REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

CARMEN COPPER CORPORATION *Petitioner,*	**CTA *EB* NO. 2596** *(CTA Case No. 9726)*
-versus-	Present: **DEL ROSARIO, P.J., RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID,** and **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: SEP 25 2023 3:10 PM

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court is a Petition for Review,[1] filed through registered mail on 10 May 2022 by petitioner Carmen Copper Corporation, seeking the reversal and setting aside of the Decision, dated 5 June 2020[2] ("Assailed Decision"), and Resolution, dated 22 March 2022[3] ("Assailed Resolution"), both rendered by the Court in Division.[4] Petitioner prays for this Court to render judgment ordering respondent to refund or issue a tax credit certificate to petitioner in the amount of ₱29,875,350.26 representing unutilized input value-added tax ("VAT") attributable to zero-rated sales for the 2nd to 4th quarters of taxable year ("TY") 2015.

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1 *EB* Records, pp. 8-86, with annexes.
2 Division Records Vol. 2, pp. 547-571.
3 *Id.*, pp. 717-735.
4 CTA-Second Division.

The Parties

Petitioner Carmen Copper Corporation is a corporation duly organized and existing under the laws of the Philippines.[5]

Respondent is the duly appointed Commissioner of Internal Revenue ("CIR") empowered to perform the duties of said office including, among others, the power to decide, approve, and grant tax refunds or tax credits as provided for by law.[6] He may be served summons, pleadings, and other processes at his office at the BIR National office Building, Agham Road, Diliman, Quezon City.[7]

The Facts

The relevant factual antecedents found by the Court in Division and culled from the records of the case follow.

On 30 June 2017, petitioner filed with the Bureau of Internal Revenue ("BIR") Large Taxpayers Service-Excise Tax Division an administrative claim for refund or for issuance of tax credit certificate in the amount of ₱145,837,597.01 allegedly representing excess and unutilized input VAT attributable to zero-rated sales for the 2nd to 4th quarters of taxable year 2015.[8]

Claiming inaction on its administrative claim for refund or for issuance of a tax credit certificate, petitioner filed a Petition for Review on 27 November 2017.[9] The case was docketed as CTA Case No. 9726 and raffled to the CTA-Second Division.

Pending resolution of CTA Case No. 9726, petitioner filed an Amended Petition for Review[10] on 14 January 2019 to reduce the amount of claim from ₱145,837,597.01 to ₱29,875,350.26 in view of respondent's partial grant of petitioner's administrative claim for refund or for issuance of tax credit certificate.

Respondent then filed his Amended Answer on 29 January 2019.[11]

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5 Exhibit "P-1", Division Records Vol. 1, pp. 378-394.
6 *See* Admitted Fact in Joint Stipulation of Facts and Issues dated 11 May 2018 as adopted in the Pre-Trial Order dated 23 May 2018, *id.*, p. 201.
7 *See* Admitted Fact in Joint Stipulation of Facts and Issues dated 11 May 2018 as adopted in the Pre-Trial Order dated 23 May 2018, *id.*, p. 201.
8 Exhibits "P-18", "P-18-1", "P-19", "P-19-1", and "P-20", *id.*, pp. 415-418.
9 *Id.*, pp. 10-25.
10 *Id.*, pp. 448-463.
11 *Id.*, pp. 477-484.

On 5 June 2020, the Court in Division rendered the Assailed Decision denying petitioner's claim for refund or for issuance of tax credit certificate.[12]

On 22 July 2020, petitioner filed, through registered mail, its Motion for Reconsideration (with Motion for Leave of Court to Reopen the Case for the Recall of a Witness).[13] Respondent filed his Opposition (Re: Motion for Reconsideration with Motion for Leave of Court to Reopen the Case for the Recall of a Witness)[14] on 25 September 2020. In a Resolution, dated 11 January 2021,[15] the Court in Division granted petitioner's Motion for Leave of Court to Reopen the Case for the Recall of a Witness and held in abeyance the resolution of petitioner's Motion for Reconsideration pending presentation, identification, and formal offer of aforesaid evidence.

On 29 January 2021, respondent filed a Motion for Reconsideration[16] of the Court in Division's Resolution, dated 11 January 2021. Petitioner filed a Comment (To Respondent's Motion for Reconsideration)[17] on 3 March 2021. In a Resolution, dated 8 June 2021,[18] the Court denied respondent's Motion for Reconsideration and further held in abeyance the resolution of petitioner's Motion for Reconsideration.

During the hearing on 5 July 2021,[19] petitioner recalled to the witness stand Mr. Ericson D. Tadeja, who testified on direct examination by way of his Judicial Affidavit[20] and completed his testimony after cross and re-direct examinations. On 22 July 2021, petitioner filed a Supplement to the Motion for Reconsideration (with Formal Offer of Evidence and Motion for Remarking of Exhibits).[21] In a Resolution, dated 6 December 2021,[22] the Court in Division granted petitioner's Motion for Remarking Exhibit and admitted petitioner's formally offered exhibits.

In the Assailed Resolution,[23] the Court in Division both denied petitioner's Motion for Reconsideration filed on 22 July 2020 and Supplement to the Motion for Reconsideration filed on 22 July 2021 for lack of merit.

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[12] Division Records Vol. 2, pp. 547-571.
[13] *Id.*, pp. 572-632, with annexes.
[14] *Id.*, pp. 635-644.
[15] *Id.*, pp. 646-655.
[16] *Id.*, pp. 656-666.
[17] *Id.*, pp. 669-673.
[18] *Id.*, pp. 676-682.
[19] *Id.*, pp 683-684.
[20] Exhibits "P-27" and "P-27-A", *id.*, pp. 624-631.
[21] *Id.*, pp. 685-710.
[22] *Id.*, pp. 712-715.
[23] *Id.*, pp. 716-735.

Aggrieved, petitioner filed the instant Petition for Review[24] on 10 May 2022 within the extended period granted by the Court *En Banc.*[25]

The Records Verification, dated 19 July 2022,[26] shows that respondent failed to file his Comment on petitioner's Petition for Review.

On 2 August 2022, the Court *En Banc* issued a Resolution submitting this case for decision.[27]

Hence, this Decision.

Issues[28]

The issues submitted for resolution of the Court *En Banc* are as follows:

(1) Whether the Court in Division erred in not holding that respondent is required by law and the Constitution to provide sufficient explanation and specific legal bases for its denial of claim for VAT refund in compliance with due process;
(2) Whether the Court in Division went beyond its jurisdiction when it ruled on issues not disputed by the parties;
(3) Whether the Court in Division erred in holding that petitioner's sales are not qualified for VAT zero-rating;
(4) Whether the Court in Division erred in disregarding the reconciliation of zero-rated sales contained in the BIR Records that were formally offered as evidence by respondent;
(5) Whether the Court in Division erred in its ruling that a Board of Investments ("BOI")-registered entity cannot be passed on with VAT by all of its local suppliers of goods and services; and
(6) Whether the allocation of input taxes to valid and invalid zero-rated sales creates a category of sales that is not contemplated by the ***Tax Code***.

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[24] *EB* Records, pp. 8-86, with annexes.
[25] *Id.*, p. 7; The extended period granted by the Court *En Banc* is until 7 May 2022 which is a Saturday. The next working day is 10 May 2022, considering that 9 May 2022 was declared a special (non-working) holiday for the National and Local Elections, pursuant to Proclamation No. 1357.
[26] *Id.*, p. 90.
[27] *Id.*, pp. 92-93.
[28] *See* Assignment of Errors, Petition for Review, *id.*, p. 13.

Arguments of Petitioner[29]

Petitioner presents the following arguments:

First, petitioner maintains that the denial letter of respondent is insufficient insofar as it failed to inform the taxpayer as to the factual and legal bases of its decision. Petitioner asserts that due process requires that the taxpayer must be informed of the factual and legal bases supporting the administrative decisions of government agencies. In support of its claim, petitioner cites ***Section 1, Article III of the 1987 Constitution*** pertaining to due process, ***Section 14, Chapter 3, Book III of the Administrative Code*** requiring that decisions rendered by an agency shall state clearly and distinctly the facts and the law on which the decision is based, ***Section 112(C) of the National Internal Revenue Code of 1997, as amended ("Tax Code"),*** requiring the CIR to state in writing the legal and factual basis for the denial of refund, and ***Section 228 of the Tax Code, as amended,*** on the requirement to inform the taxpayer in writing the law and facts on which the assessment is made otherwise the assessment is rendered void. Petitioner adds that while there is no categorical requirement in the ***Tax Code*** with respect to nullifying decisions on claims for refund that are not compliant with due process, procedural violations in other aspects of law are quite clear on the consequences.

Second, the original jurisdiction to settle tax refunds is vested with the CIR, subject only to exclusive appellate jurisdiction of the CTA. Petitioner maintains that the Court in Division exceeded its jurisdiction when it ruled on an issue that is not disputed by the parties particularly on the validity of petitioner's zero-rated sales. According to petitioner, respondent, in the exercise of its original jurisdiction, conducted audit to verify the claim for refund and found it to be valid except for the alleged unsubstantiated input taxes. Petitioner believes that the Court in Division effectively supplanted respondent's exercise of original jurisdiction when it denied the claim on another ground (*i.e.* petitioner's zero-rated sales were not paid for in foreign currency accounted for under BSP rules) which was not brought up by the parties. Petitioner cites ***Chinatrust (Phils.) Commercial Bank v. Turner***[30] where the Supreme Court purportedly ruled that "courts cannot grant a relief not prayed for in the pleadings or in excess of what is being sought by the party."

Third, petitioner maintains that its sales properly qualify as zero-rated under ***Section 106(A)(2)(a), sub-paragraphs (1) and (5) of the Tax Code, as amended***. Petitioner takes the view that its sales could fall under both ***paragraph (1)*** as direct exports, and under ***paragraph (5)*** as a sale by a Board of Investments ("BOI")-registered export enterprise. Under both situations;

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[29] *See* Discussion, Petition for Review, *id.*, pp. 14-31.
[30] G.R. No. 191458, 3 July 2017.

petitioner insists, the sales should be considered export sales subject to 0% VAT. Petitioner insists that it is unnecessary to ascertain whether exporters are compliant with Bangko Sentral ng Pilipinas ("BSP") rules and regulations on the accounting of export sales proceeds due to the liberalization of foreign currency transactions.

Fourth, the evidence offered by respondent could be considered by the court in favor of petitioner. Petitioner maintains that, with the admission of the BIR Records in evidence, the Court in Division should have accepted the records found therein as sufficient proof to establish petitioner's zero-rated sales. Petitioner further points out that respondent's witness testified that the BIR has no findings with respect to sales. Petitioner thus concludes that it was unnecessary to prove facts that are not disputed.

Fifth, the disallowed input taxes on domestic purchases by BOI-registered enterprises. Petitioner disagrees with the Court in Division's application of the doctrine in ***Coral Bay Nickel Corp. v. CIR***[31] ***("Coral Bay Case")*** to the present case. According to petitioner, ***Coral Bay Case*** applies only to PEZA-registered enterprises which enjoy a different regime of incentives than BOI-registered enterprises. Petitioner refers to ***Section 106(A)(2)(a)(3) of the Tax Code*** which explicitly provides for the incentives to BOI-registered enterprises particularly that only sale of raw materials and packaging materials to export-oriented enterprises whose sales exceed 70% of their annual production are zero-rated. Petitioner then concludes that it was erroneous for the Court in Division to disregard altogether all input taxes relating to domestic purchases.

Sixth, petitioner claims that the input tax on "invalid zero-rated" sales does not become attributable to sales subject to VAT nor in VAT-exempt sales to be removed from the refundable amount. Petitioner faults the computation of the Court in Division on the allocation of sales.

The Ruling of the Court *En Banc*

The Petition for Review is unmeritorious.

[31] G.R. No. 190506, 13 June 2016.

Respondent's denial letter failed to state the basis of the partial denial as required by administrative due process.

Section 4 of the Tax Code vests with respondent the power to decide refunds of internal revenue taxes:

> "SEC. 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.* - The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.
>
> **The power to decide** disputed assessments, **refunds of internal revenue taxes,** fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue **is vested in the Commissioner**, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals." (Emphasis, Ours)

In the exercise of its power, the CIR must give due regard to the taxpayer's constitutional rights,[32] comply with the requirements of law,[33] and with the BIR's own rules.[34]

The constitutional right to due process applies to administrative proceedings where a person may be deprived of life, liberty, or property. Although quasi-judicial agencies may be said to be free from the rigidity of certain procedural requirements, it does not mean that it can, in justiciable cases coming before it, entirely ignore or disregard the fundamental and essential requirements of due process in trials and investigations of an administrative character.[35]

Administrative due process requires that the party's defenses be considered by the administrative body in making its conclusions and that the party be sufficiently informed of the reasons for its conclusions.[36] In ***Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.,***[37] the Court reiterated the fundamental requirements of due process that must be

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[32] Commissioner of Internal Revenue v. Unioil Corp., G.R. No. 204405, 4 August 2021 *citing* Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., G.R. Nos. 201398-99 & 201418-19, 3 October 2018.

[33] Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., G.R. Nos. 201398-99 & 201418-19, 3 October 2018.

[34] *Ibid.*

[35] Ang Tibay v. The Court of Industrial Relations, G.R. No. 46496, 27 February 1940.

[36] Commissioner of Internal Revenue v. Unioil Corp., G.R. No. 204405, 4 August 2021 *citing* Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., G.R. Nos. 201398-99 & 201418-19, 3 October 2018.

[37] G.R Nos. 201398-99 & 201418-19, 3 October 2018.

respected in administrative proceedings as earlier set forth in the case of ***Ang Tibay v. The Court of Industrial Relations***:[38]

(1) The party interested or affected must be able to present his or her own case and submit evidence in support of it.
(2) The administrative tribunal or body must consider the evidence presented.
(3) There must be evidence supporting the tribunal's decision.
(4) The evidence must be substantial or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."
(5) The administrative tribunal's decision must be rendered on the evidence presented, or at least contained in the record and disclosed to the parties affected.
(6) The administrative tribunal's decision must be based on the deciding authority's own independent consideration of the law and facts governing the case.
(7) The administrative tribunal's decision is rendered in a manner that the parties may know the various issues involved and the reasons for the decision.

The *first requirement* pertains to the party's substantive right at the **hearing stage** of the proceedings. The essence of this aspect of due process is to give the parties an opportunity to be heard or, as applied in administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of.[39]

The *second* to the *sixth requirements* are reinforcements of the right to a hearing and are the inviolable rights applicable at the **deliberative stage**, as the decision-maker decides on the evidence presented during the hearing. These standards set forth the guiding considerations in deliberating on the case and are the material and substantial components of decision-making. Briefly, the tribunal must consider the totality of evidence presented, which must all be found in the records of the case (i.e., those presented or submitted by the parties); the conclusion, reached by the decision-maker itself and not by a subordinate, must be based on substantial evidence.[40]

The *last requirement,* relating to the form and substance of the decision of the quasi-judicial body, further complements the hearing and decision-making due process rights. It is similar in substance to the constitutional requirement that a decision of a court must state distinctly the facts and law upon which it is based.[41] As a component of the rule of fairness that underlies

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[38] G.R. No. 46496, 27 February 1940.
[39] Mendoza v. Commission on Elections, G.R. No. 188308, 15 October 2009 *citing* Bautista v. COMELEC, G.R. Nos. 154796-97, 23 October 2003.
[40] *Ibid.*
[41] Mendoza v. Commission on Elections, G.R. No. 188308, 15 October 2009 *citing* Section 14, Article VIII, 1987 Constitution and Solid Homes, Inc. v. Laserna, G.R. No. 166051, 8 April 2008.

due process, this is the **"duty to give reason"** to enable the affected person to understand how the rule of fairness has been administered in their case, to expose the reason to public scrutiny and criticism, and to ensure that the decision will be thought through by the decision-maker.[42]

In the present case, petitioner claims that respondent's denial letter violated its administrative right to due process because the letter failed to state the facts and the law on which the denial is based. Petitioner essentially invokes the requirement on "duty to give reason".

The resolution of this issue requires an examination of respondent's denial letter. We reproduce respondent's Denial Letter[43] below:

"October 4, 2017

CARMEN COPPER CORPORATION
Claim for VAT Refund/TCC
For the Period April 1, 2015 to December 31, 2015

- Refers to the report of investigation covering subject taxpayer's claim for VAT Refund/TCC equivalent to its unutilized input tax attributable to zero-rated transactions for the period from April 1, 2015 to December 31, 2015 in the amount of **P145,837,597.01 (BIR-P4,192,487.32 & BOC-P141,645,109.69)** conducted pursuant to LOA No. AUDM03/012891/2017 eLA201500034776 dated July 6, 2017 and MOA No. RC-06-17-043 dated June 30, 2017, **p.447-448.** Separate LOA was issued on AIRT (except VAT) audit for CY 2015 per LOA No. AUDM35/011461/2017 eLA201500034751 dated April 27, 2017 as stated in the memo on **p.483**;
- Application for the issuance of VAT Refund/TCC was filed on June 30, 2017, being within the prescriptive period as provided for under Sec. 204(C), in relation to Section 112 (A) of the NIRC, **p. 382**. TP is 100% exporter of copper concentrates hence, its sale is subject to zero-percent VAT rate which entitles subject TP for issuance of TCC/refund on its unutilized creditable input taxes from operations;
- Subject claim for refund/TCC was no longer deducted from available input tax for the succeeding quarters of CY 2015 because TP did not carry over input VAT in the succeeding quarters as evidenced by attached photocopy of VAT Return for the 1st Quarter of CY 2016, **p. 452**;
- TP submitted required and complete documents on June 30, 2017 hence, ELTAD I RO processed herein claim within the 120-day period required under RMC 54-2014, see Checklist of Mandatory Requirements on **p.442-443** and Sworn Certification as to the completeness of documents submitted on **p.287**;
- Verification on the documents submitted disclosed that VAT Returns are duly filed and purchases were found to be ordinary and necessary expenses in carrying TP's course of trade and business. Pertinent attachments such as invoices and ORs were fully vouched/validated by

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[42] Mendoza v. Commission on Elections, G.R. No. 188308, 15 October 2009.
[43] BIR Records, p. 504.

the assigned RO from the originals as discussed in the memo report on **p.479**;

- It was noted that results of TIN validation in the CAATTs laboratory was provided by the CAATTs Project Manager and attached on **p.223-224 of Folder 2**. Results of TIN Validation showed some suppliers to be non-VAT Taxpayer and unregistered/not in TIN Database hence, included as part of the disallowances, see discussion in the memo report on **p.478**;
- TP has no record of tax liabilities per Delinquency Verification Reports (DVR) issued by Chief, LT Collection and Enforcement Division, Chief, LT-Document Processing and Quality Assurance Division and Chief, Accounts Receivable Monitoring Division, **p.449-451**;
- TP has not filed any similar claim for refund as certified by the DOF One-Stop-Shop Inter-Agency Tax Credit & Duty Drawback Center, **p.289**. Likewise, no similar claim has been filed with Bureau of Customs as evidenced by the Certification issued by the Chief Accountant, Financial Management Office of the BOC, **p.290**. The Chief, VAT Credit Audit Division of this Bureau also issued Certification of No Pending claim for VAT Refund covering period from January 1, 2015 to December 31, 2015, see **p.291**;
- Evaluation of documents disclosed adjustment and disallowances in the aggregate amount of **P29,875,350.26 (BIR-P4,192,487.32 & BOC-P25,682,862.94), see Schedule on p.235 of Folder 2**;
- ROs/GS/Chief, ELTAD I forwarded the docket for approval of report with the recommendation for the issuance of TCC in the adjusted amount of **P115,962,246.75 (BOC)**;
- **Concur with the recommendation of ELTAD I for issuance of BIR part TCC to TP, after which, docket be transmitted to the Office of the CIR on or before the 120-day due date (October 28, 2017) for signature of Letter to the Commissioner of BOC.**

Reviewed by:	Recommending Approval:
(sgd)	(sgd)
M.A.C. ZAPANTA-VITALES	**MAGDALENA A. ANCHETA**
Reviewer, Office of HREA	Head Revenue Executive Asst.
Excise Group-LTS	Excise Group-LTS

Approved by:

(sgd)
TERESITA M. ANGELES
OIC-Assistant Commissioner
Large Taxpayers Service"

A perusal of the Denial Letter, particularly the 9th bullet, would show that the partial denial is based on respondent's evaluation of documents resulting to adjustments and disallowances in the amount of ₱ 29,875,350.26. From the Denial Letter and the Schedule of Adjustment and Disallowances, the breakdown of the partially granted refund claim in the amount of ₱115,962,246.75 is as follows:

	BIR Component	BOC Component	TOTAL
Claim for VAT Refund/ TCC	₱ 4,192,487.32	₱ 141,645,109.69	₱ 145,837,597.01
Less: Adjustments and disallowances	4,192,487.32	25,682,862.94	29,875,350.26
Granted VAT Refund/TCC	₱ -	₱ 115,962,246.75	**₱ 115,962,246.75**

The Denial Letter alone fails to state the legal basis of respondent's denial. The Denial Letter merely states that respondent evaluated the documents which "disclosed adjustments and disallowances." While the Denial Letter refers to certain memo reports which purportedly explain respondent's findings, said memo reports are mere summaries without any explanation or citation of the legal basis.

Administrative due process imposes upon the agency the "duty to give reason" and for the decision to state the facts and law upon which the decision is based. At most, while the Denial Letter states the factual basis for the partial denial, it fails to state the legal basis for the decision.

The Court, however, disagrees with petitioner's contention that "to the extent that it improperly denies a portion of petitioner's claim, must be rendered invalid, and the claim for refund be deemed fully granted as a necessary consequence." The effect of an invalid decision does not automatically result in the deemed granting of the refund claim.

The Court in Division did not act beyond its jurisdiction when it ruled on the issue of existence of petitioner's zero-rated sales.

We shall resolve the second and fourth issues jointly.

Petitioner claims that the Court in Division exceeded its jurisdiction when it ruled on an issue not disputed by the parties. It maintains that the original jurisdiction to settle tax refunds are vested with the CIR subject only to the appellate jurisdiction of the CTA. According to petitioner, the issue on recognition of zero-rated sales is not in dispute. Respondent exercised his original jurisdiction when he partially denied petitioner's claim for refund for alleged failure to substantiate some of the input taxes.

Petitioner's contention is erroneous.

We affirm the ruling of the Court in Division in the Assailed Resolution that the CTA is not bound by issues raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.[44]

Indeed, cases filed before this Court are litigated *de novo*.[45] Consequently, petitioner must competently establish its claim for refund or tax credit following the prescribed requisites.

Similarly, in ***Commissioner of Internal Revenue v. Univation Motor Philippines, Inc.***,[46] the Supreme Court ruled:

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

From the foregoing, parties are expected to litigate and prove every minute aspect of their case anew by presenting, formally offering, and submitting to the CTA all evidence required for the successful prosecution of its claim.[47] The Court may consider and evaluate anew evidence submitted before it and make its own factual determination of the case.

Evidently, the Court in Division did not err in deciding the case based on its findings that petitioner's sales did not comply with the substantiation requirements.

Anent petitioner's claim that the Court should have used foreign currency remittances to the export sales found in the BIR Records, we echo the ruling of the Court in Division that cases filed before this Court are litigated *de novo*. For the Court to give value to a specific piece of evidence, the party must formally offer the same in Court with a statement of purpose on why it is being offered. Absent such offer, the Court cannot countenance

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[44] Section 1, Rule 14, Revised Rules of the Court of Tax Appeals.
[45] Commissioner of Internal Revenue v. Univation Motor Philippines, Inc., G.R. No. 231581, 10 April 2019.
[46] G.R. No. 231581, 10 April 2019.
[47] *Id.*; Philippine Airlines, Inc. v. Commissioner of Internal Revenue, G.R. No. 206079-80 and 206309, 17 January 2018.

the allegedly relevant piece of evidence that is purportedly found in the BIR Records.

The Court in Division did not err in holding that petitioner is not qualified for VAT zero-rating.

Petitioner insists that the Court in Division erred in holding that its sales are not qualified for VAT zero-rating. Petitioner insists that export sales do not always have to be paid for in acceptable foreign currency as required ***Section 106(A)(2)(a)(1) of the Tax Code*** as there is no such requirement if the export sales fall under ***Section 106(A)(2)(a)(5) of the Tax Code.***

We disagree with petitioner.

We reproduce ***Section 106(A)(2)(a)(1) or (5) of the Tax Code*** below:

"SEC. 106. Value-Added Tax on Sale of Goods or Properties. —

(A) Rate and Base of Tax. —

...

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

(a) Export Sales. — The term 'export sales' means:

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

(2) ...

(3) ...

(4) ...

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

Export sales contemplated in ***Section 106(A)(2)(a)(5) of the Tax Code*** by BOI-registered entities are also covered in ***Section 106(A)(2)(a)(1) of the Tax Code***. Stated otherwise, export sales in ***Section 106(A)(2)(a)(5)*** are also covered and must thus comply with the requirements set forth in ***Section 106(A)(2)(a)(1) of the Tax Code***

In fact, in ***Atlas Consolidated Mining and Development Corp. v. Commissioner of Internal Revenue***,[48] the Supreme Court explained that there are no inconsistencies between ***Section 106(A)(2)(a)(5)*** and ***Section 106(A)(2)(a)(1)***. The term export sales in ***Section 106(A)(2)(a)(1)*** is more comprehensively defined in ***EO 226*** as identified in ***Section 106(A)(2)(a)(5)***. The Supreme Court held:

> "The T**ax Code of 1977, as amended, gave a limited definition of export sales**, to wit: "The sale and shipment or exportation of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported, or foreign currency denominated sales." **Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987 — which, in the years concerned (i.e., 1990 and 1992), governed enterprises registered with both the BOI and EPZA, provided a more comprehensive definition of export sales**, as quoted below:
>
> > "ART. 23. "Export sales" shall mean the Philippine port F.O.B. value, determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer or the net selling price of export product sold by a registered export producer or to an export trader that subsequently exports the same: Provided, That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates of similar commercial documents: Provided, further, That without actual exportation the following shall be considered constructively exported for purposes of this provision: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) sales to export processing zones; (3) sales to registered export traders operating bonded trading warehouses supplying raw materials used in the manufacture of export products under guidelines to be set by the Board in consultation with the Bureau of Internal Revenue and the Bureau of Customs; (4) sales to foreign military bases, diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products whether paid for in foreign currency or not: Provided, further, That export sales of registered export trader may include commission income; and Provided, finally, That exportation of goods on consignment shall not be deemed export sales until the export products consigned are in fact sold by the consignee.
> >
> > Sales of locally manufactured or assembled goods for household and personal use to Filipinos abroad and other non-residents of the Philippines as well as returning Overseas Filipinos under the Internal Export Program of the

[48] G.R. No. 141104 &148763, 8 June 2007.

> government and paid for in convertible foreign currency inwardly remitted through the Philippine banking systems shall also be considered export sales. (Underscoring ours.)
>
> The afore-cited provision of the Omnibus Investments Code of 1987 recognizes as export sales the sales of export products to another producer or to an export trader, provided that the export products are actually exported. For purposes of VAT zero-rating, such producer or export trader must be registered with the BOI and is required to actually export more than 70% of its annual production.
>
> **Without actual exportation, Article 23 of the Omnibus Investments Code of 1987 also considers constructive exportation as export sales**. Among other types of constructive exportation specifically identified by the said provision are sales to export processing zones. Sales to export processing zones are subjected to special tax treatment. ...
> ...."
> (Emphasis, Ours.)

Further, the Supreme Court emphasized in ***Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue***[49] the importance of establishing the fact that payment on export sales are made in acceptable foreign currency or its equivalent in goods or services in accordance with the rules and regulations of the BSP:

> "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." In short, petitioner is considered engaged in export sales (a zero-rated transaction) if made by a VAT-registered entity. **Moreover, the certification of inward remittances attests to the fact of payment "in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the BSP."** Thus, petitioner's evidence, juxtaposed with the requirements of Sections 106 (A)(2)(a)(1) and 112(A) of the Tax Code, as enumerated earlier, sufficiently establish that it is entitled to a claim for refund or issuance of a tax credit certificate for creditable input taxes."
> (Emphasis, Ours.)

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

---

[49] G.R. No. 166732, 27 April 2007.

There is also no indication in petitioner's BOI Certificate of Registration and its Specific Terms and Conditions[50] that petitioner is exempted from compliance with the general requirement under ***Section 106 (A)(2)(a)(1) of the Tax Code***.

The Court in Division did not err ruling that BOI-registered entities cannot be passed on with VAT by all its suppliers of goods and services.

We have long settled and adopted the ruling in the case of ***Coral Bay Nickel Corporation v. Commissioner of Internal Revenue***[51] on entities such as petitioner who are not supposed to be passed on output tax by its local suppliers:

> "As such, the purchases of goods and services by the petitioner that were destined for consumption within the ECOZONE should be free of VAT; hence, no input VAT should then be paid on such purchases, rendering the petitioner not entitled to claim a tax refund or credit. Verily, if the petitioner had paid the input VAT, the CTA was correct in holding that the Petitioner's proper recourse was not against the Government but against the seller who had shifted to it the output VAT following RMC No. 42-03, which provides:
>
> > In case the supplier alleges that it reported such sale as a taxable sale, the substantiation of remittance of the output taxes of the seller (input taxes of the exporter-buyer) can only be established upon the thorough audit of the suppliers' VAT returns and corresponding books and records. It is, therefore, imperative that the processing office recommends to the concerned BIR Office the audit of the records of the seller.
> >
> > In the meantime, the claim for input tax credit by the exporter-buyer should be denied without prejudice to the claimant's right to seek reimbursement of the VAT paid, if any, from its supplier.
>
> We should also take into consideration the nature of VAT as an indirect tax. Although the seller is statutorily liable for the payment of VAT, the amount of the tax is allowed to be shifted or passed on to the buyer. However, reporting and remittance of the VAT paid to the BIR remained to be the seller/supplier's obligation. Hence, the proper party to seek the tax refund or credit should be the suppliers, not the petitioner." (Citations omitted.)

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[50] Exhibit "P-22", Division Records Vol. 1, pp. 420-426.
[51] G.R. No. 190506, 13 June 2016.

Thus, the Court in Division did not err in finding that the proper party to seek the tax refund or credit is not petitioner but its suppliers. In turn, petitioner's proper recourse is not against the Government but against the seller who had shifted to it the output VAT.

The Court in Division did not err in determining the refundable amount.

Petitioner claims that the Court in Division employed the wrong method when it removed the input tax on "invalid zero-rated" sales from the refundable amount.

We disagree.

In the recent case of ***Chevron Holdings, Inc. v. Commissioner of Internal Revenue***,[52] the Supreme Court clarified the method for computing the refundable amount. Insofar as the input tax on "invalid zero-rated" sales is concerned, the Supreme Court held that the substantiated or valid input VAT should be multiplied to the valid zero-rated sales over total sales. This is contrary to petitioner's contention that there should be no allocation in case of 100% BOI-registered exporters.

WHEREFORE, in light of the foregoing considerations, the Petition for Review filed by Carmen Copper Corporation. is hereby **DENIED** for lack of merit. The assailed Decision, dated 5 June 2020, and assailed Resolution, dated 22 March 2022, promulgated by the Court in Division are hereby **AFFIRMED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

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

[52] G.R. No. 215159, 5 July 2022.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

(With Separate Opinion.)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

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

CARMEN COPPER CORPORATION, Petitioner,	**CTA EB No. 2596** (CTA Case No. 9726)
	Present:
- versus -	**DEL ROSARIO,** ***P.J.***, **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO,** **CUI-DAVID,** and **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 25 2023 3:10 pm

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DISSENTING OPINION

DEL ROSARIO, P.J.:

With utmost respect, I am constrained to withhold my assent on the *ponencia* which denies for lack of merit the Petition for Review filed by Carmen Copper Corporation.

I submit that since petitioner's export sales are transactions within the ambit of **Section 106(A)(2)(a)(5) of the National Internal Revenue Code of 1997, as amended (Tax Code)**, being transactions considered as **export sales under Article 23 of the Omnibus Investments Code (OIC or Executive Order No. 226 [EO 226])**, petitioner need not present proof of payment of export sale in acceptable foreign currency duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP), pursuant to Section 112 (A) of the Tax Code.

It is elementary rule in statutory construction that when the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.[1]

Section 106(A)(2)(a) of the Tax Code, reads:

"Section 106. *Value-Added Tax on Sale of Goods or Properties*. -

> *(A) Rate and Base of Tax*. -There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to twelve percent (12%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor: xxx
>
> xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export Sales*. -The term 'export sales' means:
>
> (1) **The sale and actual shipment of goods from the Philippines to a foreign country**, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and **paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)**;
>
> (2) Sale of raw materials or packaging materials to a nonresident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods and paid **for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)**;
>
> (3) Sale of raw materials or packaging materials to export-oriented enterprise whose export sales exceed seventy-percent (70%) of total annual production;
>
> (4) Sale of gold to the Bangko Sentral ng Pilipinas (BSP);
>
> (5) **Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987**, and other special laws;
>
> (6) The sale of goods, supplies, equipment and fuel to persons engaged in international shipping or international air transport operations." (*Boldfacing supplied*)

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

On the other hand, Section 112 of the Tax Code which provides the requisites for refund or issuance of tax credit certificate of creditable input tax pertinently states:

> "Section 112. Refunds or Tax Credits of Input Tax. –
>
> *(A)* Zero-rated or Effectively Zero-rated Sales. - Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: ***Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)**; xxx." *(Boldfacing and underscoring supplied)*

These Tax Code provisions are clear and unambiguous. Section 106(A)(2)(a) plainly shows that the requirement that the "**acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)**" is only required for ordinary export sales and constructive export sales under Section 106(A)(2)(a)(1), (2) and (b). **It is not required for export sales by a BOI-registered export enterprise under Section 106(A)(2)(a)(5).**

Had the intention was to treat export sales by a BOI-registered export enterprise under Section 106(A)(2)(a)(5) similar to ordinary export sales under Section 106(A)(2)(a)(1), by requiring payment of acceptable foreign currency duly accounted for in accordance with the BSP rules and regulations, the *proviso* in Section 112(A) could have simply specifically mentioned Section 106(A)(2)(a)(5). But, it did not. Thus, the only conclusion is that they should be treated differently.

It must be emphasized that Section 106(A)(2)(a)(1) and (5) of the Tax Code specify two (2) different categories of "export sales". **When an exporter that is not registered with the BOI** sells and actually ships goods from the Philippines to a foreign country, such export sale falls under Section 106(A)(2)(a)(1) as this is the provision that applies to any and all kinds of exportations. However, **if the exporter is BOI-registered**, the actual exportation of goods from the Philippines to a foreign country falls under the definition of "export sale" under Article 23 of the OIC, for which Section 106(A)(2)(a)(5) of the Tax Code, becomes applicable.

The Tax Code itself provided the distinction between exports by BOI-registered exporter and a non-BOI exporter. Reasonable classification is permitted by the Constitution, as one class may be treated differently from another where the groupings are based on reasonable and real distinctions.[2]

Clearly, there is nothing in Section 106(A)(2)(a) or Section 112(A) which requires the refund claimant under Section 106(A)(2)(a)(5) to prove that its export sale was paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the BSP. Such requirement is only **specifically provided and imposed on export sale under Section 106(A)(2)(a) paragraphs (1) and (2)**. Likewise, it also does not require that when a transaction is considered an export sale under the OIC pursuant to Section 106(A)(2)(a)(5) but at the same time qualifies as a transaction under Section 106(A)(2)(a)(1), the taxpayer must also comply with the conditions imposed thereunder. **To do so would render nugatory the different meanings of export sales enumerated under Section 106(A)(2)(a).**

Article 23 of the OIC states that:

> "ART. 23. 'Export sales' shall mean the Philippine port F.O.B. value, determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products **exported directly by a registered export producer** or the net selling price of export product sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same: Provided, That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents: Provided, further, That without actual exportation the following shall be considered constructively exported for purposes of this provision: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) sales to export processing zones; (3) sales to registered export traders operating bonded trading warehouses supplying raw materials used in the manufacture of export products under guidelines to be set by the Board in consultation with the Bureau of Internal Revenue and the Bureau of Customs; (4) sales to foreign military bases, diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products whether paid for in foreign currency or not: Provided, further, That export sales of registered export trader may include commission income: and Provided, finally, That exportation of goods on consignment shall not

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[2] *Zomer Development Company, Inc. vs. Special Twentieth Division of the Court of Appeals, Cebu City and Union Bank of the Philippines*, G.R. No. 194461, January 7, 2020.

> be deemed export sales until the export products consigned are in fact sold by the consignee.
>
> Sales of locally manufactured or assembled goods for household and personal use to Filipinos abroad and other non-residents of the Philippines as well as returning Overseas Filipinos under the Internal Export Program of the government and paid for in convertible foreign currency inwardly remitted through the Philippine banking systems shall also be considered export sales." *(Boldfacing supplied)*

Similarly, there is nothing in Article 23 of the OIC that requires payment of acceptable foreign currency duly accounted for in accordance with BSP rules and regulations for direct export sales to be considered as export sales.

Considering the foregoing, **direct export sales of BOI-registered enterprises, like petitioner, which fall under Section 106(A)(2)(a)(5) of the Tax Code need not be substantiated with payment of acceptable foreign currency duly accounted for in accordance with the BSP rules and regulations**. To insist on a contrary application would be to require compliance with something that is **not written in the law**. It also discriminates against BOI-registered enterprises claiming refund under Section 112 relative to Section 106(A)(2)(a)(5) of the Tax Code by making it more difficult for them to substantiate their refund claims compared to non-BOI enterprises with sales to BOI-registered enterprises claiming under the same provisions of the Tax Code.

In sum, I humbly submit that the Court in Division erred in not applying Section 106(A)(2)(a)(5) of the Tax Code to petitioner's direct export sales and in insisting petitioner's compliance with Section 106(A)(2)(a)(1) of the Tax Code.

All told, I VOTE for the Court *En Banc* to: *(i)* **GRANT** the Petition for Review filed by Carmen Copper Corporation; *(ii)* **REVERSE** and **SET ASIDE** the assailed Decision dated June 5, 2020 and Resolution dated March 22, 2022 in CTA Case No. 9726; and, *(iii)* **REMAND** the case to the Court in Division for determination of the refund due to petitioner, if any.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

CARMEN COPPER CORPORATION, Petitioner,	**CTA EB NO. 2596** (CTA Case No. 9726)
- versus -	*Present*: **DEL ROSARIO**, *P.J.*, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, **CUI-DAVID**, *and* **FERRER-FLORES**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 25 2023

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SEPARATE OPINION

BACORRO-VILLENA, J.:

I concur with the *ponencia* of our esteemed colleague Associate Justice Maria Rowena Modesto-San Pedro in ruling that petitioner is not entitled to any additional amount of refund because respondent has already authorized the issuance of a Value-Added Tax (**VAT**) Credit/Refund in the amount of ₱115,962,246.75[1], which is above and beyond the amount found by the Court's Second Division as petitioner's valid excess and unutilized input VAT attributable to its zero-rated sales for the second (2[nd]) to fourth (4[th]) Quarters of the taxable year (**TY**) 2015.

However, with due respect, I espouse a different view as regards the computation of the amount of excess and unutilized input value-added tax (**VAT**) attributable to zero-rated sales (or the refundable amount before

[1] Exhibit "R-4", BIR Records, Folder 1 of 24, p. 500.

deducting the amount already authorized for issuance of a VAT Credit/Refund).

As can be deduced from the recent Supreme Court decision in *Chevron Holdings, Inc. (formerly Caltex Asia Limited) v. Commissioner of Internal Revenue*[2] (**Chevron**), the steps in computing the refundable amount of excess and unutilized input VAT attributable to zero-rated sales when the taxpayer-claimant is engaged in mixed transactions are as follows:

1. Determine the amount of substantiated or valid input VAT;

2. Deduct from the substantiated or valid input VAT any input VAT directly attributable to a specific activity to arrive at the substantiated or valid input VAT not attributable to any activity;

3. Multiply the substantiated or valid input VAT not attributable to any activity by the ratio of Valid Zero-Rated Sales over Total Sales to determine the amount of substantiated or valid input VAT attributable to valid zero-rated sales;

4. Add to the amount computed in no. 3 any substantiated or valid input VAT directly attributable to zero-rated sales to arrive at the total substantiated or valid input VAT attributable to zero-rated sales;

5. Determine the output VAT still due;

6. Deduct from the output VAT still due any input VAT carried over from previous period to arrive at the amount that may be deemed applied against substantiated or valid input VAT directly attributable to zero-rated sales;

7. Determine the amount of input VAT carried-over instead; and,

8. Deduct from the total substantiated or valid input VAT attributable to zero-rated sales the amount computed in nos. 6 and 7.

Applying the foregoing steps to this case, the amount of excess and unutilized input VAT attributable to valid zero-rated sales (or the refundable amount before deducting the amount already authorized for issuance of a VAT Credit/Refund) should be **₱102,122,859.60**, as computed below:

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[2] G.R. No. 215159, 05 July 2022.

Step 1. It is observable from the Second Division's assailed Resolution dated 22 March 2022 (**Assailed Resolution**) that the amount of substantiated or valid input VAT is ₱142,134,608.74.

Step 2. No input VAT is directly attributable to a specific activity.

Step 3. The amount of substantiated or valid input VAT attributable to valid zero-rated sales is computed as follows:

Total Valid Zero-Rated Sales	₱6,390,386,317.03
Divided by Total Sales for the 2nd to 4th Quarters of TY 2015	8,750,685,509.15
Multiplied by Total Valid Input VAT	142,134,608.74
Valid Input VAT Allocated to Total Valid Zero-Rated Sales	**₱103,797,017.72**

Step 4. No input VAT is directly attributable to a specific activity.

Step 5. Output VAT still due is:

Output VAT		₱1,936,239.09
Total VATable Sales	₱16,135,325.28	
Divided by Total Sales	8,750,685,509.15	
Multiplied by Total Valid Input VAT	142,134,608.74	
Less: Valid Input VAT Allocated to VATable sales		262,080.97
Output VAT Still Due		**₱1,674,158.12**

Step 6. The output VAT still due of ₱1,674,158.12 may be deemed applied against substantiated or valid input VAT directly attributable to zero-rated sales since there is no input VAT carried over from previous period that can cover the same, as shown below:

Output VAT Still Due	₱1,674,158.12
Less: Input VAT Carried Over from Previous Period[3]	-
Valid Input VAT attributable to Valid Zero-Rated Sales Effectively Applied Against Output VAT	**₱1,674,158.12**

Step 7. No input VAT deemed carried-over.

Step 8. The excess input VAT attributable to valid zero-rated sales is:

[3] No Input VAT Carried Over from Previous Period *per* 2nd to 4th Quarter VAT Returns for the Fiscal Year (FY) 2015 (Line Item 20A), Exhibits "P-5", "P-6" and "P-7", Division Docket, Volume I, pp. 399, 400 and 401, respectively.

Valid Input VAT allocated to Total Valid Zero-Rated Sales	₱103,797,017.72
Less: Valid Input VAT attributable to Valid Zero-Rated Sales Effectively Applied Against Output VAT	1,674,158.12
Less: Input VAT Deemed Carried-Over	-
Excess Input VAT attributable to Valid Zero-Rated Sales	**₱102,122,859.60**

In contrast, the Court's Second Division, as affirmed by the Court *En Banc* through the *ponencia*, computed an excess input VAT attributable to valid zero-rated sales of ₱102,571,133.36 in the following manner:

Output VAT	₱1,936,239.09
Less: Valid Input VAT allocated to Sales subject to 12% VAT	262,080.97
Output VAT Still Due	**₱1,674,158.12**
Valid Input VAT allocated to Total *Declared* Zero-Rated Sales	₱141,752,864.66
Less: Output VAT Still Due	1,674,158.12
Excess Input VAT allocated to Total *Declared* Zero-Rated Sales	**₱140,078,706.54**
Excess Input VAT allocated to Total *Declared* Zero-Rated Sales	₱140,078,706.54
Divided by Total *Declared* Zero-Rated Sales	8,727,182,982.80
Multiplied by Total *Valid* Zero-Rated Sales	6,390,386,317.03
Excess Input VAT attributable to Total *Valid* Zero-Rated Sales	**₱102,571,133.36**

The key difference between the foregoing computations is the treatment of the resulting "Output VAT Still Due" amounting to **₱1,674,158.12**. Applying *Chevron*, I submit that it should be deducted from the valid input VAT allocated to **total *valid* zero-rated sales** and *not* from the valid input VAT allocated to **total declared zero-rated sales**.

As elucidated in *Chevron*[4], it is not for the Court of Tax Appeals (**CTA**) to determine and rule in a judicial claim for refund under Section 112(A)[5] of the NIRC of 1997, as amended, that the taxpayer had insufficient or unsubstantiated input VAT to cover or pay its output VAT and, for this reason, it is not proper to charge the taxpayer's substantiated or valid input VAT against its output VAT first and use the resultant amount as basis for computing the allowable amount for refund, *viz*:

> ...
>
> *Fourth*, that the taxpayer failed to prove that it had sufficient creditable input taxes to cover or "pay" its output tax liability in a given

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4 Supra at note 1; Citations omitted, emphasis and italics in the original text and supplied.

5 **Sec. 112**. *Refunds or Tax Credits of Input Tax*. –
A. *Zero-rated or Effectively Zero-rated Sales*. – ...

period, hence, there is no refundable "excess" input tax, which is an issue distinct, separate, and independent from a claim for refund or issuance of tax credit certificate of **unutilized** input VAT attributable to zero-rated sales. For one, the taxpayer-claimant is not asking to refund the "excess" creditable input taxes from the output tax. To be sure, the "excess" input tax may only be carried over to the succeeding period and cannot be refunded. But, on the other hand, **the taxpayer is asking to refund the unutilized or unused input tax from zero-rated sales.**

Next, the substantiation of input taxes that can be credited against the output tax is an issue relevant to the assessment for potential deficiency output VAT liability. In turn, it is not for the CTA and the Court to determine and rule in a judicial claim for refund under Section 112(A) of the Tax Code that the taxpayer had insufficient or unsubstantiated input taxes to cover its output tax liability. This is for the BIR to determine in an administrative proceeding for assessment of deficiency taxes.

...

All told, it was erroneous for the CTA to charge the validated and substantiated input taxes against Chevron Holdings' output taxes first and use the resultant amount as the basis for computing the allowable amount for refund. The CTA also erred in requiring Chevron Holdings to substantiate its excess input tax carried over from the previous quarter as it is not a requirement for entitlement to a refund of unused or unutilized input VAT from zero-rated sales.

We reiterate that although the burden of proof to establish entitlement to a refund is on the taxpayer-claimant, the Court has consistently held that once the minimum statutory requirements have been complied with, the claimant should be considered to have successfully discharged their burden to prove its entitlement to the refund. After the claimant has successfully established a *prima facie* right to the refund by complying with the requirements laid down by law, the burden is shifted to the opposing party, *i.e.*, the BIR, to disprove such claim. Otherwise, we would unduly burden the taxpayer-claimant with additional requirements which have no statutory nor jurisprudential basis. In the present case, Chevron Holdings sufficiently proved compliance with all the requisites for entitlement to a refund or credit of unutilized input tax allocable to zero-rated sales under Section 112(A) of the Tax Code.

...

From the foregoing, when a taxpayer-claimant has excess input VAT carried over from previous period, it need not substantiate the same for purposes of establishing its entitlement to a refund of excess input VAT from zero-rated sales. The declared excess input tax carried over from previous period is presumed correct and is used to cover or pay for the output VAT still due in the period of claim. It is only when there is no such input tax carried over from previous period, as in this case, or the amount thereof is less than or insufficient to cover the output VAT still due that the difference or the remaining output VAT may be deducted from or charged against the substantiated or valid input VAT attributable to zero-rated sales.

Furthermore, it must be noted that the option of a VAT-registered taxpayer on whether to charge against output tax from regular 12% VATable sales and any unutilized or "excess" input tax may be claimed for refund or the issuance of a tax credit certificate (**TCC**), or whether to claim for refund or tax credit in its entirety, *only* applies to substantiated input tax attributable to **valid zero-rated sales**. This can be gleaned from the following computation of the Supreme Court in *Chevron*[6], citing Section 4.110-4[7] of Revenue Regulations (**RR**) No. 16-2005[8], as amended by RR No. 4-2007[9]:

> ...
>
> Thus, **the refundable input VAT is computed by getting the percentage of valid zero-rated sales over total reported sales (taxable, zero-rated, and exempt)** multiplied by the properly substantiated input taxes not directly attributable to any of the transactions.
>
> ...

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6 Supra at note 1; Citation omitted, emphasis in the original text and supplied.

7 SEC. 4.110-4. *Apportionment of Input Tax on Mixed Transactions.* — . . .

. . .

Illustration: ERA Corporation has the following sales during the month:

Sale to private entities subject to 12%	₱	100,000.00
Sale to private entities subject to 0%		100,000.00
Sale of exempt goods		100,000.00
Sale to gov't. subjected to 5% final VAT Withholding		100,000.00
Total Sales for the month	₱	400,000.00

The following input taxes were passed on by its VAT suppliers:

Input tax on taxable goods 12%	₱	5,000.00
Input tax on zero-rated sales		3,000.00
Input tax on sale of exempt goods		2,000.00
Input tax on sale to government		4,000.00
Input tax on depreciable capital good **not attributable** to any specific activity (monthly amortization for 60 months)		**20,000.00**

. . .

B. The input tax attributable to zero-rated sales for the month shall be computed as follows:

Input tax directly attributable to zero-rated sale — ₱ 3,000.00

Ratable portion of the input tax not directly attributable to any activity:

Taxable sales (0%) / Total Sales x **Amount of input tax not directly attributable to any activity**

P100,000.00 / 400,000.00 x P20,000.00 — ₱ 5,000.00

Total input tax attributable to zero-rated sales for the month ₱ 8,000.00

8 Consolidated Value-Added Tax Regulations of 2005.

9 Amending Certain Provisions of Revenue Regulations No. 16-2005, As Amended, Otherwise Known as the Consolidated Value-Added Tax Regulations of 2005.

Accordingly, Chevron Holdings is entitled to the refund of unutilized input tax allocable to its zero-rated sales for January 1 to December 31, 2006, in the total amount of ₱1,140,381.22, computed as follows:

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Valid zero-rated sales	5,762,011.70	4,669,743.23	66,091,331.71	79,131,661.58
Divided by: Total reported sales	313,164,583.06	272,400,438.61	299,500,840.65	501,152,183.16
Multiplied by: Valid input tax not directly attributable to any activity	1,276,656.14	1,650,503.65	1,860,385.53	4,294,269.68
Input tax attributable to zero-rated sales	**23,489.59**	**28,294.48**	**410,534.26**	**678,062.88**
TOTAL				**₱1,140,381.22**

...

Notably, the Second Division would have arrived at the same amount of excess and unutilized input VAT attributable to valid zero-rated sales (or the refundable amount before deducting the amount already authorized for issuance of a VAT Credit/Refund) of ₱102,122,859.60 had it *first* separated or excluded the "disallowed" portion of the input VAT allocated to total zero-rated sales (*i.e.*, ₱37,955,846.94) and deducted the output VAT still due (*i.e.*, ₱1,674,158.12) only against the "valid" portion thereof (*i.e.*, ₱103,797,017.72), as follows:

Table 1. Input VAT Allocation	**Amount (a)**		**Allocation Factor (c) = (a) / (b)**	**Allocated Input VAT (e) = (c) x (d)**	
Valid Zero-Rated Sales	₱6,390,386,317.03		73.03%	₱103,797,017.72	
Disallowed Zero-Rated Sales	2,336,796,665.77		26.70%	37,955,846.94	
VATable Sales	16,135,325.28		0.18%	262,080.97	
Exempt Sales	4,267,960.00		0.05%	69,323.12	
Sales to Government	3,099,241.07		0.04%	50,339.99	
Total Reported Sales[10]	**₱8,750,685,509.15**	**(b)**	**100.00%**	**₱142,134,608.74**	**(d)**

Table 2. Computation of Output VAT Still Due

Output VAT	₱1,936,239.09
Less: Valid Input VAT allocated to VATable Sales	262,080.97
Output VAT Still Due	**₱1,674,158.12**

Table 3. Excess Input VAT Attributable to *Valid* Zero-Rated Sales

Valid Input VAT allocated to *Valid* Zero-Rated Sales	₱103,797,017.72
Less: Output VAT Still Due	1,674,158.12
Excess Input VAT attributable to *Valid* Zero-rated sales	**₱102,122,859.60**

10 Exhibits "P-5", "P-6" and "P-7", supra at note 3.

The principle of *stare decisis et non quieta movere* (to adhere to precedents and not to unsettle things which are established), as ordained in Article 8[11] of the Civil Code, enjoins adherence by this Court to doctrinal rules established by the Supreme Court in its final decisions, such as the recent pronouncement in *Chevron* regarding the proper formula for computing the refundable input tax.[12] This principle is based on the notion that once a question of law has been examined and decided, it should be considered settled and closed to further argument.[13] The High Court's interpretation of a statute becomes part of the law as of the date it was originally passed because such interpretation simply establishes the contemporaneous legislative intent that the interpreted law carries into effect.[14]

Nonetheless, since the amount already authorized for issuance of a VAT Credit/Refund of ₱115,962,246.75 is still above and beyond the amount of excess and unutilized input VAT attributable to valid zero-rated sales of ₱102,122,859.60, as recomputed, petitioner is not entitled to any additional amount of refund.

All told, I vote to **DENY** the instant Petition for Review for lack of merit.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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11 ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines.

12 See *Benjamin G. Ting v. Carmen M. Velez-Ting*, G.R. No. 166562, 31 March 2009.

13 Id.

14 *Philippine Long Distance Telephone Company v. Abigail R. Razon Alvarez, et al.*, G.R. No. 179408, 05 March 2014.