred in ruling that respondent is entitled to refund in the reduced amount of ₱32,319,333.57 representing unutilized excess input VAT allegedly attributable to zero-rated sales for the 3rd and 4th Quarters of TY 2013 and 1st Quarter of TY 2014.[85]

On the other hand, Oceanagold forwards the following issues in its *Petition for Review*:

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[77] *Id.*, pp. 48-63.
[78] CTA *EB* No. 2571, *EB* Docket, pp. 1-4.
[79] *Id.*, p. 6.
[80] *Id.*, pp. 7-424.
[81] CTA *EB* No. 2552, *EB* Docket, p. 65.
[82] *Id.*, pp. 67-68.
[83] *Id.*, pp. 69-74.
[84] *Id.*, pp. 77-78.
[85] *Id.*, p. 3.

I. Whether or not the Court in Division erred in ruling that Oceanagold's sales declared during the 1st Quarter of TY 2014 amounting to ₱4,681,519,998.33 are outside the period of claim;

II. Whether or not the Court in Division erred in ruling that provisional invoices are necessary to establish sale and actual shipment of goods; and,

III. Whether or not the Court in Division erred in disallowing input tax amounting to ₱14,875,604.42 for failure of the suppliers to indicate the term "Valid until October 31, 2013 only" in the VAT invoice or official receipt.[86]

THE PARTIES' ARGUMENTS

CTA *EB* No. 2552

CIR's Arguments

The CIR argues that no attributability was established between the input VAT of Oceanagold vis-à-vis the latter's zero-rated sale. The CIR posits that the law requires only "*creditable input taxes*" that are "*directly attributable*" may be refunded.[87] Stating that the Philippine VAT system was adopted from Europe, the CIR forwards the argument that not all input tax from purchases by a business is creditable as input tax; only those "related" to the supplies made can be claimed.[88]

The CIR further posits that for input tax to be creditable, the input tax must come from purchases of goods that form part of the finished product of the taxpayer, or it must be directly used in the chain of production.[89]

As to attributability, the CIR states that it signifies that the connection between the purchases and the finished product is "*concrete*" and not "*imaginary*" or "*remote.*"[90]

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[86] CTA *EB* No. 2571, *EB* Docket, pp. 18-19.
[87] *Petition for Review*, CTA *EB* No. 2552, *EB* Docket, p. 4.
[88] *Id.*, p. 5.
[89] *Id.*, p. 7.
[90] *Id.*

The CIR closes its argumentation by stating that tax refunds are strictly construed against the claimant-taxpayer, and Oceanagold failed to prove that it is entitled to the refund sought.[91]

Oceanagold's Counter-arguments

Oceanagold first presents its observation that the arguments forwarded by the CIR in his *Petition for Review* contain a mere rehash of arguments that were sufficiently passed upon and discussed by the Court in Division in the *assailed Decision*, and according to Oceanagold, such already merits the dismissal of the *Petition* for being *pro forma*.[92]

Oceanagold counterargues that the CIR's arguments that input tax should be directly attributable before they may be considered attributable runs counter to the clear provision and intendment of Section 112(A), in relation to Section 110, of the NIRC of 1997, as amended, for there is nothing in the said provisions which requires direct attributability.[93] It continues by stating that Section 110(A)(3) allows a tax credit of an allocable portion of a taxpayer's input tax that is not directly and entirely attributable to the zero-rated sales.[94]

CTA *EB* No. 2571

Oceanagold's Arguments

Oceanagold argues that its export sale and actual shipment of minerals within the 1st Quarter of TY 2014 amounting to ₱4,681,519,998.33 are duly supported and are within the period of the claim.[95] It claims that it is erroneous for the Court in Division to require that the submitted bill of lading and sales invoices be within the same taxable quarter pertinent to the refund claim,[96] as such, will be in "complete disregard of the nature and character of the business of export of mineral products."[97] It further asserts that this will result in a "clearly absurd situation" where its "validly paid input VAT attributable to its zero-rated export of mineral products,

[91] *Id.*, p. 10.
[92] Comment, CTA *EB* No. 2552, *EB* Docket, pars. 4-7.
[93] *Id.*, pars. 7-10.
[94] *Id.*, pars. 11-12.
[95] *Petition for Review*, CTA *EB* No. 2571, *EB* Docket, p. 13.
[96] *Id.*, par. 47.
[97] *Id.*, par. 48.

particularly those at the end of each quarter, can never be refundable, considering that the date of shipment as indicated in the bill of lading will most likely be one quarter earlier than the date of the sales invoice."[98] Citing *Philex Mining Corporation v. CIR*, among other cases, Oceanagold forwards that the shipment date indicated in the bill of lading shall be considered the date of the sale transaction.[99]

Oceanagold further submits that a provisional invoice is not among the list of documentary requirements necessary to establish zero-rated sales,[100] as this is not a document required of taxpayers.[101]

Oceanagold likewise assails the ruling of the Court in Division in disallowing input tax amounting to ₱14,875,604.42 due to its suppliers' failure to stamp the phrase "*valid until October 31, 2013 only*" on the face of the VAT invoices or official receipts as required under Revenue Memorandum Circular ("**RMC**") No. 52-2013.[102] It argues that such is not required under Section 113 of the NIRC of 1997, as amended,[103] and Section 4.113-1 of Revenue Regulations ("**RR**") No. 16-2005, as amended.[104] While it concedes that the CIR may issue RMCs, it argues that the same "should not impose additional substantive requirements beyond what is provided by the law."[105] It further posits that requiring it to ensure that the invoices and official receipts comply with all the administrative regulations, including RMC No. 52-2013, is unjust and not administratively feasible, contrary to one of the fundamental principles of a sound tax system.[106]

CIR's Counter-arguments

The CIR reiterates his argument that tax refunds are strictly construed against taxpayers.[107] The CIR argues that a taxpayer seeking a refund is responsible for complying with the requirements of RR No. 3-1988.[108]

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[98] *Id.*, par. 49.
[99] *Id.*, pars. 50-57.
[100] *Id.*, par. 61.
[101] *Id.*, par. 65.
[102] *Id.*, par. 68.
[103] *Id.*, par. 70.
[104] *Id.*, par. 71.
[105] *Id.*, pars. 73-83.
[106] *Id.*, pars. 84-85.
[107] Comment, CTA *EB* No. 2552, *EB* Docket, p. 75.
[108] *Id.*, p. 71.

The CIR proceeds to echo the ruling of the Court in Division that Oceanagold failed to submit its sales invoice pertaining to its shipment of dore to client Perth Mint Australia and that certain declared zero-rated sales had no corresponding inward remittances.[109]

THE COURT *EN BANC*'S RULING

The instant *Petitions* are bereft of merit.

The Court En Banc has jurisdiction over the instant Petitions.

Before going into the merits of the case, We shall first rule on whether the Court *En Banc* has jurisdiction over the instant petitions.

On October 21, 2021, the Court in Division promulgated a *Resolution*, [110] denying both parties' *Motions for Reconsideration*. The CIR received the *Resolution* on November 25, 2021, while Oceanagold received a copy of the same *Resolution* on February 17, 2022.

As provided under Section 3(b), Rule 8[111] of Revised Rules of the Court of Tax Appeals ("**RRCTA**"), the CIR had until December 10, 2021 to file his *Petition for Review* before the CTA *En Banc*. On the other hand, Oceanagold had until March 4, 2022 to do the same.

On December 9, 2021, within the reglementary period, the CIR filed his *Petition for Review*.[112]

Meanwhile, Oceanagold filed a *Motion for Extension of Time to File Petition for Review* on March 3, 2022, within the reglementary period.[113] The *Motion* was granted in a *Minute*

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[109] *Id.*, p. 72.
[110] *Supra* at note 74.
[111] *Section 3. Who May Appeal; Period to File Petition.* –
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.
[112] *Supra* at note 75.
[113] *Supra* at note 78.

Resolution dated March 4, 2022;[114] thus, Oceanagold had until March 19, 2022 to file its *Petition for Review.*

On March 18, 2022, Oceanagold filed its *Petition for Review* within the extension period.[115]

Having settled that the *Petitions* were timely filed, the Court *En Banc* has validly acquired jurisdiction over the present *Petitions* under Section 2(a)(1), Rule 4[116] of the RRCTA.

At the outset, it must be underscored that the issues raised by Oceanagold and the CIR in their respective petitions are mere reiterations of the issues already considered, passed upon, and resolved by the Court's Third Division in the *Decision*, assailed *Amended Decision* and assailed *Resolution* rendered in CTA Case Nos. 9207, 9277, and 9416.

Nonetheless, if only to reinforce the conclusions reached by the Court in Division, We shall discuss the salient points of the assailed *Amended Decision* and *Resolution* anew.

CTA *EB* No. 2552
CIR's *Petition for Review*

Input tax need not be directly and entirely attributable to the zero-rated sales to be refundable or creditable.

In his *Petition*, the CIR posits that the law requires that only "creditable input taxes" that are "directly attributable" may be refunded. The fact is – no attributability was established between the input tax on purchases vis-à-vis the zero-rated sales.[117] The CIR cited that the Philippine VAT system was adopted from Europe. As it is in Europe, not all input tax from purchases by a business is creditable as input tax; only those "related" to the supplies made can be claimed.[118]

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[114] *Supra* at note 79.
[115] *Supra* at note 80.
[116] *Section 2. Cases Within the Jurisdiction of the Court En Banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies — Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture.
[117] *Petition for Review*, CTA *EB* No. 2552, *EB* Docket, p. 4.
[118] *Id.*, p. 5.

The CIR further posits that for input tax to be creditable, the input tax must come from purchases of goods that form part of the finished product of the taxpayer, or it must be directly used in the chain of production.[119]

We find the CIR's arguments untenable.

This issue is not novel, as the CIR has repeatedly raised it.

In *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*,[120] We ruled that the law does not require the input tax to be directly attributable to zero-rated sales to be refundable or creditable, *viz.*:

> The petitioner's claim that the assailed Decision and Resolution of the Court in Division are erroneous for having failed to establish the direct attributability between respondent's input tax on purchases and its zero-rated sales is bereft of merit.
>
> Section 112 (A) of the Tax Code provides for the grounds when input tax may be refunded or claimed as tax credit in cases of zero-rated sales, 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, xxx: **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."

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[119] *Id.*, p. 7.
[120] CTA *EB* No. 2082 (CTA Case No. 9496), July 21, 2020.

Contrary to the argument of the petitioner, there is nothing in the provision which states that the input tax needs to be directly attributable or a factor in the chain of production to the zero-rated sale in order for it to be creditable or refundable. In fact, **the aforementioned provision allows as tax credit an allocable portion of a taxpayer's input tax that is not directly and entirely attributable to the zero-rated sales**.

Further, Section 110 (A) of the Tax Code, which enumerates the transactions upon which creditable input tax may be claimed, only requires that the transaction was incurred or paid in connection with the taxpayer's trade or business whether directly or indirectly and **that it is evidenced by a VAT invoice or official receipt,** to wit:

xxx xxx xxx

> The term "input tax" means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. It shall also include the transitional input tax determined in accordance with Section 111 of this Code."

Clearly, based on the foregoing provisions, **the Tax Code does not require the input tax to be directly attributable to zero-rated sales to be refundable or creditable**. [*Emphasis and underscoring supplied.*]

In another case,[121] We likewise held:

Based from the foregoing, creditable input taxes which cannot be directly or entirely attributable to any sale transaction (i.e., zero-rated or effectively zero-rated sale and taxable or exempt sale of goods of properties or services), shall be allocated proportionally on the basis of the volume of sales. **Evidently, contrary to the CIR's allegation, the attribution of the input VAT to the zero-rated sales need *not* always be direct.**

Moreover, the word "attribute," the adjective form of which is "attributable," is defined as "to explain as to cause or origin," or simply, to "ascribe." Thus, when Section 112(A) of the NIRC of 1997, as amended, states that the input VAT must be attributable to the zero-rated or effectively zero-rated sales, it simply means that the input VAT must be regarded as being caused by such sales. Accordingly, **We sustain the Court in**

[121] *Deutsche Knowledge Services Pte. Ltd. v. Commissioner of Internal Revenue*, CTA *EB* Nos. 1917 & 1919 (CTA Case No. 9079), February 5, 2020.

> **Division's ruling that is it not required that the claimed input tax be directly attributable to zero-rated sales in order to be creditable."** [*Emphasis and underscoring supplied.*]

In fine, the Court in Division committed no error when it ruled that there is no requirement that the input taxes subject of the claim for refund be "directly attributable" to zero-rated sales.[122]

CTA *EB* No. 2571
Oceanagold's Petition for Review

The Court in Division did not err in ruling that Oceanagold's export sales for the 1st Quarter of TY 2014 are outside the period of the claim.

Oceanagold claims that its export sale and actual shipment of minerals within the 1st Quarter of TY 2014 are duly supported and are *within* the period of the claim.[123] It questions the Court in Division's rulings in the assailed *Decision* and *Resolution* denying its zero-rated sales declared in the 1st Quarter of TY 2014 in the total amount of ₱4,681,519,998.33 ($104,438,010.16) on the ground that they were supported by sales invoices dated *outside* the period of the claim, and holds that the said rulings are erroneous and contrary to laws and established jurisprudence.[124]

Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, provides that the export sales of goods by VAT-registered persons shall be subject to a zero percent (0%) rate, *viz.*:

> **SEC. 106**. *Value Added Tax on Sale of Goods or Properties.*—
>
> (A) *Rate and Base of Tax.*— x x x

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[122] Annexes "B" and "C," *Petition for Review*, Amended Decision and Resolution, CTA *EB* No. 2571, *EB* Docket, pp. 124-125, and pp. 129-131, respectively.
[123] *Petition for Review*, CTA *EB* No. 2571, *EB* Docket, pp. 19-29.
[124] *Id.*

(2) The following sales by VAT-registered persons shall be subject to a 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), xxx. [*Emphasis supplied.*]

Accordingly, for an export sale to qualify for VAT zero rating, the following essential elements must be present:

1. The sale was made by a VAT-registered person;

2. There was a sale and actual shipment of goods from the Philippines to a foreign country; and,

3. The sale was paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP.[125]

The *first* and *third* essential elements were undisputed by the parties in the present cases.

Relative to the *second* essential element, Section 113 (A)(1), (B)(1), and (2)(c) of the NIRC of 1997, as amended, and Section 4.113-1 (A)(1), (B)(1), and (2)(c) of RR No. 16-2005, respectively provide:

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.

[125] *Phil. Gold Processing & Refining Corp. v. Commissioner of Internal Revenue*, CTA *EB* No. 1082 (CTA Case No. 8270), November 26, 2014.

(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);

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: xxx

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[.]

xxx xxx xxx

SEC. 4.113-1. Invoicing Requirements. —

(A) *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.

Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoice or official receipts. Said documents shall be considered as a 'VAT Invoice' or VAT official receipt. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

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

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: xxx

> 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[.]
>
> xxx xxx xxx
>
> [*Emphasis supplied.*]

Considering the above provisions, We have consistently ruled[126] that any VAT-registered person claiming for VAT zero-rating in relation to export sales of goods must present to the Court the following documents, *at the very least*:

1. The **sales invoice** as proof of the sale of goods;

2. The **export declaration** and **bill of lading** or **airway bill** as proof of actual shipment of goods from the Philippines to a foreign country; and

3. The **bank credit advice, certificate of bank remittance,** or any other document proving payment of goods in acceptable foreign currency or its equivalent in goods and services.

Thus, only export sales supported by the above-stated documents shall qualify for VAT zero-rating under Section 106 (A)(2)(a)(1) of the NIRC of 1997, as amended.

In *Commissioner of Internal Revenue v. Manila Mining Corp.*,[127] the Supreme Court discussed the concept of a *sales or commercial invoice*, to wit:

> A "**sales or commercial invoice**" is a written account of goods sold or services rendered indicating the prices charged therefor or a list by whatever name it is known which is used in the ordinary course of business **evidencing sale and transfer or agreement to sell or transfer goods and services**.
>
> A "receipt" on the other hand is a written acknowledgment of the fact of payment in money or other settlement between seller and buyer of goods, debtor or creditor, or person rendering services and client or customer. | [*Emphasis and underscoring supplied*]

[126] *Carmen Copper Corp. v. Commissioner of Internal Revenue*, CTA *EB* No. 1461 (CTA Case No. 8418), November 16, 2017.
[127] G.R. No. 153204, August 31, 2005, 505 SCRA 650-672.

These sales invoices or receipts issued by the supplier are necessary to substantiate the actual amount or quantity of goods sold and their selling price. Taken collectively, they are the best means to prove the input VAT payments.[128]

In *Saludo, Jr. v. Court of Appeals*,[129] the Supreme Court discussed the nature of a *bill of lading*:

> **A bill of lading is a written acknowledgment of the receipt of the goods and an agreement to transport and deliver them at a specified place to a person named or on his order.** Such instrument may be called a shipping receipt, forwarder's receipt and receipt for transportation. The designation, however, is immaterial. It has been held that freight tickets for bus companies as well as receipts for cargo transported by all forms of transportation, whether by sea or land, fall within the definition. Under the Tariff and Customs Code, a bill of lading includes airway bills of lading. **The two-fold character of a bill of lading is all too familiar; it is a receipt as to the quantity and description of the goods shipped and a contract to transport the goods to the consignee or other person therein designated, on the terms specified in such instrument.** [*Emphasis and underscoring supplied*]

Simply put, to prove that the goods were shipped to a foreign country, a bill of lading is required to be presented.

In the assailed *Amended Decision*, the Court in Division maintained the disallowance of Oceanagold's zero-rated sales declared in the 1st Quarter of TY 2014 in the total amount of ₱4,681,519,998.33 ($104,438,010.16), on the ground that the sales invoices were dated *outside* the period of the claim, [130] *viz.*:

> In its Motion, petitioner argues that the Court erred in using the date of issuance of the sales invoices as basis in determining the zero-rated export sale since the same is contrary to the numerous decisions issued by this Court. Petitioner asserts, that **the bill of lading should be regarded as the actual date of export sales in view of the peculiar nature of export sale of mineral products.** In support thereto, petitioner cited the Court of Tax Appeals (CTA) cases of *Philex Mining Corporation v. Commissioner of Internal Revenue (CTA Case Nos. 7528 and 7564 dated February 9, 2010; and CTA Case No. 8228 dated May 31, 2012)* and *Phil.*

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[128] *Id.*
[129] G.R. No. 95536, March 23, 1992.
[130] Annex "B," *Petition for Review*, Amended Decision dated February 3, 2021, CTA *EB* No. 2571, *EB* Docket, pp. 111-114.

> *Gold Processing & Refining Corporation v. Commissioner of Internal Revenue (CTA EB Case No. 1670 dated July 9, 2018).*
>
> Unfortunately, this Court does not agree.
>
> xxx xxx xxx
>
> While this Court acknowledges that the shipment date indicated in the Bills of Lading is considered as the date of sale of petitioner's exported products, **the absence nonetheless of their corresponding sales invoices — dated within the period of claim — is fatal to petitioner's claim for refund.** The Court cannot overemphasize the importance of proper substantiation of zero-rated sales being claimed by petitioner as expressly provided for by law.
>
> Petitioner contends that it issued provisional invoices in relation to the supposed zero-rated sales and these were all dated within the 1st Quarter of TY 2014. In the testimony of its witness, Ms. Josefina Mallari, petitioner's Finance Manager, she explained the procedure in issuing the provisional and final invoices, as follows: xxx
>
> Regrettably, however**, petitioner failed to present the alleged provisional invoices it issued as nowhere in the records can the said provisional invoices be found.** [*Emphasis and underscoring supplied*]

Here, Oceanagold maintains that it is erroneous for the Court in Division to require that the submitted bills of lading and sales invoices be *within the same taxable quarter* pertinent to the refund claim[131] as such will be in "complete disregard of the nature and character of the business of export of mineral products."[132] It asserts that this will result in a "clearly absurd situation" where its "validly paid input VAT attributable to its zero-rated export of mineral products, particularly those at the end of each quarter, can never be refundable, considering that the date of shipment as indicated in the bill of lading will most likely be one quarter earlier than the date of the sales invoice."[133]

In support of its arguments, Oceanagold again cited several cases involving *Philex Mining Corporation* ("*Philex Mining*"),[134] where the CTA allegedly held that the shipment dates indicated in the bills of lading were considered the dates

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[131] *Petition for Review*, par. 47, CTA *EB* No. 2571, *EB* Docket, pp. 7-46.
[132] *Id.*, par. 48.
[133] *Id.*, par. 49.
[134] *Philex Mining Corp. v. CIR*, CTA Case Nos. 7528 and 7564, February 9, 2010; *Philex Mining Corp. v. CIR*, CTA Case No. 8228, May 31, 2012; *Philex Mining Corp. v. CIR*, CTA Case Nos. 8753 and 8762, February 17, 2016.

of the sale transactions even though the final invoices bear dates much later than the shipment dates.[135]

We disagree with Oceanagold's arguments.

As correctly found by the Court in Division, *Philex Mining* cases are inapplicable because the factual circumstances therein are not in *all fours* with the present consolidated cases.

In the said cases, *Philex Mining* submitted its duly issued provisional invoices before the Court, aside from the final invoices. The Court ruled that the final invoices, dated much later than the dates of shipment indicated in the *bills of lading* and *provisional invoices*, were merely additional evidence to support *Philex Mining* claimed zero-rated sales. The ruling of the Court therein was premised on the fact that *Philex Mining* export sales were duly supported by *bills of lading* and *provisional invoices* issued upon shipment of the mineral products.

In a *Philex Mining case (2012 Decision)* cited by Oceanagold, it was ruled:[136]

> ... to substantiate its *export sales* for the third quarter of taxable year 2008 and that the foreign exchange proceeds thereof were duly accounted xxx, petitioner proffered its Long Term Gold and Copper Concentrates Sales Agreement with Pan Pacific Copper Co., Ltd. of Tokyo, Japan, ***provisional* and *final sales invoices, bills of lading,*** export declarations, certificates of remittances xxx.
>
> While the Court noted that the final invoices submitted by petitioner bear dates much later than the dates of shipment indicated in the ***bills of lading* and *provisional invoices***, petitioner's witness, Ms. Eileen C. Rodriguez, sufficiently explained that in its direct exports of copper concentrates, it issues two invoices to the buyer. First, a ***Provisional Invoice*** covering ninety percent (90%) of the estimated value of the shipment is issued by petitioner upon shipment of the mineral products or copper concentrates to its foreign buyer. Second, a ***Final Invoice*** is issued by petitioner to its foreign buyer after petitioner and its foreign buyer have reached an agreement regarding the final settlement of weights, assays and quotations and the final price of the shipment. xxx

[135] *Petition for Review*, paragraphs 50, 51, 53, 55, CTA *EB* No. 2571, *EB* Docket, pp. 7-46.
[136] *Philex Mining Corp. v. CIR*, CTA Case No. 8228, May 31, 2012.

> In view thereof, the Court holds that **the actual shipment date of the mineral products, as appearing in the bills of lading, should be regarded as the actual date when the export sales took place.** [*Emphasis and underscoring supplied*]

In another *Philex Mining case (2016 Decision)* cited by Oceanagold, it was held:[137]

> With the presentation of Export Declarations, ***Bills of Lading***, ***Provisional Invoices*** and ***Final Invoices*** of the subject export sales, petitioner was able to prove that it sold and shipped mineral products to xxx for the 3rd and 4th quarters of 2011. xxx
>
> As to the discrepancies on dates appearing in the final invoices submitted by petitioner which were later than the dates of shipment indicated in the bills of lading and provisional invoices, witness, Ms. Eileen C. Rodriguez explained as follows:
>
> "Q. No. 26. — Please explain **why** for each shipment of mineral products to Japanese buyer Petitioner **issues two invoices to the buyer, namely, a *provisional invoice* and a *final invoice*,** and **why the final invoice is issued much later than the date of shipment.**
>
> A. No. 26. — Clause 9 of the Agreement requires the Buyer to pay the Seller the price of each shipment of copper concentrates in two stages: **First**, a **provisional payment** at the time of shipment equal to 90% of the provisional price as determined by the Seller based on shipped weight and the Seller's provisional assay, and, **Second**, a **final payment** covering the balance of the concentrate value (after deducting the 90% provisional payment from the final concentrate value) upon presentation of the final invoice after all data necessary to determine the final settlement (including weights and moisture content, final assays for copper, gold, silver contents and impurities [which are done in Buyer's smelting/refining plant at the port of discharge], and final prices for payable copper, payable gold and payable silver) are available.
>
> xxx xxx xxx
>
> Therefore, the considered dates of the sale transactions were the shipment dates indicated in the Bills of Lading. Since the Bills of Lading were all dated within the 3rd and 4th quarters of 2011, they were considered valid. [*Emphasis and underscoring supplied*]

[137] *Philex Mining Corp. v. CIR*, CTA Case Nos. 8753 and 8762, February 17, 2016.

Oceanagold also cited the case of *Phil. Gold Processing & Refining Corp. v. CIR* ("*Phil. Gold*").[138] However, its reliance on *Phil. Gold* is misplaced since the factual milieus are different from the instant cases.

Further reading of the *Phil. Gold case* reveals no issue was raised on the sales invoice and the date of the zero-rated sale. More importantly, the bill of lading was referred to as the document that will prove the remittance of payment for the goods shipped to foreign companies, *viz.*:

> **The bill of lading or airway bill, as the case may be, is the document that will prove petitioner's allegation that the money remitted by the foreign companies through HSBC and credited to its bank account was actually the payment for the goods that petitioner shipped to the said foreign companies**. As such, export sale is clearly and convincingly proven. However, petitioner failed to do so in the case at hand. [*Emphasis and underscoring supplied*]

Thereafter, Oceanagold quoted a more recent *Philex Mining case (2018 Decision)*, as follows:[139]

> 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. [*Emphasis and underscoring supplied*]

However, upon perusal of the above decision in *Philex Mining case (2018 Decision)*, We note that the first sentence of the quoted paragraph should have been mentioned to understand the ruling better. Thus, We reproduce below the cited portion of the decision, including the omitted first sentence, *viz.*:

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[138] CTA *EB* No. 1670 (CTA Case No. 8763), May 7, 2018.
[139] Par. 55, *Petition for Review*, CTA *EB* No. 2571, *EB* Docket, pp. 28-29, citing *Philex Mining Corp. v. CIR*, CTA *EB* Case No. 1525.

> **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 respondent during the period of claim as indicated in the provisional invoices, bills of lading and export declarations.** [*Emphasis and underscoring supplied*]

It is clear from the foregoing that *Philex Mining* presented both the *provisional invoices* and the *bills of lading* to prove the export sale and actual shipment of goods *during* the refund claim period. The Court considered the shipment date in the bills of lading and provisional invoices as the *date of sale* and the corresponding final invoices dated much later than the shipment date as mere additional evidence to support *Philex Mining's* zero-rated sales during the claim period.

In contrast with the present consolidated cases, no provisional invoices were presented and formally offered as evidence by Oceanagold before the Court in Division. Its Finance Manager, Ms. Josefina Mallari, testified that Oceanagold issues provisional and final invoices relative to its export sales of minerals. She explained that it issues a *provisional invoice* upon shipment of the mineral products to its foreign buyer and a *final invoice* after an agreement has been reached regarding the weights, assays, quotations, and the final price of the shipment. However, it offered as evidence only the bills of lading and final invoices with much later dates, not the provisional invoices issued upon shipment.

Oceanagold's failure to substantiate its zero-rated sales with sales invoices dated within the period of the claim is fatal to its claim for a refund.[140]

Given the foregoing, the Court in Division correctly maintained the disallowance of Oceanagold's zero-rated sales for the 1st Quarter of TY 2014 in the total amount of ₱4,681,519,998.33 with sales invoices dated outside the period of the claim, to wit:[141]

Customer	Sales Invoice	Amount Declared in the 1st Quarter of TY 2014	Peso Equivalent
Trafigura Pte. Ltd. *(CuCon Shipment 14)*	• No. 00025 • Date: **5-Apr-2014** • Exhibit P-2007-20	₱14,819,297.20	₱663,780,032.46
Trafigura Pte. Ltd. *(CuCon Shipment 15)*	• No. 00026 • Date: **7-May-2014** • Exhibit P-2007-21	15,300,333.57	687,391,966.17
Trafigura Pte. Ltd. *(CuCon Shipment 16)*	• No. 00027 • Date: **1-Jun-2014** • Exhibit P-2007-22	14,592,624.86	655,135,893.09
Trafigura Pte. Ltd. *(CuCon Shipment 17)*	• No. 00028 • Date: **6-Aug-2014** • Exhibit P-2007-23	28,841,830.48	1,291,871,734.13
Trafigura Pte. Ltd. *(CuCon Shipment 18)*	• No. 00029 • Date: **6-Aug-2014** • Exhibit P-2007-24	27,900,782.04	1,249,720,668.82
Perth Mint Australia *(Dore 8)*	• No. 00034 • Date: **02-Apr-14** • Exhibit P-2007-26	2,983,142.01	133,619,703.66
TOTAL		**₱104,438,010.16**	**₱4,681,519,998.33**

The Court in Division did not err in ruling that the presentation of Oceanagold's provisional invoices is necessary to establish its zero-rated sales for the 1st Quarter of TY 2014.

Oceanagold submits that provisional invoices are not necessary to establish export sales and shipment of goods. It claims that taxpayers are not required to issue provisional

[140] Annex "B," *Petition for Review*, Amended Decision dated February 3, 2021, CTA *EB* No. 2571, *EB* Docket, pp. 111-114.
[141] *Id.*, p.111.

invoices, which are merely supplementary to the principal invoices.[142] It further claims that provisional invoices are not among the list of documentary requirements necessary to establish zero-rated sales.[143]

We partly agree.

While taxpayers are not required to issue provisional invoices, Oceanagold issues provisional invoices upon shipment of the mineral products to its foreign buyer, in contrast, the final invoices are issued much later than the dates of shipment indicated in the bills of lading and provisional invoices.

It must be recalled that the term "export sales" is defined in Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, as "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)."

An export sale is subject to VAT, albeit at a rate of zero, upon sale *and* actual shipment of goods from the Philippines to a foreign country and payment in acceptable foreign currency in accordance with the BSP rules and regulations. Thus, to reiterate, a VAT-registered person claiming for VAT zero-rating in relation to export sales of goods must present at least three (3) types of documents, *to wit*:

> 1. The sales invoice as proof of the sale of goods;
>
> 2. The bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and,
>
> 3. The bank credit advice, certificate of bank remittance, or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services.

---

[142] *Id.*, par. 65.
[143] *Id.*, par. 61.

It must be stressed that the use of the conjunctive word "**and**" between "sale" and "actual shipment" reveals that both must be satisfied and proven to constitute an export sale.

Thus, both the *sales invoice* and *bill of lading* must be presented to prove the sale and actual shipment of goods *during* the period of the claim for refund or tax credit.

Here, the sales invoices presented to prove Oceanagold's zero-rated sales for the 1st Quarter of TY 2014 were dated outside the claim period. However, as testified by its witness, Ms. Mallari, Oceanagold issues provisional invoices upon shipment and the related final invoices on a much later date. It contends that it issued provisional invoices concerning the supposed zero-rated sales, all dated within the 1st quarter of TY 2014.[144] Regrettably, however, it failed to present the same.

Consistent with our ruling in *Philex Mining* cases, Oceanagold could have proven the sale **and** actual shipment of goods for the 1st quarter of TY 2014 by presenting the pertinent provisional invoices and bills of lading. It bears reiterating that a sales invoice is offered to prove the sale, while a bill of lading is presented to establish that goods were shipped to a foreign country.

Thus, presenting the provisional invoices is crucial to prove Oceanagold's zero-rated sales for the 1st quarter of TY 2014, considering that the related final invoices were issued outside the claim period.

The Court in Division did not err in disallowing the input VAT of ₱14,875,604.42 pursuant to RMC No. 52-2013.

Stamping the phrase "valid until October 31, 2013 only" is a precondition for claiming input VAT.

[144] Annex "B," *Petition for Review*, Amended Decision dated February 3, 2021, CTA *EB* No. 2571, *EB* Docket, p. 112.

Oceanagold likewise assails the ruling of the Court in Division in disallowing the input tax amounting to ₱14,875,604.42 for its suppliers' failure to stamp the phrase "*valid until October 31, 2013 only*" on the face of the VAT invoices or official receipts, as required under RMC No. 52-2013.[145] It argues that such is not required under Section 113 of the NIRC of 1997, as amended,[146] and Section 4.113-1 of RR No. 16-2005, as amended.[147] While Oceanagold concedes that the CIR may issue RMCs, it argues that the same "should not impose additional substantive requirements beyond what is provided by the law."[148] It further posits that requiring it to ensure that the invoices and official receipts comply with all the administrative regulations, including RMC No. 52-2013, is unjust and not administratively feasible, contrary to one of the fundamental principles of a sound tax system.[149]

We are not convinced.

First, petitioner's reliance on the ruling in the CTA case of *Deutsche Knowledge Services Pte. Ltd. v. CIR* ("*Deutsche Knowledge Services*")[150] is misplaced.

Indeed, We ruled in *Deutsche Knowledge Services* that there is no requirement that the phrase *'valid until October 31, 2013'* must be stamped or imprinted on the face of the invoices or ORs to be able to claim the deduction and input tax refund/credit under Section 113 of the NIRC of 1997, as amended, and Section 4.113-1 (B) of RR No. 16-2005.

However, as the Court in Division aptly found, the case was taken out of context. RMC No. 52-2013 was made inapplicable in the quoted case considering that such RMC was not yet effective during the refund claim period.

> "The requirement of stamping the term 'valid until October 31, 2013' on the face of the invoices and receipts was only introduced in RMC No. 52-2013 which was issued on August 13, 2013. Considering that the instant case involves the claim for refund or credit of unutilized input VAT for the taxable period April to June 2013, or the 2nd Quarter of CY 2013, it is evident that the requirement under RMC No. 52-13

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[145] *Id.*, par. 68, *Petition for Review*, CTA *EB* No. 2571, *EB* Docket, p. 32.
[146] *Id.*, par. 70.
[147] *Id.*, par. 71.
[148] *Id.*, pars. 73-83.
[149] *Id.*, pars. 84-85.
[150] CTA *EB* Case Nos. 1917 & 1919 (CTA Case No. 9079), February 5, 2020.

> was inexistent during the subject period of claim, and therefore could not have been complied with by Deutsche Knowledge.
>
> The said circular cannot be applied retroactively so as to prejudice Deutsche Knowledge, given the well-entrenched principle that statutes, including administrative rules and regulations, operate prospectively only, unless the legislative intent to the contrary is manifest by express terms or by necessary implication."

Second, contrary to Oceanagold's supposition, We find no conflict between RMC No. 52-2013 on the one hand, and Section 113 of the NIRC of 1997, as amended, and Section 4.113-1 (B) of RR No. 16-2005, on the other hand.

Section 113 of the NIRC of 1997, as amended, does not require the indication of the Authority to Print ("ATP"). Section 238 of the same law likewise does not require the ATP stamping in the invoice, although it requires business taxpayers to secure an ATP. RR No. 16-2005, which sought to implement the VAT provisions of the NIRC, likewise did not provide for a requirement about the stamping of ATP.

However, the absence of such a requirement does not mean that the BIR cannot subsequently impose such a requirement. Section 238 of the NIRC of 1997 empowers the CIR to do such. We quote:

> *SEC. 238. Printing of Receipts or Sales or Commercial Invoices.* - All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.
>
> No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and **such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner**.
>
> All persons who print receipt or sales or commercial invoices shall maintain a logbook/register of taxpayers who availed of their printing services. The logbook/register shall contain the following information:

> (1) Names, Taxpayer Identification Numbers of the persons or entities for whom the receipts or sales or commercial invoices were printed; and
>
> (2) Number of booklets, number of sets per booklet, number of copies per set and the serial numbers of the receipts or invoices in each booklet. [*Emphasis and underscoring supplied.*]

Thus, pursuant to this, RR No. 18-2012[151] was issued, promulgating the rules and regulations concerning securing an ATP. The said RR specifically provided: "No ATP shall be granted for the printing of principal and supplementary receipts/invoices unless the required information, which shall be prescribed in a separate revenue issuance, are reflected therein."

Thus, necessarily supplementing RR No. 18-2012 is Revenue Memorandum Order ("**RMO**") No. 12-2013. [152] It provides that:

> K. The following information shall be printed at the bottom portion of the OR/SI/CI:
>
> 1. Name, address, and TIN of the accredited printer;
>
> 2. **Accreditation number and the date of accreditation of the accredited printer**;
>
> 3. **ATP number, OCN, date issued (mm/dd/yyyy) and valid until (mm/dd/yyyy)**;
>
> 4. BIR Permit Number (if loose leaf OR/SI/CI);
>
> 5. Approved inclusive serial numbers of OR/SI/CI;
>
> 6. Security/Special markings/features of the accredited printer;
>
> 7. The phrase "THIS INVOICE/RECEIPT SHALL BE VALID FOR FIVE (5) YEARS FROM THE DATE OF THE ATP." [*Emphasis and underscoring supplied.*]

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[151] 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, October 22, 2012.

[152] Work-Around Guidelines and Procedures in the Processing of Authority to Print Official Receipts, Sales Invoices, etc., May 2, 2013.

Finally, RMC No. 52-2013[153] was issued. Regarding RMC No. 44-2013,[154] the said Circulars clarified and elucidated the transitory provisions of RR No. 18-2012.

To explain, Section 5 of RR No. 18-2012 provides that "all unused/unissued principal and supplementary receipts/invoices printed before the effectivity of these Regulations shall be valid until June 30, 2013." RMC No. 44-2013 extended the validity to August 30, 2013, while RMC No. 52-2013 further clarified that "all Principal and Supplementary Receipts/Invoices with ATP dated January 1, 2011 to January 17, 2013 may be used until October 31, 2013 provided that new ATP was issued on or before August 30, 2013."

The RMC is clear and leaves no room for contrary interpretation.

> II. Receipts with Authority to Print dated to January 1, 2011 to January 17, 2013
>
> All Principal and Supplementary Receipts/Invoices with ATP dated January 1, 2011 to January 17, 2013 may be used until October 31, 2013 provided that new ATP was issued on or before August 30, 2013. However, application for new ATP filed after April 30, 2013 is deemed to have been filed out of time and subject to a penalty of One Thousand Pesos (Php1000) pursuant to Section 264 of the Tax Code, as amended.
>
> **In all principal and supplementary receipts/invoice which can still be used until October 31, 2013, the term "valid until October 31, 2013 only" shall be stamped prominently on the face of the receipts or invoices (original and duplicate copies). Otherwise, no deduction and input tax may be claimed using these receipts/invoices**. [*Emphasis and underscoring supplied.*]

Thus, to this Court's mind, there is no conflict between the provisions of RMC No. 52-2013 on one hand, and Section 113 of the NIRC of 1997, as amended, and Section 4.113-1 (B) of RR No. 16-2005. RMC No. 52-2013 merely clarified RMC No. 44-2013 as to the extension of validity of principal and supplementary invoices and echoed the ATP printing requirement provided under RMO No. 12-2013. In turn, the

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[153] Clarifying the Validity of Unused/Unissued Principal and Supplementary Receipts/Invoices Printed Prior to January 18, 2013, August 13, 2013.
[154] Extending the Validity of Unused/Unissued Principal and Supplementary Receipts/Invoices Printed Prior to January 18, 2013 and Other Matters, June 11, 2013.

latter issuances sought to supplement further RR No. 18-2012, which promulgated the rules and regulations of Section 238 of the NIRC of 1997. Hence, the issuance of RMC No. 52-2013 and the requirements imposed therein have a statutory basis.

Considering the foregoing, the Court in Division correctly disallowed Oceanagold's input VAT amounting to ₱14,875,604.42.

Determination of the refundable amount

Finally, We quote with approval the Court in Division's determination of the amount refundable to Oceanagold in the assailed *Amended Decision, viz.*:

> In the assailed Decision, it was determined that petitioner has output VAT liability in the amount of ₱325,070.86. Since petitioner's valid input VAT allocated to sales subject to 12% VAT is only ₱13,329.92, petitioner still has output VAT due of ₱311,740.94, computed as follows:
>
> | | |
> |---|---|
> | Output VAT | ₱325,070.86 |
> | Less: Valid input VAT allocated to sales subject to 12% VAT | 13,329.92 |
> | **Output VAT still due** | **₱311,740.94** |
>
> Thereafter, the valid input VAT attributable to total reported zero-rated sales in the amount of ₱56,310,912.80 shall then be utilized against the remaining output VAT liability of ₱311,740.94. Accordingly, only the remaining input VAT of ₱55,999,171.86 can be attributed to the entire zero-rated sales reported by petitioner in the amount of ₱11,443,573,448.60, and only the input VAT of ₱32,319,333.57 is attributable to valid zero-rated sales of ₱6,604,538,160.70, computed as follows:
>
> | | |
> |---|---|
> | Valid Input VAT allocated to reported zero-rated sales | ₱ 56,310,912.80 |
> | Output VAT still due | 311,740.94 |
> | **Valid input VAT allocated to total reported zero-rated sales** | **₱ 55,999,171.86** |
> | Divide by total declared zero-rated sales | 11,443,573,448.60 |
> | Multiply by valid zero-rated sales | 6,604,538,160.70 |
> | **Excess input VAT attributable to valid zero-rated sales** | **₱ 32,319,333.57** |

Given the foregoing, We find no reason to depart from the findings and conclusions of the Court in Division.

WHEREFORE, premises considered, the *Petition for Review* of the Commissioner of Internal Revenue under CTA *EB* No. 2552 and the *Petition for Review* of Oceanagold (Philippines), Inc. under CTA *EB* Nos. 2571 are **DENIED** for lack of merit.

Accordingly, the *Amended Decision* dated February 3, 2021, and the *Resolution* dated October 21, 2021, of the Court's Third Division in CTA Case No. 9207, 9277, and 9416 are **AFFIRMED**.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

(See Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

(On Official Business)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner, - versus - **OCEANAGOLD (PHILIPPINES), INC.**, Respondent.	**CTA EB NO. 2552** (CTA Case Nos. 9207, 9277 & 9416)
OCEANAGOLD (PHILIPPINES), INC., Petitioner, - versus - **COMMISSIONER OF INTERNAL REVENUE**, Respondent.	**CTA EB NO. 2571** (CTA Case Nos. 9207, 9277 & 9416) Present: **DEL ROSARIO**, *P.J.*, **UY**, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, **CUI-DAVID**, and **FERRER-FLORES**, *JJ.* Promulgated: MAY 12 2023

CONCURRING AND DISSENTING OPINION

***DEL ROSARIO, P.J.*:**

I concur in the denial of the Commissioner of Internal Revenue's Petition for Review in **CTA EB No. 2552** for lack of merit. I am constrained, however, to withhold my assent to the *ponencia*'s denial

of Oceanagold (Philippines), Inc.'s Petition for Review in **CTA EB No. 2571**.

The *ponencia* rules that:

(1) The Court in Division did not err in ruling that Oceanagold's export sales for the first quarter of taxable year (TY) 2014 are outside the period of claim;

(2) The Court in Division did not err in ruling that the presentation of Oceanagold's provisional invoices is necessary to establish its zero-rated sales for the first quarter of TY 2014; and,

(3) The Court in Division did not err in disallowing the input value-added tax (VAT) of ₱14,875,604.42 pursuant to Revenue Memorandum Circular (RMC) No. 52-2023, as the stamping of the phrase "valid until October 31, 2013 only" is a precondition for claiming input VAT.

I respectfully disagree.

Exportation where the date of actual shipment appearing on the Bill of Lading/Airway Bill is within the period of claim may be allowed, notwithstanding that the VAT invoice is dated outside the said period

Section 106(A)(2)(a)(1) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides that export sales of goods from the Philippines are treated as VAT zero-rated sales, *viz.*:

> "SEC. 106. ***Value-Added Tax on Sale of Goods or Properties***. –
>
> x x x x x x x x x
>
> (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" (*Boldfacing supplied*)

Relatedly, Section 4.106-5 of RR No. 16-2005, as amended, provides:

> "SECTION 4.106-5. *Zero-Rated Sales of Goods or Properties.* — x x x
>
> The following **sales by VAT-registered persons** shall be subject to zero percent (0%) rate:
>
> (a) Export sales. — "Export Sales" shall mean:
>
> (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, **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" (*Boldfacing supplied*)

As correctly held by the Court in Division, there are three essential elements that must be met before an export sale is considered VAT zero-rated, to wit:

(1) The sale was made by a VAT-registered person;

(2) There was sale and actual shipment of goods from the Philippines to a foreign country; and

(3) It was paid for in acceptable foreign currency accounted for in accordance with the rules and regulations of the BSP.

As to the first element, there is no dispute that Oceanagold is a VAT-registered taxpayer.[1]

[1] Exhibit "P-3", CTA Case No. 9207, Division Docket, p. 1876.

Anent the second element, there is also no question that Oceanagold actually exported minerals to its foreign buyers. The crux of the present controversy revolves around the issue on **when export sales are deemed to have been made.** Corollary, **is it required that a sales invoice be dated the same time the export sale was made, or could it be dated beyond said date?**

Under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, an export sale means "**sale and actual shipment** of goods from the Philippines to a foreign country x x x 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]". In *Phil. Gold Processing & Refining Corporation vs. Commissioner of Internal Revenue*,[2] this Court has acknowledged that the **Bill of Lading or Airway Bill is the competent proof of actual shipment of the exported goods**, *viz.*:

> "It must be recalled that the assailed decision considered the claim for refund as having been based on Section 106(A)(2)(a)(1) of the National Internal Revenue Code (NIRC) of 1997, as amended, or from export sales.
>
> The term 'export sales' is defined in the said provision as '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).'
>
> Thus, **the provision requires that there should be an actual shipment of goods from the Philippines to a foreign country and such shipment can only be proven by the airway bill or bill of lading**." (*Boldfacing supplied*)

Similarly, the Omnibus Investments Code of 1987[3] provides:

> "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

[2] CTA EB No. 1670 (CTA Case No. 8763), July 9, 2018.
[3] Executive Order No. 226 dated July 16, 1987.

> 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**[.] x x x" (*Boldfacing supplied*)

A Bill of Lading is jurisprudentially defined as:

> "[A] written acknowledgement of the receipt of goods and an agreement to transport and to **deliver them at a specified place to a person named or on his or her order**. It operates both as a receipt and as a contract. It is a receipt for the goods shipped and a contract to transport and deliver the same as therein stipulated. As a receipt, **it recites the date and place of shipment,** describes the goods as to quantity, weight, dimensions, identification marks, condition, quality, and value. As a contract, it names the contracting parties, which include the consignee; fixes the route, destination, and freight rate or charges; and stipulates the rights and obligations assumed by the parties."[4] (*Boldfacfing supplied*)

Evidently, export sales are not necessarily determined from the sales invoices, but also from **Bills of Lading**, inward letters of credit, landing certificates, and other commercial documents of exports.

Thus, the date appearing on the Bill of Lading or Airway Bill is considered as the date of export sale.

On the other hand, issuance of a VAT invoice stating the "date of transaction" is a mandatory requirement under Section 113(B)(3) of the NIRC of 1997, as amended, to wit:

> "SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons*. -
>
> (A) *Invoicing Requirements*. – x x x
>
> x x x x x x x x x
>
> (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:
>
> x x x x x x x x x

[4] *Unsworth Transport International (Phils.), Inc. vs. Court of Appeals and Pioneer Insurance and Surety Corporation*, G.R. No. 166250, July 26, 2010.

> (3) The **date of transaction**, quantity, unit cost and description of the goods or properties or nature of the service; x x x" (*Boldfacing supplied*)

Notwithstanding that the VAT invoice is dated outside the period of claim, for as long as the Bill of Lading or Airway Bill shows that the goods were **actually shipped during the period of claim**, such is sufficient to prove that the export sales were made during the taxable quarter in question.

This is especially true with Oceanagold's line of business where the VAT invoice is issued upon the final determination of the weight and price of the goods actually shipped, which happens beyond the current taxable period. This is supported by the uncontested testimony of Oceanagold's Finance Manager, Ms. Josefina Mallari, to wit:

> "Q-57 You mentioned that petitioner issues provisional invoice and final invoice relative to its export sales of minerals. Can you explain why petitioner issues provisional invoice and final invoice?
>
> A-57 Petitioner issues a provisional invoice upon shipment of the mineral products to its foreign buyer. The provisional invoice covers approximately ninety percent (90%) of the estimated value of the shipment. Petitioner makes a provisional pricing or valuation based on weight (dry and wet weight) and moisture as determined by it and also based on its provisional assays showing copper, gold and silver content.
>
> Subsequently, a **final invoice is issued after petitioner and its foreign buyer have reached an agreement regarding the final settlement weights, assays and quotations and the final price of the shipment. The final price is based on the weight and moisture content upon arrival of the concentrates at the port of unloading and the metal price at the London Metal Exchange three (3) months after the arrival of the shipment at the port of destination.**
>
> The remaining unpaid balance based on the final invoice is paid within three (3) days upon receipt of the same.
>
> x x x x x x x x x
>
> Q-61 In the sample permit to export, bill of lading, provisional invoice and final invoice presented, it appears that

there are differences in the weight of the minerals shipped, why is this so?

A-61 The difference is a result of the changing moisture content of the minerals."[5] (*Boldfacing supplied*)

Even if the VAT invoice is dated outside the period of claim, what controls as the date of export is the date appearing on the Bill of Lading or Airway Bill. As held by this Court in the case of *Phil. Gold Processing & Refining Corp. vs. Commissioner of Internal Revenue*,[6] which invoked the Supreme Court's pronouncement in *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*,[7] the Bill of Lading or Airway Bill is sufficient on its own to establish the fact of actual shipment of goods from the Philippines to a foreign country, *viz.*:

> "At the outset, contrary to petitioner's claim, **it must be pointed out that the Supreme Court in *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, categorically identified export documents such as export declarations and airway bills as sufficient proof of actual shipment of goods from the Philippines to a foreign country**. According to the Supreme Court:
>
> > 'To the mind of the Court, these documentary evidence submitted by petitioner, *e.g.*, summary of export sales, sales invoices, official receipts, airway bills and export declarations, prove that it is engaged in the sale and actual shipment of goods from the Philippines to a foreign country.
>
> While it may be argued that the above pronouncement by the Supreme Court in Intel did not exclusively limit proof of actual shipment to export declarations, airway bills, or bills of lading only and that there may be other documents which may sufficiently prove that the goods were actually shipped to a foreign country, it still does not negate the reality that the documentary evidence adduced by petitioner before the Court in Division failed to sufficiently establish such fact. **What is clear from the abovequoted portion of *Intel* is that export documents such as airway bills and export declarations prove the actual shipment of goods from the Philippines to a foreign country.**" (*Boldfacing supplied*)

The *ponencia* rules that a provisional invoice is required to establish the fact of sale. The subsequent discussion below will show that a provisional invoice is not required to be presented to prove the

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[5] Exhibit "P-50", CTA Case No. 9207, Division Docket, Vol. 2, pp.916-917.
[6] CTA EB No. 1599 (CTA Case No. 8697), January 31, 2018.
[7] G.R. No. 166732, April 27, 2007.

date of export sale so long as the Bill of Lading or Airway Bill provides for the same.

Provisional invoice is not necessary to establish the fact that goods were sold; it is the VAT (final) invoice which is required

A provisional invoice, or "supplementary invoice" or "commercial" invoice", is defined under Section 2(3) of RR No. 18-2012 dated October 22, 2012, to wit:

> "3. **SUPPLEMENTARY RECEIPTS / INVOICES** - for purposes of these Regulations, 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**, acknowledgement 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 <u>not valid</u> proof to support the claim of Input Taxes by buyers of goods and/or services**." (*Boldfacing and underscoring supplied*)

On the other hand, a VAT invoice (or final invoice) is defined under Section 2.1 of RR No. 18-2012, *viz.*:

> "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 falls under this definition." (*Boldfacing supplied*)

Prescinding from the foregoing, a provisional invoice has the following characteristics:

(1) It is a document evidencing delivery, agreement to sell or transfer of goods and services;

(2) It is for recording, monitoring and control purposes of the taxpayer; and

(3) It is not valid proof to support the claim of input tax.

Between a provisional invoice and a VAT (final) invoice, the latter is considered to be the **competent proof of the actual sale of the goods**, bearing therein details as to the exported goods' **final quantity and price** which are then reported and declared in the taxpayer's VAT returns.

As discussed, although such VAT (final) invoices are dated outside the period of claim, the date appearing on the Bill of Lading or Airway Bill should be considered as the date of export sale. Otherwise stated, Oceanagold's failure to present provisional invoices may not be considered fatal to its claim.

To prove, however, the final or actual amount or quantity of goods sold and their selling price that is eventually reported in the taxpayer's VAT returns, the VAT (final) invoice should be presented in evidence, albeit dated outside of the period of claim.

In *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*,[8] the Supreme Court emphasized that the VAT (final) invoice or official receipt is considered as the proof of the **actual amount or quantity of goods sold and their selling price**, *viz.*:

> **"[T]he VAT invoice is the seller's best proof of the sale of the goods or services to the buyer** while the VAT receipt is the buyer's best evidence of the payment of goods or services received from the seller. Even though VAT invoices and receipts are normally issued by the supplier/seller alone, the said invoices and receipts,

[8] G.R. No. 191495, July 23, 2018.

> taken collectively, are necessary to **substantiate the actual amount or quantity of goods sold and their selling price (proof of transaction), and the best means to prove the input VAT payments (proof of payment)**. Hence, VAT invoice and VAT receipt should not be confused as referring to one and the same thing. Certainly, neither does the law intend the two to be used alternatively." (*Boldfacing and underscoring supplied*)

As testified by Oceanagold's witness, Ms. Mallari, Oceanagold issued a provisional invoice which only covers around 90% of the estimated value of the shipment. Thus, a provisional invoice does not capture the entirety of the sale transaction, as the final weight and price of the exported goods are yet to be determined, unlike the VAT (final) invoice which shows the **actual amount or quantity of goods sold and their selling price**.

As afore-stated, under RR No. 18-2012, a provisional invoice is used merely for "recording, monitoring and control purposes". In addition, it cannot be used to support a claim for input tax on the part of the buyer of goods. At most, a provisional invoice can be considered a document that merely assists a VAT seller of goods in checking the amount of sales it had tentatively made.

Thus, Oceanagold's failure to offer in evidence the provisional invoices for the transactions subject of its Petition for Review, *i.e.*, disallowed sales in the total amount of ₱4,681,519,998.33, despite the testimony of Ms. Mallari that Oceanagold issued provisional invoices for its export sales, is not fatal to its refund claim.

To require the submission of provisional invoices is to add a requirement not found in the law or regulations. In *Commissioner of Internal Revenue vs. Philex Mining Corporation*,[9] the Supreme Court held that the refund claimant is not required to submit its subsidiary sales and purchase journals in support of its refund claim considering that such requirement is not found in the law, *viz.*:

> "In all, Philex Mining's **failure to maintain subsidiary sales and purchase journals** or to file the monthly VAT declarations **should not result in the outright denial of its claim for refund or credit of unutilized input VAT attributable to its zero-rated sales. These are not part of the requirements for Philex Mining to be entitled thereto**. Section 112 (A) of the Tax Code is very clear; no construction or interpretation is needed. The Court may not construe a statute that is free from doubt; neither can we impose conditions or

[9] G.R. No. 230016, November 23, 2020.

> limitations when none is provided for. While tax refunds are in the nature of tax exemptions and are construed *strictissimi juris* against the taxpayer, tax statutes shall be construed strictly against the taxing authority and liberally in favor of the taxpayer, for taxes, being burdens, are not to be presumed beyond what the statute expressly and clearly declares. Verily, the CTA did not err in ruling that the absence of subsidiary sales journal, subsidiary purchase journal, and monthly VAT declarations is not sufficient to deprive Philex Mining of its right to a refund." (*Boldfacing supplied*)

Similarly, there is nothing in Section 112(A) of the NIRC of 1997, as amended, that requires the submission of **provisional invoices**, which cannot even be used as proof in claiming input taxes. What the law requires is the submission of the **VAT sales (final) invoice**, in accordance with Section 113 of the NIRC of 1997, as amended.

To summarize, a VAT-registered person claiming VAT zero-rated export sales of goods under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, is required to present the following documents, to wit:

(1) VAT sales (final) invoice, as **proof of the final or actual amount of exported goods**, which may be dated **within or outside the period of claim**.

Provisional invoices, which are issued for "recording, monitoring and control purposes", and cannot be used to support a claim for input VAT, are **not** required to be presented;

(2) Bill of Lading or Airway Bill, as **proof of the date of actual shipment of goods** from the Philippines to a foreign country, which must be dated **within the period of claim**; and,

(3) Bank credit advice, certificate of bank remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services, as **proof that the foreign currency payment was accounted for in accordance with the rules and regulations of the BSP**.

In these consolidated cases, the disallowed zero-rated sales of ₱4,681,519,998.33 were supported by both bills of Lading/Airway Bills; and VAT (final) invoices, *sans* provisional invoices. With the

submission of the said documents, Oceanagold has proven the fact of sale and actual shipment of the exported goods.

Anent the third element of Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, *i.e.*, payment in foreign currency accounted for in accordance with the rules and regulations of the BSP, **the Court in Division did not make a determination whether such element was complied with**. Thus, it is proper to remand the case to verify whether Oceanagold established that its export sales were paid for in acceptable foreign currency in accordance with BSP rules and regulations.

An RMC cannot supplant the provisions of the NIRC of 1997, as amended, and its implementing regulations

RMCs are "issuances [which] disseminate and embody pertinent and applicable portions, as well as amplifications of the rules, precedents, laws, regulations, opinions and other orders and directives issued by or administered by the [CIR], and by offices and agencies other than the [BIR], for the information, guidance or compliance of revenue personnel."[10] They are issued by the CIR under his power to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws pursuant to Section 4 of the NIRC of 1997, as amended.

On the other hand, RRs are "issuances x x x that specify, prescribe or define rules and regulations for the effective enforcement of the provisions of the NIRC and related statutes."[11] They are issued by the Secretary of Finance, upon recommendation of the CIR, under his delegated authority to promulgate all needful rules and regulations for the effective implementation of the NIRC of 1997, as amended, pursuant to Section 244 thereof.

As correctly posited by Oceanagold, nowhere in Section 113 of the NIRC of 1997, as amended, and Section 4.113-1 of RR No. 16-2005, as amended, is it provided that a VAT invoice or official receipt should contain the phrase "valid until October 31, 2013 only" for it to be given validity.

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[10] Section 1(g), Revenue Administrative Order No. 001-12 dated April 2, 2012.
[11] Section II(A)(a.1), Revenue Memorandum Order No. 12-97 dated March 20, 1997.

The CIR cannot, on his own, amend Section 113 of the NIRC of 1997, as amended, by obligating that the phrase "valid until October 31, 2013 only" be added to all VAT invoices and official receipts, and in case of failure of such taxpayers to comply, they cannot claim input taxes thereon.

As held by the Supreme Court in *Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc.*:[12]

> "RMO No. 15-91 and RMC No. 43-91 were issued in accordance with the power of the CIR to make rulings and opinions in connection with the implementation of internal revenue laws, which was bestowed by then Section 245 of the NIRC of 1977, as amended by E.O. No. 273. Such power of the CIR cannot be controverted. However, **the CIR cannot, in the exercise of such power, issue administrative rulings or circulars not consistent with the law sought to be applied. Indeed, administrative issuances must not override, supplant or modify the law, but must remain consistent with the law they intend to carry out**. Only Congress can repeal or amend the law." (*Boldfacing supplied*)

In fact, this Court has ruled, in *Deutsche Knowledge Services Pte. Ltd. vs. Commissioner of Internal Revenue, et seq.*,[13] that RMC No. 52-2013 cannot supplant the provisions of the NIRC of 1997, as amended, and RR No. 16-2005, as amended, *viz.*:

> "The requirement of stamping the term 'valid until October 31, 2013' on the face of the invoices and receipts was only introduced in RMC No. 52-2013 which was issued on August 13, 2013. Considering that the instant case involves the claim for refund or credit of unutilized input VAT for the taxable period April to June 2013, or the 2nd quarter of CY 2013, it is evident that the requirement under RMC No. 52-13 was inexistent during the subject period of claim, and therefore could not have been complied with by Deutsche Knowledge.
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> x x x x x x x x x
>
> **Moreover, it bears noting that in the aforementioned Section 113 of the Tax Code and Sections 4.113-1 (B) of RR No. 16-2005, which specify the mandatory information that must be contained in the VAT invoices and ORs, there is no requirement that the phrase 'valid until October 31, 2013' must be stamped or imprinted on the face of the invoices or ORs to be able to claim deduction and input tax refund/credit**.

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[12] G.R. No. 150947, July 15, 2003.
[13] CTA EB Nos. 1917 & 1919 (CTA Case No. 9079), February 5, 2020.

> **As discussed above, while administrative issuance such as RMC No. 52-2013, have the force and effect of law, and benefit from the same presumption of validity and constitutionality enjoyed by statutes, it cannot prevail over the clear and plain language of the Tax Code**." (*Boldfacing supplied*)

The rule of law mandates this Court to be consistent in its decisions. The Court disregards such duty by ruling that RMC No. 52-2013 is contrary to law in a previous case, and then applying the provisions of such invalidated issuance in this case.

As held in the *ponencia*, Section 238 of the NIRC of 1997, as amended, provides that the Secretary of Finance may, upon recommendation of the Commissioner of Internal Revenue, promulgate rules and regulations that may require such other information to be shown in VAT invoices and commercial receipts before an Authority to Print (ATP) may be issued, *viz.*:

> "SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* – x x x
>
> No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and **such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner**." (Boldfacing supplied)

The *ponencia* holds that the Secretary of Finance issued RR No. 18-2012 to implement Section 238 of the NIRC of 1997, as amended. However, review of said RR reveals that the same did not impose a new requirement that the phrase "valid until October 31, 2013 only" should be shown on the face of VAT invoices or official receipts.

Even though RR No. 18-2012 provided that "No ATP shall be granted for the printing of principal and supplementary receipts/invoices unless the required information, **which shall be prescribed in a separate revenue issuance**, are reflected therein", the "revenue issuance" referred to pertains to a subsequent RR to be promulgated by the Secretary of Finance. Congress has already delegated its rulemaking power to the Secretary of Finance under Section 237 of the NIRC of 1997, as amended, and the latter is not authorized to delegate such power further to the CIR. *Delegata*

potestas non potest delegari. What has once been delegated by Congress can no longer be further delegated or redelegated by the original delegate to another.[14]

RMC No. 52-2013 imposed a new requirement that all invoices/official receipts must contain the term "valid until October 31, 2013 only" stamped prominently thereon, otherwise the taxpayer cannot claim it as a deduction to gross income or as proof of input tax. By imposing this new requirement, and providing for the legal consequences for failure to comply therewith, the CIR did not merely "fill in" the supposed gap in RR No. 18-2012, but the said RMC went beyond its function to "disseminate and embody pertinent and applicable portions, as well as amplifications of the rules, precedents, laws, regulations, opinions and other orders and directives issued by or administered by the [CIR.]"[15] Simply, the above provision in RMC No. 52-2013 is not merely interpretative in nature, as it substantially increased the burden of taxpayers.

As discussed, it is through an RR promulgated by the Secretary of Finance that other requirements may be imposed on the invoice/official receipt. To note, RMC No. 52-2013 was only issued by the CIR.

Indeed, if the CIR wanted to impose the new requirement, he should have recommended the same to the Secretary of Finance for possible issuance of a new RR. However, he merely issued an RMC which imposed the new requirement, contrary to Section 238 of the NIRC of 1997, as amended.

In sum, to ascertain whether Oceanagold's input taxes in the total amount of ₱14,875,604.42 complied with the other invoicing and substantiation requirements, it is proper to remand the case to the Court in Division for a full determination of the validity of said input taxes.

ALL TOLD, I *VOTE* to:

(1) CONCUR in the denial of the Commissioner of Internal Revenue's Petition for Review in CTA EB No. 2552; and,

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[14] *Republic of the Philippines vs. Herederos de Ciriaco Chunaco Disteleria Incorporada*, G.R. No. 200863, October 14, 2020.
[15] Section 1(g), Revenue Administrative Order No. 001-12.

(2) PARTIALLY GRANT Oceanagold (Philippines), Inc.'s Petition for Review in CTA EB No. 2571. Accordingly, the case should be remanded to the Court in Division for a full determination of its refundable amount in accordance with the disquisitions herein.

ROMAN G. DEL ROSARIO
Presiding Justice