REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

REMA TIP TOP PHILIPPINES, INC., Petitioner,	**CTA EB NO. 2623** (CTA Case No. 9836)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 04 2023 4:30 pm

x - x

DECISION

BACORRO-VILLENA, J.:

Before the Court *En Banc* is the Petition for Review[1] filed by petitioner Rema Tip Top Philippines, Inc. (**petitioner**), pursuant to Section 3(b)[2], Rule 8, in relation to Section 2(a)(1)[3], Rule 4 of the Revised

---

1 Filed on 10 June 2022 *via* registered mail, *Rollo*, pp. 8-59.

2 **SEC. 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.

3 **SEC. 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 Division in the exercise of its exclusive appellate jurisdiction over:

Rules of the Court of Tax Appeals[4] (**RRCTA**), assailing the Decision dated 25 May 2021[5] (**assailed Decision**) and Resolution dated 27 April 2022[6] (**assailed Resolution**) of the First Division[7] of this Court in CTA Case No. 9836, entitled *Rema Tip Top Philippines, Inc. v. Commissioner of Internal Revenue.*

PARTIES OF THE CASE

Petitioner is a corporation duly organized and existing under Philippine laws, with office address at Unit 502, Richmonde Plaza Ortigas, San Miguel Ave. Brgy. San Antonio, Ortigas Center Pasig City.[8] It is a registered taxpayer with the Bureau of Internal Revenue (**BIR**) Revenue District Office (**RDO**) No. 43A, with Tax Identification Number (**TIN**) 008-042-655-000.[9] It is engaged in the business of construction or construction-related works on commercial or industrial facilities.[10]

Respondent Commissioner of Internal Revenue (**respondent/CIR**), on the other hand, is the head of the BIR with the power or authority to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (**NIRC**) of 1997, as amended.

FACTS OF THE CASE

On 02 April 2018, petitioner filed its administrative claim for value-added tax (**VAT**) refund or issuance of a tax credit certificate (**TCC**) in the amount of ₱5,897,917.11, incurred during the four (4) quarters of taxable year (**TY**) 2016 (as evidenced by the Application for

---

(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture[.]

...

4 A.M. No. 05-11-07-CTA.

5 Division Docket, Volume VI, pp. 3648-3692.

6 Id., pp. 3722-3733.

7 Penned by Presiding Justice Roman G. Del Rosario, with Associate Justice Catherine T. Manahan concurring.

8 Exhibit "P-2", Division Docket, Volume VI, p. 3442.

9 Id.

10 See primary purpose in the Amended Articles of Incorporation of Rema Tip Top (Philippines), Inc., id., p. 3446.

Tax Credits/Refunds[11] and Revised Checklist for Mandatory Requirements for Claims for VAT Refund[12]).

On 12 April 2018, petitioner received respondent's letter dated 10 April 2018[13] denying its claim for VAT refund (**Denial Letter**). Aggrieved, petitioner filed its judicial appeal before this Court on 15 May 2018.[14]

Within the extended period[15], on 13 July 2018, respondent filed his or her Answer[16] and alleged that: (1) petitioner failed to submit the documentary requirements for refund; and, (2) petitioner's Audited Financial Statements (**AFS**) did not show the unutilized input taxes that it applied for refund, hence its claim therefor was properly denied.

The Pre-Trial Conference was then set on 08 November 2018.[17] Accordingly, the parties filed their Pre-Trial Briefs on 05 November 2018.[18] During the pre-trial proper[19], the hearing dates were set.

Later, or on 11 April 2019, the Court issued the Pre-Trial Order.[20] On even date, upon petitioner's motion[21], Ma. Theresa R. Dela Roca (**Dela Roca**) was commissioned as the Independent Certified Public Accountant (**ICPA**).[22] On 10 June 2019, she filed the initial ICPA Report[23]; however, she later on also filed an Amended ICPA Report on 24 July 2019 *via* registered mail.[24]

During trial[25], petitioner presented its first witness, Jennilyn U. Gaanan (**Gaanan**) who testified, by way of her Judicial Affidavit[26], that: (1) she is petitioner's Chief Financial Officer; (2) petitioner filed an

---

11 Exhibit "P-5", id., Volume VI, p. 3477.
12 Exhibit "P-34", id., p. 3591.
13 Exhibit "P-70", id., p. 3592.
14 Petition for Review, id., Volume I, pp. 12-43.
15 See Resolution dated 02 July 2018, id., Volume V, p. 2299.
16 Id., pp. 2300-2305.
17 Notice of Pre-Trial Conference dated 12 October 2018, id., pp. 2817-2818.
18 Respondent's Pre-Trial Brief, id., pp. 2821-2823; Petitioner's Pre-Trial Brief, id., pp. 2824-2856.
19 Conducted on 17 January 2019. See Order, id., pp. 2875-2876.
20 Id., pp. 3081-3094.
21 Motion to Commission an Independent Certified Public Accountant, id., pp. 2861-2865.
22 See Order dated 11 April 2019, id., pp. 3076-3077.
23 See Order dated 28 June 2019, id., Volume VI, p. 3129.
24 Id., pp. 3196-3351.
25 See Order dated 09 July 2019, id., pp. 3124-3125.
26 Exhibit "P-93", id., Volume V, pp. 2882-2905.

administrative claim for VAT refund or issuance of TCC for its unutilized input VAT of ₱5,897,917.11 for TY 2016; (3) it submitted various documentary requirements in relation to the request for refund; (4) respondent denied the claim for refund; and, (5) upon receipt of the denial letter, petitioner filed its judicial claim before this Court within the thirty (30)-day prescriptive period. No cross-examination was conducted.[27]

Dela Roca assumed the witness stand next and testified, by way of her Amended Judicial Affidavit[28], that: (1) she is the Court-commissioned ICPA; (2) she conducted a verification of petitioner's documents in relation to its claim for VAT refund or issuance of TCC; (3) after she examined the documents, she determined that petitioner validly substantiated the unutilized input VAT of ₱4,698,694.19 (out of ₱5,897,917.11 that it applied for); and, (4) the results of the verification and examination were summarized in the Amended ICPA Report and the softcopies of the documents were stored in a DVD filed before this Court.

No cross-examination was conducted.[29] After respondent manifested that he or she will no longer present any evidence, the Court directed the parties to file the necessary pleadings.[30]

On 25 October 2019, petitioner filed its Formal Offer of Documentary Exhibits (**FOE**).[31] Without respondent's comment[32], the Court issued the Resolution dated 26 February 2020[33] (**FOE Resolution**) which denied some of the offered exhibits for petitioner's failure to present the originals for comparison.

Later, or on 01 July 2020, petitioner also filed its Memorandum.[34] After respondent failed to file a memorandum, the case was submitted

---

27 See Minutes of Hearing dated 21 May 2019, id., Volume VI, pp. 3122-3123.
28 Exhibit "P-92", id., pp. 3355-3372.
29 See Minutes of Hearing dated 03 September 2019, id., pp. 3384-3388.
30 See Order dated 03 September 2019, id., pp. 3394-3395.
31 Id., pp. 3422-3439.
32 *Per* Records Verification dated 05 December 2019, id., p. 3597.
33 Id., pp. 3603-3607.
34 Id., pp. 3609-3640.

for decision.[35] Thereafter, the First Division promulgated the now assailed Decision.[36] The dispositive portion thereof reads:

> ...
>
> **WHEREFORE**, in light of the foregoing, the Petition for Review filed on May 15, 2018 is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**
>
> ...

In the assailed Decision, the First Division determined that petitioner complied with the following requisites for a VAT refund:

1. It is a VAT-registered entity;

2. It timely filed the administrative and judicial claims pursuant to Section 112(A)[37] of the NIRC of 1997, as amended, and Section 11[38] of Republic Act (RA) No. 9282[39], respectively;

3. Out of ₱83,178,005.10 (the declared zero-rated sales for TY 2016), petitioner has valid zero-rated sales in the amount of ₱62,449,305.68.

---

35 See Resolution dated 22 July 2020, id., p. 3645.

36 Supra at note 5.

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

38 SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* — Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
...

39 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

In arriving at the said amount, the First Division disallowed: (**a**) ₱3,309,019.20, representing sales to alleged Non-Resident Foreign Corporations (**NRFCs**), for failure to submit two (2) crucial documents to prove the NRFCs' status; and, (**b**) ₱17,255,348.43, for failure to comply with the invoicing requirements under the NIRC of 1997, as amended, and Revenue Regulations (**RR**) No. 16-2005.[40]

4. Petitioner had a substantiated valid input VAT attributable to zero-rated sales of ₱291,262.93 only.

   Most of the ICPA's and the First Division's disallowances were due to petitioner's failure to comply with the invoicing requirements under the NIRC of 1997, as amended, and RR No. 16-2005.

Despite the above findings, the First Division ruled that petitioner had no excess input VAT available for refund. In so ruling, it noted that petitioner had an output VAT liability of ₱1,754,936.25 for TY 2016. After deducting the input VAT allocated to VATable sales (amounting to ₱51,209.66), petitioner still had a net output VAT payable of ₱1,703,726.59. Finding that petitioner's input VAT attributable to the zero-rated sales (₱291,262.93) was significantly lower than the net output VAT payable (₱1,703,726.59), the First Division determined that it still had a net output VAT still due in the amount of ₱1,412,463.66.

The First Division also ruled that although petitioner had an input tax carried over from the previous period amounting to ₱4,249,849.48, it failed to submit supporting documents to substantiate the said carry-over. Hence, the First Division disregarded it in its computation and ultimately denied petitioner's claim for refund.

Aggrieved, on 07 July 2021, petitioner filed a Motion for Reconsideration[41] (**MR**). Despite due notice, respondent failed to file his or her comment thereto.[42] Subsequently, the First Division promulgated the assailed Resolution[43] denying petitioner's MR. The dispositive portion thereof reads:

---

40 Consolidated Value-Added Tax Regulations of 2005.
41 Filed *via* registered mail; Division Docket, Volume VI, pp. 3693-3709.
42 *Per* Records Verification dated 24 February 2022, id., p. 3716.
43 Supra at note 6.

> ...
>
> **WHEREFORE**, premises considered, petitioner's **Motion for Reconsideration** is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**
>
> ...

In the assailed Resolution, the First Division reiterated its earlier findings and sustained the denial of petitioner's claim for VAT refund or issuance of TCC.

Unsatisfied, on 10 June 2022[44] and within the extended period[45], petitioner filed before the Court *En Banc* the instant Petition for Review.[46] Without respondent's comment,[47] the case was submitted for decision on 04 October 2022.[48]

ISSUE

The sole issue forwarded for the Court *En Banc*'s resolution is –

> WHETHER THE FIRST DIVISION ERRED IN DENYING PETITIONER REMA TIP TOP PHILIPPINES, INC.'S CLAIM FOR REFUND OR TAX CREDIT CERTIFICATE (TCC) OF VALUE-ADDED TAX (VAT) IN THE AMOUNT OF ₱5,897,917.11 ATTRIBUTABLE TO ZERO-RATED SALES INCURRED IN THE FOUR (4) QUARTERS OF TAXABLE YEAR (TY) 2016.

ARGUMENTS

In support of the above, petitioner contends that it sufficiently established all the requisites for the VAT refund or issuance of TCC. According to it, the uncontroverted ICPA Report or the ICPA's findings confirmed the following: (1) petitioner is engaged in zero-rated sales; (2) the input taxes paid in TY 2016 were not applied against any output taxes; (3) the input taxes being claimed are attributed and allocated proportionately to zero-rated sales; and, (4) the payment for the sales to

44 Filed *via* registered mail.
45 See Minute Resolution dated 26 May 2022, *Rollo*, p. 7.
46 Supra at note 1.
47 *Per* Records Verification dated 05 September 2022, *Rollo*, p. 139.
48 See Resolution dated 04 October 2022, id., pp. 139-140.

the NRFCs are paid in foreign currency. Likewise, the ICPA traced, examined, and verified the supporting documents submitted to substantiate the input VAT refund claim.

Petitioner also claims that during the Pre-Trial Conference, respondent stipulated that the input taxes applied for refund were paid in accordance with the prevailing laws, rules, and regulations. As the stipulation is a judicial admission, the fact of payment is beyond contest and no longer requires the presentation of evidence to prove the same. Likewise, petitioner points out that respondent failed to rebut with evidence the refund claim; thus, the supporting documents submitted in the administrative level are deemed complete.

Contrary to the First Division's ruling, petitioner argues that the whole zero-rated sales of ₱83,178,005.53 were duly substantiated. The relevant bank statements, payment advices, and official receipts (**OR**s) prove that the sales were made to NRFCs and that these comply with the invoicing requirements. As stated, the ICPA traced, examined, and confirmed the said documents.

Petitioner further disputes the First Division's disallowance of the zero-rated sales and the purchases supported by documents with unreadable content. According to petitioner, it could not be faulted in relying on the First Division's admission of the documents (despite the fact they were allegedly unreadable). Had the First Division denied their admission outright for being blurred or unreadable, they could have presented clearer copies. Due to the First Division's action, it then claims that its right to due process was violated.

Banking on the ICPA's tracing and verification procedures, petitioner requests that this Court reconsiders its ruling on the disallowed purchases and importations due to the supposed non-compliance with the invoicing requirement and the submission of mere photocopies of the supporting documents. Petitioner maintains that the ICPA already determined that these documents were duly compliant with the invoicing requirements and sufficient to prove the VAT refund; hence, the latter's findings deserve great weight in the resolution of the instant case.

In the same vein, petitioner insists that the photocopies of the supporting documents should be accepted since duplicates are now treated as originals under the Revised Rules on Evidence.[49]

Lastly, petitioner prays that this Court evaluates anew the disallowance of the input tax carried over from the previous period. It explains that the Tax Code and the related issuances do not require the taxpayer-claimant to submit documents, ORs, and invoices to prove the input tax carry-over.

<u>RULING OF THE COURT *EN BANC*</u>

Before going into the merits of the case, the Court *En Banc* finds it propitious to first determine if it has jurisdiction over the present petition.

THE COURT HAS JURISDICTION OVER
THE INSTANT PETITION.

Section 18 of RA 1125[50], as amended by RA 9282[51], provides that a party adversely affected by a resolution of a Division of Court of Tax Appeal (**CTA**) on a motion for reconsideration or new trial, may file a Petition for Review with the CTA *En Banc*.

Corollarily, Section 3(b)[52], Rule 8 of the RRCTA[53] states that the party affected should file the Petition for Review within fifteen (15) days from receipt of a copy of the questioned decision or resolution. This is without prejudice to an additional 15-day period from the expiration of the original period (within which to file the Petition for Review) that the Court may grant.

Applying the foregoing, petitioner received the assailed Resolution of 27 April 2022 on 11 May 2022.[54] Counting 15 days therefrom, petitioner had until 26 May 2022 to file the Petition for Review before

---

[49] A.M. No. 19-08-15-SC.
[50] AN ACT CREATING THE COURT OF TAX APPEALS.
[51] Supra at note 39.
[52] Supra at note 2.
[53] Supra at note 4.
[54] See Notice of Resolution dated 29 April 2022, *Rollo*, p. 109.

the Court *En Banc*. However, on 24 May 2022, petitioner filed a "Motion for Extension of Time to File Petition for Review"[55] to which the Court granted a non-extendible 15 days from 26 May 2022, or until 10 June 2022, to file the petition.[56] The instant petition filed on 10 June 2022 has thus been timely filed and the Court *En Banc* successfully acquired jurisdiction over it.

SALES TO NON-RESIDENT FOREIGN CORPORATIONS (NRFCs) THAT ARE NOT SUPPORTED BY THE REQUIRED DOCUMENTS MUST BE DISALLOWED.

1. DISALLOWANCE OF SALES TO NON-RESIDENT FOREIGN CORPORATIONS (NRFCs).

Petitioner maintains that it had duly substantiated the sales to NRFCs through the submission of bank statements and payment advice documents which prove that these sales were rendered to NRFCs and payments thereof were remitted in foreign currency.

Petitioner's contention is wrong.

In *Chevron Holdings, Inc. (formerly Caltex Asia Limited) v. Commissioner of Internal Revenue*[57] (**Chevron**), the Supreme Court (**SC**) declared that to qualify for zero-rating, sales to NRFCs should be supported with at least two (2) documents, namely: (1) the Securities and Exchange Commission (**SEC**) Certificates of Non-Registration; and, (2) the Articles or Certificates of Foreign Incorporation, printed screenshots of the foreign SEC website showing the state/province/country where the entity was organized, or any similar document. The relevant parts of the SC Decision read:

> ...
>
> To qualify for VAT zero-rating, Section 108 (B) (2) requires the concurrence of four conditions: *first*, the services rendered should be other than "processing, manufacturing or repacking of goods"; *second*,

---

55 Id., pp. 1-4.

56 See *En Banc* Minute Resolution dated 26 May 2022, id., p. 7.

57 G.R. No. 215159, 05 July 2022; Citations omitted, emphasis and italics in the original text and supplied.

> the services are performed in the Philippines; *third*, the service-recipient is (a) a person engaged in business conducted outside the Philippines; or (b) a non-resident person not engaged in a business which is outside the Philippines when the services are performed; and, *fourth*, the services are paid for in acceptable foreign currency inwardly remitted and accounted for in conformity with BSP rules and regulations.
>
> ...
>
> Anent the third requisite, the Court emphasized in *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.* that for sales to a non-resident foreign corporation to qualify for zero-rating, the following must be proved: "(1) that their client was established under the laws of a country, not the Philippines or, simply, is not a domestic corporation; and (2) that it is not engaged in trade or business in the Philippines. To be sure, there must be sufficient proof of both of these components: showing not only that the clients are foreign corporations, but also are not doing business in the Philippines."
>
> Therefore, **the taxpayer-claimant must present, at the very least, both the SEC Certificates of Non-Registration — to prove that the affiliate is foreign; and the Articles or Certificates of Foreign Incorporation, printed screenshots of US SEC website showing the state/province/country where the entity was organized, or any similar document — to prove the fact of not engaging in trade or business in the Philippines at the time the sales are rendered.**
>
> ...

As ruled in the assailed Decision of 25 May 2021[58], petitioner failed to present the two (2) required documents to prove the NRFC status of Rema Tip Top Malaysia BHD PTY and Rema Tip Top Malaysia SDN BHD.[59] Thus, the First Division properly disallowed the sales of ₱3,309,019.20 for failure to qualify as zero-rated sales.

2. DISALLOWANCE OF SALES DUE TO UNREADABLE OFFICIAL RECEIPTS (ORs).

Petitioner claims further that the First Division violated its right to due process when it disallowed zero-rated sales that were allegedly supported with unreadable ORs despite admitting them in its FOE

---

[58] Supra at note 5.
[59] See Pages 16-17 of the Decision dated 25 May 2021, *Rollo*, pp. 79-80.

Resolution of 26 February 2020.[60] Petitioner avers that if only it denied outright the unreadable exhibits, then it could have immediately filed a clearer version thereof.

We do not share petitioner's view.

Petitioner was not denied due process because it was given the opportunity to present supporting documents for its claim for refund. Unfortunately, it opted to submit blurred and/or unreadable ORs which the First Division failed to appreciate in the resolution of the case. Also, to admit evidence and not to believe it subsequently are not contradictory to each other.[61] Besides, courts are given wide latitude in ultimately assigning probative value to the exhibits offered and admitted.

As correctly pointed out by the First Division in the assailed Resolution of 27 April 2022[62], the "[a]dmissibility of evidence should not be confused with its probative value... [a]dmissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the admitted evidence proves an issue... [t]hus, a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the rules of evidence...".

Incidentally, if the clearer copies were already available, petitioner could have easily attached the same to its MR to the assailed Resolution. It is noted that petitioner did not even mention if it had in its possession the originals or certified true copies of the subject exhibits. It is noted further that petitioner could not be expected to be unaware that what it offered as evidence are not originals, duplicates or certified true copies of the originals. To Our mind, the First Division could not be accused of misleading petitioner of the exhibits that came from it in the first place.

---

60 Supra at note 33.

61 *Maria Z. Titong v. The Honorable Court of Appeals (4th Division), et al.*, G.R. No. 111141, 06 March 1998.

62 Supra at note 6.

3. DISALLOWANCE OF SALES AND PURCHASES DUE TO NON-COMPLIANCE WITH THE INVOICING REQUIREMENT.

Petitioner vehemently insists that the First Division similarly erred in disregarding the ICPA's findings despite the tracing and verification procedure observed in substantiating the zero-rated sales and purchases related to the VAT refund.

Section 3, Rule 13 of the RRCTA provides:

> ...
>
> SEC. 3. *Findings of independent CPA.* — The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. **The findings and conclusions of the independent CPA** may be challenged by the parties and **shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification.**[63]
>
> ...

As stated, the ICPA's findings and conclusions are not conclusive to this Court. The ICPA Report is but a tool or guide to aid the Court in the resolution of the case. The merit or the probative value of such report is still subject to Our final determination; hence, the Court is free to adapt or disregard, completely or partially, the findings of the ICPA. It can even make its own audit and evaluation of the documents pertinent to the case presented during the trial in order to intelligently resolve the conflict brought before it.[64]

Contrary to petitioner's allegations, the First Division ably observed and determined that some of the ORs and invoices do not comply with the invoicing requirements (as exhaustively enumerated in the assailed Decision). Therefore, there is no reason for Us to deviate from these findings.

---

[63] Emphasis supplied.

[64] *First Lepanto Taisho Insurance Corporation v. Commissioner of Internal Revenue*, C.T.A. EB No. 563, 01 March 2011.

Moreover, petitioner's argument that the photocopies of the supporting documents should be accepted and be deemed as the originals in the substantiation of the input VAT is devoid of merit. It is to be noted that the FOE Resolution (which denied the admission of exhibits that are mere photocopies) was promulgated on 26 February 2020, or prior to the effectivity of the Revised Rules on Evidence on 01 May 2020. Hence, at the time of their offer, the parties are required to submit the originals or certified true copies of the documentary evidence. In their absence, to proffer reasons why the photocopies may be admitted as secondary evidence.

Although We are not unaware that statutes regulating the procedure of the courts will be construed as applicable to actions pending at the time of their passage provided that it would not impair vested rights[65], such in this case, We still cannot admit the photocopies. Under Section 4(b)[66], Rule 130 of the Revised Rules on Evidence, a duplicate is defined as a counterpart produced by the same impression as the original. Hence, there is a need to determine that the duplicate is the same as the original. Here, however, petitioner failed to present the originals of the photocopies, thus, there is no way for Us to verify if the duplicates are indeed a counterpart thereof.

Similarly, as pointed out in the assailed Resolution of 27 April 2022, under Section 2(b), Rule 13 of the RRCTA[67], the ICPA has the duty to compare the reproduced documents with the originals and to certify that those are faithful copies. However, as stated in the ICPA Report, petitioner's importation documents were mostly photocopies.

---

65 See *Jaime Tan, Jr. v. Hon. Court of Appeals (Ninth Special Div.), et al.*, G.R. No. 136368, 16 January 2002.

66 SEC. 4. *Original of Document.* —
...
(b) A "duplicate" is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduce the original.
...

67 SEC. 2. *Duties of independent CPA.* — ...
...
(b) Reproduction of, and comparison of such reproduction with, and certification that the same are faithful copies of original documents, and pre-marking of documentary exhibits consisting of voluminous documents[.]
...

Lastly, petitioner's assertions that respondent did not present any evidence to counter its refund claim is of no moment. At the risk of being repetitive, We underscore that tax refunds, being in the nature of tax exemptions, are construed in *strictissimi juris* against the taxpayer and liberally in favor of the government. Accordingly, it is the claimant's burden to prove the factual basis of a claim for refund or tax credit.[68] Unfortunately, petitioner herein failed to do so.

PETITIONER IS ENTITLED TO A VALUE-ADDED TAX (VAT) REFUND.

While the Court *En Banc* agrees with the First Division's actions and disquisitions on matters discussed above and as appearing in the assailed Decision[69] and Resolution[70], We are, however, constrained to nonetheless rule that petitioner is entitled to a refund of its excess and unutilized input VAT attributable to valid zero-rated sales.

In the assailed Decision[71] promulgated on 25 May 2021, the First Division held that petitioner had a net output VAT due of ₱1,412,463.66:

> ...
> ***Sixth Requisite: Petitioner has no excess input VAT available for refund***
>
> Having determined that petitioner had valid input VAT attributable to its zero-rated sales, the Court shall now determine whether the same was not applied against its output VAT liability.
>
> After deducting the input tax attributable to VATable sales in the amount of P51,209.66 from its output VAT liability of ₱1,754,936.25 from the said sales, petitioner still has a **net output VAT payable of ₱1,703,726.59**, as computed below:

Period	Output VAT
1st Quarter	₱428,487.15
2nd Quarter	377,688.41
3rd Quarter	556,167.00

[68] *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 183531, 25 March 2015.
[69] Supra at note 5.
[70] Supra at note 6.
[71] Supra at note 5; Emphasis in the original text.

4th Quarter	392,593.69
Total	**₱1,754,936.25**

Output VAT per Returns	₱1,754,936.25
Less: Input VAT Allocated to Total VATable Sales	51,209.66
Net Output VAT Payable	**₱1,703,726.59**

Since petitioner's input VAT attributable to VATable sales is not enough to cover its output VAT liability, the valid input VAT attributable to zero-rated sales shall be utilized against the remaining output VAT liability of ₱1,703,726.59. However, the input VAT attributable to zero-rated sales of ₱291,262.93 is way lower than the net output VAT payable of ₱1,703,726.59. Consequently, petitioner **still has net output VAT due of ₱1,412,463.66**, computed as follows:

Net Output VAT Payable	₱1,703,726.59
Less: Input VAT Allocated to Zero rated Sales	291,262.93
Net Output VAT Still Due	**₱1,412,463.66**

While the Court notes that petitioner's 1st Quarterly VAT Return for TY 2016 reflected the amount of ₱4,249,849.48 as "Input Tax Carried Over from Previous Period", petitioner failed to submit documents, official receipts and invoices to support the input tax carry-over of ₱4,249,849.48. Hence, petitioner's input tax carried over from previous period cannot be validly applied against petitioner's net output VAT due pursuant to Section 110(A) in relation to Section 110(B) of the NIRC of 1997, as amended.

...

However, after about a year from the promulgation of the assailed Decision, specifically on 05 July 2022, the SC promulgated *Chevron* and shed light on the utilization of input tax carried over from the previous period and provided guidelines on the computation of the refundable unutilized input VAT attributable to zero-rated sales when the taxpayer-claimant is engaged in mixed transactions.

In *Chevron*, petitioner therein is engaged in the sale of services to affiliates locally and abroad, thus it has VATable sales and zero-rated sales. It allocated proportionately the total input tax incurred for both sales for TY 2006 between the VATable sales and zero-rated sales. The resulting input tax attributable to zero-rated sales in the amount of

₱36,802,956.63 was not charged against any output tax since petitioner used its input tax carried forward from the previous period to cover the output tax. Hence, the whole amount of input tax attributable to zero-rated sales for TY 2006 was applied for VAT refund or issuance of TCC. For reference, We quote the relevant part in the SC Decision where it was illustrated how it arrived at the amount of input VAT that was applied for refund:[72]

> ...
>
> The input taxes were allocated proportionately, as follows:

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
VAT-able sales	4,687,290.75	35,386,665.52	28,405,325.59	41,180,817.13
Zero-rated sales	308,477,292.31	237,013,773.09	271,095,515.06	459,971,366.03
Total	313,164,583.06	272,400,438.61	299,500,840.65	501,152,183.16
Zero-rated sales/Total sales	98.50%	87.01%	90.52%	91.78%
Multiply by input tax	5,473,352.33	6,843,948.53	7,144,030.57	20,690,791.66
Input tax from zero-rated sales	5,391,252.04	5,954,919.62	6,466,776.47	18,990,008.50

> [The total input tax from zero-rated sales of ₱36,802,956.63 was applied for refund.]
>
> The input taxes attributable to zero-rated sales were not credited against output taxes because of the substantial amounts of input taxes carried forward from the previous quarters. ...
>
> ...

To recall, the CTA *En Banc*'s Decision in *Chevron* that was elevated to the SC partially granted the VAT refund in the amount of ₱15,085.24. In arriving at the said figure, the *En Banc* ruled that the substantiated input tax of ₱9,081,815.00 shall be first deducted from the output tax (for the period of claim) since petitioner therein cannot apply the input tax carried over of ₱56,564,096.77 against the output tax because it failed to present VAT invoices or receipts to prove its existence. Thereafter, the resultant amount was multiplied with the percentage of the valid zero-rated sales over the declared zero-rated sales to determine the amount available for refund.

---

72 Supra at note 57; Citation omitted and emphasis supplied.

Dissatisfied with the CTA *En Banc*'s Decision, petitioner went to SC which eventually ruled that under Section 112[73] of the NIRC of 1997, as amended, a taxpayer claiming for refund of its input tax attributable to zero-rated sales has the option to: (1) charge it against the output tax from regular 12% VATable sales, and any unutilized or excess input tax may be claimed for refund; or, (2) claim it for refund or tax credit in its entirety.

Since the petitioner in *Chevron* availed of the second option, the SC declared that this Court erred in deducting the output tax from the unutilized input VAT attributable to zero-rated sales, let alone disallow the application of the input tax carried over against the output tax. Accordingly, the SC recomputed the refundable amount by getting the percentage of the valid zero-rated sales over the total reported sales and multiplying it with the substantiated input tax of ₱9,081,815.00, thus granted petitioner's claim for a refund in the amount of P1,140,381.22, as computed below:

...

	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				**P1,140,381.22**

...

We find the factual circumstances of this case to be similar to *Chevron* for the reasons essayed below.

First, the claimant in *Chevron* allocated proportionately its input VAT between the VATable sales and the zero-rated sales prior to filing its application for VAT refund or issuance of TCC.

[73] Supra at note 37.

Here, petitioner already separated the input VAT attributable to its zero-rated sales by reporting it under Line **21N/O** (Others) and reflecting the input VAT attributable thereto as zero (0) amount in the quarterly VAT returns[74] to exclude them in the computation of the tax still payable or overpayment (such in the case of petitioner). We quote the table presented in the assailed Decision:[75]

...

Gross Amount of Purchases and Importations	**1st Quarter**	**2nd Quarter**	**3rd Quarter**	**4th Quarter**	**Total**
Domestic Purchases of Goods Other Capital Goods (Line 21E)	P114,574.85	P98,156.47	P87,326.02	P287,282.26	P587,339.60
Importation of Goods Other than Capital Goods (Line 21G)	759,331.16	1,323,256.87	395,878.16	946,617.16	3,425,083.35
Domestic Purchase of Services (Line 21I)	318,512.62	484,343.63	892,450.48	1,497,611.51	3,192,918.24
Others (Line 21N)	**9,965,604.54**	**15,473,118.03**	**6,709,880.34**	**17,000,706.32**	**49,149,309.23**
Total Current Purchases/Importations	P11,158,023.17	P17,378,875.00	P8,085,535.00	P19,732,217.25	P56,354,650.42

...

	1st Quarter	**2nd Quarter**	**3rd Quarter**	**4th Quarter**	**Total**
Input VAT allocated to Zero-rated Sales	P1,151,078.34	P1,820,236.69	P745,811.57	P1,982,837.34	P5,699,963.94
Input VAT Directly Attributable to Zero-rated Sales	44,794.21	36,537.47	59,374.07	57,247.42	197,953.17
Total Input VAT Allocated and Directly Attributable to Zero-rated Sales	**P1,195,872.54**	**P1,856,774.16**	**P805,185.64**	**P2,040,084.76**	**P5,897,917.11**

[The total input tax from zero-rated sales of ₱5,897,917.11 was applied for refund.]

...

Second, in *Chevron*, after the claimant (petitioner therein) determined the input tax proportionately allocated to zero-rated sales, it did not credit the said input tax against its output tax. Instead, it applied the input tax carried over from the previous quarters against the output tax.

---

[74] Exhibits "P-8", "P-9", "P-10", and "P-11", Division Docket, Volume VI, pp. 3483-3490.
[75] Emphasis supplied.

In the same regard, as mentioned above, since petitioner herein reflected "0" amounts of input tax attributable to zero-rated sales, the said input tax was not charged against its output tax. As a matter of choice, petitioner used the input tax carried over of ₱4,249,849.48, in addition to the input tax attributable to VATable sales, to charge against its output tax.

Clearly, both claimants in *Chevron* and in herein case applied the entirety of the input tax attributable to zero-rated sales for refund.

With the striking semblance especially on the option availed by the taxpayer-claimants, We find no other proper recourse but to apply the principle and the manner of computation laid down in *Chevron*.

To echo *Chevron*[76], it is not for the CTA to determine and rule in a judicial claim for refund under Section 112(A)[77] 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 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 periods 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

---

[76] Supra at note 57; Citations omitted, emphasis in the original text and supplied.
[77] Supra at note 37.

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.

...

Clearly from the aforestated, 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 due in the period of claim.

Applying the same in the case at bar, since petitioner had an input VAT carried over from previous period of ₱4,249,849.48[78], it sufficiently covered the output tax *per* returns of ₱1,754,936.25[79] and resulted to an

---

78 Input VAT Carried Over from Previous Period *per* 1st Quarter VAT Return for TY 2016 (Line Item 20A), Exhibit "P-11", Division Docket, Volume VI, pp. 3489-3490.

79 As quoted from the assailed Decision, id., p. 3690.

...

Period	Output VAT
1st Quarter	P428,487.15
2nd Quarter	377,688.41

overpayment. Although We have established this fact, it is important to note that this will not affect the computation of the refundable amount since We have determined that petitioner did not charge its input VAT attributable to zero-rated sales against its output tax and opted to claim it in its entirety. In other words, petitioner availed of the second option under the Tax Code.

With the foregoing, We also adopt the computation in *Chevron* to determine the input tax available for refund. Thus, the substantiated input tax not attributable to any activity[80] of ₱342,472.59[81] shall be proportioned to the valid zero-rated sales over the total declared sales, to arrive at the refundable amount of ₱218,677.62, computed in this wise:

3rd Quarter	556,167.00
4th Quarter	392,593.69
Total	**P1,754,936.25**

...

80 As quoted from the assailed Decision, id., pp. 3669-3670

...

Upon verification by the Court, it is found that petitioner failed to prove that certain domestic purchases and importation of goods other than capital goods, and domestic purchase of services in the total amount of P1,649,609.75 were directly attributable to zero-rated sales made during the four quarters of TY 2016. **Thus, the Court is constrained to consider the whole amount of P56,354,650.42 as petitioner's total domestic purchases and importation of goods other than capital goods, and domestic purchase of services, subject to proportional allocation between VATable, VAT-exempt and VAT zero-rated sales pursuant to Section 112 (A) of the NIRC of 1997, as amended.** (Emphasis supplied)

...

81 As quoted from the assailed Decision, id., p. 3689.

...

In view of the foregoing disallowances, the total valid input taxes of petitioner subject for allocation is P342,472.59, as shown below:

	1st Quarter	**2nd Quarter**	**3rd Quarter**	**4th Quarter**	**Total**
Total Input VAT	P1,338,962.78	P2,085,465.00	P970,264.20	P2,367,866.07	P6,762,558.05
Less: Disallowance per ICPA Exception	338,285.47	150,499.55	189,997.23	79,414.02	758,196.27
Disallowance per Court's Further Verification	1,046,113.85	1,772,464.73	560,337.87	1,754,107.46	5,133,023.91
Valid Common Input Tax for Allocation	(45,436.54)	162,500.72	219,929.10	534,344.59	871,337.87
Less: Input Tax on Unaccounted Purchases					528,865.28
Net Valid Common Input Tax for Allocation					**P342,472.59**

Total Valid Zero-Rated Sales	₱62,449,305.68[82]
Divided by Reported Total Declared Sales *per* Quarterly VAT Returns for TY 2016	97,802,307.14
Multiplied by Total Valid Input VAT not directly attributable to any activity[83]	342,472.59
Valid Input VAT Allocated to Total Valid Zero-Rated Sales	**₱ 218,677.62**

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[84] of the Civil Code, enjoins adherence by this Court to doctrinal rules established by the SC in its final decisions, such as the recent pronouncement in *Chevron* regarding the proper formula for computing the refundable input tax.[85] 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.[86] 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.[87]

Having thus established that there is a refundable excess input VAT attributable to valid zero-rated sales in the amount of ₱218,677.62 following the procedure laid down in *Chevron* and since such amount is

---

82 As quoted from the assailed Decision, id., p. 3667

...

In sum, out of the total reported zero-rated sales of P83,178,005.10, only the amount of P62,449,305.68 shall be considered as valid zero-rated sales for the four quarters of TY 2016, detailed as follows:

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Zero-rated Sales	P22,759,452.94	P19,064,944.08	P20,776,007.25	P20,577,600.83	P83,178,005.10
Less: Disallowances	7,540,924.62	2,846,064.78	1,023,663.08	9,153,716.15	20,564,368.63
Excess Claims	0.21	0.33	164,330.25	-	164,330.79
Total Valid Zero-rated Sales	**P15,218,528.11**	**P16,218,878.97**	**P19,588,013.92**	**P11,423,884.68**	**P62,449,305.68**

...

83 Supra at note 80.

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

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

86 Id.

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

well within the input VAT claim of ₱5,897,917.11 that remained unutilized until the same was deducted as "VAT Refund/TCC Claimed" in respondent's first (1st) Quarterly VAT Return for FY 2017[88], petitioner has sufficiently proven its entitlement to a refund or issuance of a TCC in the said amount.

Verily, when a claim for refund has a clear legal basis and is sufficiently supported by evidence, as in the present case, the Court shall not hesitate to grant the refund.[89]

WHEREFORE, in view of the foregoing, the instant Petition for Review filed by petitioner Rema Tip Top Philippines, Inc. on 10 June 2022 is hereby **PARTIALLY GRANTED**. The assailed Decision dated 25 May 2021 and assailed Resolution dated 27 April 2022, of the First Division in CTA Case No. 9836 entitled *Rema Tip Top Philippines, Inc. v. Commissioner of Internal Revenue,* are **MODIFIED** insofar as the amount of refundable input tax is concerned.

Accordingly, respondent Commissioner of Internal Revenue or any person duly acting on his or her behalf is **ORDERED** to refund, or in the alternative, issue a tax credit certificate in favor of petitioner in the total amount of ₱218,677.62, representing unutilized input tax attributable to zero-rated sales for the period of 01 January to 31 December 2016.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

---

88 Exhibits "P-4645" and "P-4645-A", DVD.

89 *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, 25 November 2009; *Commissioner of Internal Revenue v. Philippine Air Lines, Inc.*, G.R. No. 180043, 14 July 2009.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

ON LEAVE
HENRY S. ANGELES
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