

REPUBLIC OF THE PHILIPPINES  
COURT OF TAX APPEALS  
QUEZON CITY

EN BANC

COMMISSIONER OF  
INTERNAL REVENUE,  
*Petitioner,*

CTA *EB* NO. 2632  
(CTA Case Nos. 9655 & 9695)

*-versus-*

PHILIP MORRIS  
PHILIPPINES  
MANUFACTURING, INC.,  
*Respondent.*

X- - - - - X

PHILIP MORRIS  
PHILIPPINES  
MANUFACTURING, INC.,  
*Petitioner,*

CTA *EB* NO. 2636  
(CTA Case Nos. 9655 & 9695)

Present:

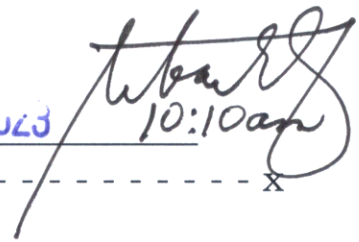
*-versus-*

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 17 2023



10:10am

X- - - - - X

**DECISION**

MANAHAN, J.:

For decision before the Court *En Banc* are the following:



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1. Petition for Review,<sup>1</sup> docketed as CTA EB No. 2632, filed by the Commissioner of Internal Revenue (CIR); and
2. Petition for Review,<sup>2</sup> docketed as CTA EB No. 2636, filed by Philip Morris Philippines Manufacturing, Inc. (Philip Morris).

Both parties are assailing the Decision dated January 20, 2021, which partially granted Philip Morris' claim for refund/issuance of tax credit certificate (TCC) of unutilized input value-added tax (VAT) attributable to its zero-rated sales for the 1<sup>st</sup> and 2<sup>nd</sup> quarters of 2015. Also assailed is the Resolution, dated May 11, 2022, which denied the parties' respective motions for partial reconsideration.

**FACTS**

The CTA 3<sup>rd</sup> Division recounts the facts, as follows:

Petitioner [Philip Morris] is a domestic corporation duly organized and existing under the laws of the Philippines, with office address at 27<sup>th</sup> Floor, Tower 1, The Enterprise Center, 6766 Ayala Avenue cor. Paseo de Roxas, Makati City. It is a VAT-registered taxpayer, with Taxpayer Identification Number ("TIN") 205-933-844-000.

Respondent is the duly appointed Commissioner of Internal Revenue with office address at Bureau of Internal Revenue ("BIR") Building, Diliman, Quezon City.

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Petitioner [Philip Morris] filed its Amended Quarterly VAT Returns for the first and second quarters of taxable year 2015, on March 29, 2017 and on June 29, 2017, respectively.

On March 30, 2017, Petitioner [Philip Morris] filed with the BIR's Excise Large Taxpayer's Audit Division II an application for VAT refund of the unutilized and excess creditable input taxes allegedly attributable to its zero-rated sales amounting to Php85,050,889.33 for the first quarter of 2015.

Thereafter, on June 29, 2017, Petitioner [Philip Morris] filed with the same BIR office an application for VAT refund

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<sup>1</sup> EB Docket (CTA EB No. 2632), pp. 1-13.

<sup>2</sup> EB Docket (CTA EB No. 2636), pp. 7-34. 

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of the unutilized and excess creditable input taxes allegedly attributable to its zero-rated sales amounting to Php90,953,374.67 for the second quarter of 2015.

Petitioner [Philip Morris] received the *Letter of Authority* (“LOA”) – SN eLA201500034637 dated April 24, 2017, on May 03, 2017, in connection with the VAT refund for the period January 1 to March 31, 2015 from the BIR-Large Taxpayers Service. Thereafter, on July 26, 2017, Petitioner [Philip Morris] received LOA-SN eLA201500089428 dated 18 July 2017, in connection with the VAT refund for the period April 1 to June 30, 2015.

On July 25, 2017, Petitioner [Philip Morris] received the letter of denial dated July 14, 2017 from the BIR Large Taxpayers Service, denying its administrative claim for refund for the first quarter of 2015; whereas on September 7, 2017, Petitioner [Philip Morris] received an undated letter from Respondent [CIR], acting through the BIR Large Taxpayers Service, which denied Petitioner [Philip Morris]’s administrative claim for the second quarter of 2015.

Petitioner [Philip Morris] filed *Petitions for Review* on August 18, 2017, covering the first quarter of taxable year 2015, and on October 5, 2017, for the second quarter of the same taxable year, docketed as CTA Case Nos. 9655 and 9695, respectively.<sup>3</sup>

CTA Case Nos. 9655 and 9695 were consolidated in the Resolutions dated January 9, 2018<sup>4</sup> and January 17, 2018<sup>5</sup>.

After trial, the CTA 3<sup>rd</sup> Division rendered its Decision, dated January 20, 2021, with the following dispositive portion:

**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, Respondent [CIR] is **ORDERED** to refund or issue tax credit certificate in favor of Petitioner [Philip Morris] the amounts of **Php11,969,803.76** for CTA Case No. 9655, and **Php19,206,150.88** for CTA Case No. 9695, or a total of **Php31,175,954.64**, representing the latter’s excess and unutilized input VAT attributable to its zero-rated sales for the first and second quarters of 2015, respectively.

**SO ORDERED.**<sup>6</sup>

<sup>3</sup> EB Docket (CTA EB No. 2632), Division Decision dated January 20, 2021, pp. 21-22.

<sup>4</sup> Division Docket (CTA Case No. 9695), p. 83.

<sup>5</sup> Division Docket (CTA Case No. 9655), Vol. I, pp. 88-89.

<sup>6</sup> EB Docket (CTA EB No. 2632), p. 116.

The parties' respective motions for partial reconsideration were also denied, as follows:

**WHEREFORE**, premises considered, petitioner [Philip Morris]'s Motion for Partial Reconsideration (of the Decision dated 20 January 2021) with Motion to Set Hearing and to Recall Witness and respondent [CIR]'s Motion for Partial Reconsideration are both **DENIED** for lack of merit.

**SO ORDERED.**<sup>7</sup>

On June 7, 2022, the CIR filed his *Petition for Review*,<sup>8</sup> docketed as CTA EB No. 2632. On the other hand, Philip Morris filed its *Petition for Review*,<sup>9</sup> docketed as CTA EB No. 2636, on June 24, 2022.

On June 28, 2022, the cases were consolidated.<sup>10</sup>

The parties were ordered to file their respective comments on each other's *Petition for Review*, in the Resolution dated July 29, 2022.<sup>11</sup>

On August 15, 2022, Philip Morris filed its *Comment (To the Petition for Review dated 3 June 2022 in CTA EB Case No. 2632)*.<sup>12</sup> On the other hand, the CIR failed to file his comment, per Records Verification dated August 30, 2022.<sup>13</sup> Thus, this case was submitted for decision on October 19, 2022.<sup>14</sup>

## ISSUES

### CTA EB No. 2632

The CIR assigns the following error:

Whether or not the Third Division of the Honorable Court erred in ruling that Philip Morris is entitled to refund in the reduced amount of Php31,175,954.64 representing excess and

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<sup>7</sup> EB Docket (CTA EB No. 2632), p. 128.  
<sup>8</sup> EB Docket (CTA EB No. 2632), pp. 1-13.  
<sup>9</sup> EB Docket (CTA EB No. 2636), pp. 7-34.  
<sup>10</sup> EB Docket (CTA EB No. 2632), p. 130.  
<sup>11</sup> EB Docket (CTA EB No. 2632) pp. 132-133.  
<sup>12</sup> EB Docket (CTA EB No. 2632), pp. 134-143.  
<sup>13</sup> EB Docket (CTA EB No. 2632), p. 145.  
<sup>14</sup> EB Docket (CTA EB No. 2632), pp. 147-148.

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unutilized input VAT allegedly attributable to zero-rated sales for the first and second quarters of 2015.<sup>15</sup>

The CIR reiterates its arguments as follows: that the CTA 3<sup>rd</sup> Division should have dismissed the petition for review for failure of Philip Morris to substantiate its administrative claim for refund; that since the CIR rendered a decision in the administrative level, the CTA's jurisdiction becomes strictly appellate in nature; and, that Philip Morris is not entitled to the refund sought.

**CTA EB No. 2636**

Philip Morris, on the other hand, assigns the following errors:

- A. The CTA 3<sup>rd</sup> Division erred in denying zero-rated treatment to Philip Morris' export sales amounting to Php260,793,153.55 for not being supported by airway bills and bills of lading.
- B. The CTA 3<sup>rd</sup> Division erred in ruling that Philip Morris' export sales in the amount of Php2,485,672,888 cannot be traced to the inward remittances per bank certifications or has no proof of payment in acceptable foreign currency accounted for in accordance with rules and regulations of the Bangko Sentral ng Pilipinas.
- C. The CTA 3<sup>rd</sup> Division erred in disallowing the input VAT on payments for services rendered by non-residents in the total amount of Php19,171,977.86 which are duly supported by BIR Form 1600 filed by Philip Morris.
- D. The CTA 3<sup>rd</sup> Division erred in ruling the Philip Morris' motion to set hearing and to recall witness is bereft of merit.

Philip Morris states that it has adequately proven that export sales amounting to Php260,793,153.55 pertained to goods actually shipped from the Philippines to a foreign

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<sup>15</sup> EB Docket (CTA EB No. 2632), p. 3.

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**DECISION**

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country. Philip Morris points out that a portion amounting to Php56,748,621.90 is actually supported by airway bills and bills of lading which are in the case records. As to the balance of Php204,044,531.65, Philip Morris states that the same should be allowed as export sales based on the totality of evidence on record.

Philip Morris states that the Independent Certified Public Accountant (ICPA) was able to trace the export sales to the certificates of inward remittances. However, the column matching the certificates of inward remittances to the sales invoices was inadvertently “hidden” by the software and did not appear in the printed version of the Summary of Zero-Rated Sale of Goods, marked as Exhibits “P-44” and “P-45”, which are the schedules of zero-rated sales of goods *vis-à-vis* the amounts reflected in the certificates of inward remittances.

Philip Morris also states that the input VAT on services rendered by non-residents were duly evidenced by BIR Form No. 1600s, found in the records of the case, which reflect the eFPS reference numbers. Thus, Philip Morris was able to comply with the substantiation requirements for the claimed input VAT.

Philip Morris also questions the CTA 3<sup>rd</sup> Division’s denial of its motion to set the case for hearing and to recall the ICPA.

**RULING OF THE COURT**

*The Petitions for Review were timely filed.*

Pursuant to the Revised Rules of the Court of Tax Appeals (RRCTA), Rule 8, Section 3(b),<sup>16</sup> the parties had fifteen (15) days from receipt of the assailed Resolution, within which to file their respective Petitions for Review.

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<sup>16</sup> Rule 8 Procedure in Civil Cases

Sec. 3. *Who may appeal; period to file petition.*-

xxx xxx xxx

(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.

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The CIR received the Resolution, dated May 11, 2022, on May 26, 2022, giving him until June 10, 2022 within which to file a Petition for Review with the CTA *En banc*. On June 7, 2022, the CIR timely filed his Petition for Review, docketed as CTA EB No. 2632.

Philip Morris received its copy of the Assailed Resolution on May 25, 2022, giving it until June 9, 2022 within which to file an appeal. On June 9, 2022, it filed a Motion for Extension of Time to File Petition for Review, praying for an additional period of fifteen (15) days, or until June 24, 2022 within which to file its appeal. The said extension was granted<sup>17</sup> and Philip Morris timely filed its Petition for Review, docketed as CTA EB No. 2636, on June 24, 2022.

*CTA EB No. 2632*

The Court finds that petitioner CIR merely rehashed his arguments raised before the Division. While it is true that the Court exercises appellate jurisdiction on the CIR's decision over the claim for refund, respondent Philip Morris is still required to show that it is entitled under the substantive laws to the grant of its refund claims. It is reiterated that cases before the CTA are litigated *de novo*, and the Court is not precluded from accepting evidence even if not presented at the administrative level.<sup>18</sup>

*CTA EB No. 2636*

With respect to petitioner Philip Morris' arguments, we find the same partially meritorious.

The Court finds that even without the reopening of trial at the Division level, the submissions made by Philip Morris clarifying certain tabular presentations/summaries of its alleged zero-rated sales may already be reconsidered.

*Philip Morris' valid zero-rated sales for TY 2015 shall be adjusted to Php833,472,300.61.*

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<sup>17</sup> EB Docket (CTA EB No. 2636), p. 6.

<sup>18</sup> See *Commissioner of Internal Revenue v. Philippine National Bank*, G.R. No. 180290, September 29, 2014.

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To recall, in order for an export sale to qualify as zero-rated pursuant to Section 106(A)(2)(a)(1) of the 1997 National Internal Revenue Code (NIRC), as amended, the following conditions must be present:

- 1.) the sale was made by a VAT-registered person;
- 2.) there was sale and actual shipment of goods from the Philippines to a foreign country; and,
- 3.) the sale was paid for in acceptable foreign currency accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).


For the *second* condition, the taxpayer-claimant must present, among others, the sales invoice as proof of sale of goods, and Airway Bill (“AB”) or Bill of Lading (“BL”) as proof of actual shipment of goods from the Philippines to a foreign country.

In the assailed *Decision*,<sup>19</sup> out of the total export sales of Php3,580,567,666.85 (or 1,183,858,846.48 in foreign currency), only the amount of Php3,319,057,825.44 (or 1,061,121,814.26 in foreign currency) complied with the *second* condition. The export sales of Php261,509,841.41 (or 122,737,032.22 in foreign currency) were denied VAT zero-rating for being either unsupported by ABs/BLs or supported by ABs/BLs which were denied admission by the Court.

In its Motion for Partial Reconsideration in Division (CTA Case Nos. 9655 & 9695) dated February 15, 2021<sup>20</sup> and Petition for Review before the En Banc (CTA EB No. 2636) dated June 24, 2022, petitioner submits that out of the Php261,509,841.41 export sales denied zero-rated treatment, the export sales in the amount of Php56,748,621.90 were actually supported by ABs and BLs marked as Exhibits “P-60-79”, “P-60-169”, “P-60-183”, “P-61-131” and “P-61-348”, which form part of the records of the case and were in fact covered by the Report dated 14 June 2018 (“ICPA Report”) submitted by the Independent Certified Public Accountant (“ICPA”).

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<sup>19</sup> Division Docket, (CTA Case No. 9655), Vol, 2, pp. 879 to 887.

<sup>20</sup> Division Docket, (CTA Case No. 9655), Vol, 2, pp. 959 to 961. 



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It is to be noted that the export sales of Php56,748,621.90 were aptly denied by the Court in Division considering that per petitioner's *Schedule of Zero-Rated Sale of Goods* for the first and second quarters of taxable year (TY) 2015,<sup>21</sup> no exhibit reference for AB/BL under "Bill of Lading reference" column were indicated for the said export sales and without the same, it cannot be ascertained as to which among the various ABs/BLs submitted, support such sales or whether such sales were indeed covered by ABs/BLs.

However, in its Motion for Partial Reconsideration, petitioner subsequently presented a schedule of the export sales of Php56,748,621.90 with the corresponding AB/BL Exhibit Nos., which were included in the pieces of evidence offered to and admitted by the Court in Division, the purported ABs/BLs can already be verified as proof of actual shipment for the said export sales, and the said export sales may be reconsidered in compliance with the *second* condition.

Below is the breakdown of the disallowed export sales amounting to Php56,748,621.90, as presented by petitioner in its Motion for Partial Reconsideration, which were allegedly supported and matched to the ABs and BLs already on records:<sup>22</sup>

Name of Buyer	Sales Invoice			Sales/Receipts in Foreign Currency	Peso Value of Sales	BL/AWB Exhibit No.
	Exhibit No.	Doc. No.	Date			
<b>First Quarter</b>						
PHILIP MORRIS (THAILAND) LIMITED	"P-58-119"	9502020481	1/24/2015	2,657,760.00	3,613,939.84	"P-60-79"
PHILIP MORRIS (THAILAND) LIMITED	"P-58-119"	9502020481	1/24/2015	1,752,240.00	2,382,641.75	"P-60-79"
PHILIP MORRIS (THAILAND) LIMITED	"P-58-120"	9502020482	1/24/2015	2,600,000.00	3,535,399.58	"P-60-79"
PHILIP MORRIS (THAILAND) LIMITED	"P-58-120"	9502020482	1/24/2015	2,600,000.00	3,535,399.57	"P-60-79"
PHILIP MORRIS (THAILAND) LIMITED	"P-58-120"	9502020482	1/24/2015	1,100,000.00	1,495,745.97	"P-60-79"
PHILIP MORRIS (THAILAND) LIMITED	"P-58-120"	9502020482	1/24/2015	340,000.00	462,321.48	"P-60-79"
PHILIP MORRIS (THAILAND) LIMITED	"P-58-120"	9502020482	1/24/2015	860,000.00	1,169,401.40	"P-60-79"
PHILIP MORRIS (THAILAND) LIMITED	"P-58-145"	9502020508	1/24/2015	745,000.00	1,013,027.96	"P-60-79"
PHILIP MORRIS (THAILAND) LIMITED	"P-58-145"	9502020508	1/24/2015	1,855,000.00	2,522,371.62	"P-60-79"
PHILIP MORRIS (THAILAND) LIMITED	"P-58-145"	9502020508	1/24/2015	1,110,000.00	1,509,343.66	"P-60-79"
PHILIP MORRIS (THAILAND) LIMITED	"P-58-145"	9502020508	1/24/2015	1,250,000.00	1,699,711.33	"P-60-79"

<sup>21</sup> Exhibits "P-44" and "P-45".

<sup>22</sup> Division Docket, (CTA Case No. 9655), Vol. 2, pp. 959 to 961; For simplification, the table format used was based on the table of disallowances per the assailed *Decision* except for the "BL/AWB Exhibit No." column.

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PHILIP MORRIS (THAILAND) LIMITED	"P-58-145"	9502020508	1/24/2015	1,160,000.00	1,577,332.12	"P-60-79"
PHILIP MORRIS (THAILAND) LIMITED	"P-58-145"	9502020508	1/24/2015	35,000.00	47,591.92	"P-60-79"
PHILIP MORRIS (THAILAND) LIMITED	"P-58-145"	9502020508	1/24/2015	95,000.00	129,178.06	"P-60-79"
PHILIP MORRIS PRODUCTS S.A.	"P-58-291"	9502020667	2/11/2015	990.00	44,262.90	"P-60-183"
PHILIP MORRIS PRODUCTS S.A.	"P-58-291"	9502020667	2/11/2015	964.00	43,100.44	"P-60-183"
PHILIP MORRIS (THAILAND) LIMITED	"P-58-345"	9502020722	2/25/2015	2,357,500.00	3,206,687.70	"P-60-169"
PHILIP MORRIS (THAILAND) LIMITED	"P-58-345"	9502020722	2/25/2015	40,000.00	54,408.28	"P-60-169"
PHILIP MORRIS (THAILAND) LIMITED	"P-58-345"	9502020722	2/25/2015	2,500.00	3,400.52	"P-60-169"
<b>Subtotal - First Quarter</b>				<b>20,561,954.00</b>	<b>28,045,266.10</b>	
<b>Second Quarter</b>						
PHILIP MORRIS (THAILAND) LIMITED	"P-59-297"	9502021330	4/29/2015	448,000.00	609,323.94	"P-61-131"
PHILIP MORRIS (THAILAND) LIMITED	"P-59-297"	9502021330	4/29/2015	552,000.00	750,774.13	"P-61-131"
PHILIP MORRIS (THAILAND) LIMITED	"P-59-301"	9502021334	4/29/2015	244,440.00	332,462.37	"P-61-131"
PHILIP MORRIS (THAILAND) LIMITED	"P-59-301"	9502021334	4/29/2015	531,560.00	722,973.73	"P-61-131"
PHILIP MORRIS (THAILAND) LIMITED	"P-59-302"	9502021335	4/29/2015	151,320.00	205,810.04	"P-61-131"
PHILIP MORRIS (THAILAND) LIMITED	"P-59-302"	9502021335	4/29/2015	1,012,680.00	1,377,344.11	"P-61-131"
PHILIP MORRIS (THAILAND) LIMITED	"P-59-304"	9502021337	4/29/2015	330,000.00	448,832.36	"P-61-131"
PHILIP MORRIS (THAILAND) LIMITED	"P-59-305"	9502021338	4/29/2015	58,200.00	79,157.71	"P-61-131"
PHILIP MORRIS (THAILAND) LIMITED	"P-59-305"	9502021338	4/29/2015	329,800.00	448,560.34	"P-61-131"
PHILIP MORRIS (THAILAND) LIMITED	"P-59-642"	9502021676	6/12/2015	94,080.00	126,224.24	"P-61-348"
PHILIP MORRIS (THAILAND) LIMITED	"P-59-642"	9502021676	6/12/2015	138,180.00	185,391.85	"P-61-348"
PHILIP MORRIS (THAILAND) LIMITED	"P-59-642"	9502021676	6/12/2015	388,080.00	520,674.97	"P-61-348"
PHILIP MORRIS (THAILAND) LIMITED	"P-59-648"	9502021682	6/12/2015	37,500.00	50,312.59	"P-61-348"
PHILIP MORRIS (THAILAND) LIMITED	"P-59-648"	9502021682	6/12/2015	75,000.00	100,625.19	"P-61-348"
PHILIP MORRIS (THAILAND) LIMITED	"P-59-648"	9502021682	6/12/2015	75,000.00	100,625.19	"P-61-348"
PHILIP MORRIS (THAILAND) LIMITED	"P-59-648"	9502021682	6/12/2015	92,500.00	124,104.40	"P-61-348"
PHILIP MORRIS (THAILAND) LIMITED	"P-59-648"	9502021682	6/12/2015	507,500.00	680,897.11	"P-61-348"
PHILIP MORRIS (THAILAND) LIMITED	"P-59-648"	9502021682	6/12/2015	537,500.00	721,147.18	"P-61-348"
PHILIP MORRIS (THAILAND) LIMITED	"P-59-648"	9502021682	6/12/2015	1,050,000.00	1,408,752.64	"P-61-348"
PHILIP MORRIS (THAILAND) LIMITED	"P-59-648"	9502021682	6/12/2015	1,055,000.00	1,415,460.98	"P-61-348"
PHILIP MORRIS (THAILAND) LIMITED	"P-59-648"	9502021682	6/12/2015	1,470,000.00	1,972,253.69	"P-61-348"
PHILIP MORRIS (THAILAND) LIMITED	"P-59-648"	9502021682	6/12/2015	2,600,000.00	3,488,339.86	"P-61-348"
PHILIP MORRIS (THAILAND) LIMITED	"P-59-650"	9502021684	6/12/2015	23,280.00	31,234.06	"P-61-348"
PHILIP MORRIS (THAILAND) LIMITED	"P-59-650"	9502021684	6/12/2015	54,320.00	72,879.47	"P-61-348"
PHILIP MORRIS (THAILAND) LIMITED	"P-59-650"	9502021684	6/12/2015	667,360.00	895,376.34	"P-61-348"
PHILIP MORRIS (THAILAND) LIMITED	"P-59-650"	9502021684	6/12/2015	1,815,840.00	2,436,256.56	"P-61-348"
PHILIP MORRIS (THAILAND) LIMITED	"P-59-650"	9502021684	6/12/2015	2,095,200.00	2,811,065.26	"P-61-348"
PHILIP MORRIS (THAILAND) LIMITED	"P-59-651"	9502021685	6/12/2015	77,600.00	104,113.53	"P-61-348"
PHILIP MORRIS (THAILAND) LIMITED	"P-59-651"	9502021685	6/12/2015	271,600.00	364,397.35	"P-61-348"

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PHILIP MORRIS (THAILAND) LIMITED	"P-59-651"	9502021685	6/12/2015	388,000.00	520,567.64	"P-61-348"
PHILIP MORRIS (THAILAND) LIMITED	"P-59-655"	9502021691	6/12/2015	7,760.00	10,411.35	"P-61-348"
PHILIP MORRIS (THAILAND) LIMITED	"P-59-656"	9502021692	6/12/2015	292,000.00	391,767.40	"P-61-348"
PHILIP MORRIS (THAILAND) LIMITED	"P-59-656"	9502021692	6/12/2015	364,000.00	488,367.58	"P-61-348"
PHILIP MORRIS (THAILAND) LIMITED	"P-59-656"	9502021692	6/12/2015	2,544,000.00	3,413,206.39	"P-61-348"
PHILIP MORRIS (THAILAND) LIMITED	"P-59-657"	9502021693	6/12/2015	42,900.00	57,557.61	"P-61-348"
PHILIP MORRIS (THAILAND) LIMITED	"P-59-659"	9502021694	6/12/2015	578,120.00	775,645.78	"P-61-348"
PHILIP MORRIS (THAILAND) LIMITED	"P-59-659"	9502021695	6/12/2015	16,500.00	22,137.54	"P-61-348"
PHILIP MORRIS (THAILAND) LIMITED	"P-59-659"	9502021695	6/12/2015	326,700.00	438,323.32	"P-61-348"
<b>Subtotal - Second Quarter</b>				<b>21,343,520.00</b>	<b>28,703,355.80</b>	
<b>Total</b>				<b>41,905,474.00</b>	<b>56,748,621.90</b>	

Upon verification of the above indicated ABs and BLs and the related sales invoices, petitioner was able to establish that there were actual shipments from the Philippines to foreign countries for the export sales of goods in the amount of Php56,748,621.90 (or 41,905,474.00 in foreign currency). Hence, the said export sales of Php56,748,621.90 (or 41,905,474.00 in foreign currency) complied with the *second* condition.

As for the *third* condition, and in relation to the *fifth* requisite for the grant of refund claim, it must be shown that the payments for the substantiated export sales of Php56,748,621.90 (or 41,905,474.00 in foreign currency) were made in acceptable foreign currency accounted for in accordance with the rules and regulations of the BSP.

However, a perusal of the Certifications of Inward Remittances<sup>23</sup> issued by Citibank N.A. reveals that out of the substantiated export sales of Php56,748,621.90 (or 41,905,474.00 in foreign currency), only the amount of Php87,363.34 (or 1,954.00 in foreign currency), as detailed hereunder, was traced to the inward remittances per bank certifications or has proof of payment in acceptable foreign currency accounted for in accordance with the rules and regulations of the BSP, and thus, satisfied the *third* condition and the *fifth* requisite:

<sup>23</sup> Exhibits "P-57" to "P-57-49", ICPA Report Binder (Exhibit "P-38-b"), pp. 289 to 338.

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Name of Buyer	Sales Invoice			Sales/ Receipts in Foreign Currency	Peso Value of Sales	Bill of Lading	Cert. of Inward Remittance
	Exhibit No.	Doc No.	Date				
PHILIP MORRIS PRODUCTS S.A.	"P-58-291"	9502020667	2/11/2015	990.00	44,262.90	"P-60-183"	"P-57-15"
PHILIP MORRIS PRODUCTS S.A.	"P-58-291"	9502020667	2/11/2015	964.00	43,100.44	"P-60-183"	"P-57-15"
<b>Total</b>				<b>1,954.00</b>	<b>87,363.34</b>		

On the other hand, the remaining amount of Php56,661,258.56 (or 41,903,520.00 in foreign currency)<sup>24</sup> shall still be disallowed for the reason that it cannot be traced to the inward remittances per bank certifications or has no proof of payment in acceptable foreign currency accounted for in accordance with the rules and regulations of the BSP.

That being so, out of the Php56,748,621.90 (or 41,905,474.00 in foreign currency) disallowed export sales subject for reconsideration, only the amount of Php87,363.34 (or 1,954.00 in foreign currency), pertaining to the first quarter of TY 2015, qualified for VAT zero-rating under Section 106(A)(2)(a)(1) of the 1997 NIRC, as amended.

In fine, petitioner's total valid zero-rated sales for the first and second quarters of TY 2015, shall be adjusted to Php329,660,185.77 and Php503,812,114.84, or a total of Php833,472,300.61, as shown below:

	1st Quarter		2nd Quarter		Total	
	Sales in Foreign Currency	*Peso Value of Sales	Sales in Foreign Currency	*Peso Value of Sales	Sales in Foreign Currency	*Peso Value of Sales
Valid Zero-Rated Export Sales of Goods per Decision <sup>25</sup>	7,386,519.09	329,572,822.43	4,081,265.44	503,812,114.84	11,467,784.53	833,384,937.27
Add:						
Reconsidered Export Sales of Goods found to be substantiated and traced to inward remittance	1,954.00	87,363.34	-	-	1,954.00	87,363.34
<b>Adjusted Valid Zero-Rated Export Sales of Goods</b>	<b>7,388,473.09</b>	<b>329,660,185.77</b>	<b>4,081,265.44</b>	<b>503,812,114.84</b>	<b>11,469,738.53</b>	<b>833,472,300.61</b>

\* The amounts were converted based on the rate used per "Schedule of Zero-Rated Sales of Goods" (Exhibits "P-44" and "P-45").

<sup>24</sup> ₱56,748,621.90 (or 41,905,474.00 in foreign currency) less ₱87,363.34 (or 1,954.00 in foreign currency).

<sup>25</sup> Division Docket, (CTA Case No. 9655), Vol, 2, p. 933.

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*Computation of refundable amount of unutilized input taxes.*

Having found that petitioner had valid zero-rated sales in the amount of Php833,472,300.61, we now proceed to the determination of the refundable amount of unutilized input taxes attributable thereto.

In the recent case of *Chevron Holdings, Inc. (Formerly Caltex Asia Limited) vs. Commissioner of Internal Revenue*,<sup>26</sup> the Supreme Court held that the input tax attributable to zero-rated sales, may at the option of the VAT-registered taxpayer, be: (1) charged against output tax from regular 12% VAT-able sales, and any unutilized or “excess” input tax may be claimed for refund or the issuance of tax credit certificate; or (2) claimed for refund or tax credit in its entirety, and such option is vested with the taxpayer-claimant, to wit:

“Thus, the input tax attributable to zero-rated sales may, **at the option of the VAT-registered taxpayer**, be: (1) charged against output tax from regular 12% VAT-able sales, and any unutilized or “excess” input tax may be claimed for refund of the issuance of tax credit certificate; or (2) claimed for refund or tax credit in its entirety. It must be stressed that the **remedies of charging the input tax against the output tax and applying for a refund or tax credit are alternative and cumulative.** Furthermore, **the option is vested with the taxpayer-claimant.** xxx” (*Emphases supplied.*)

Applying the foregoing, records show that petitioner chose the *second* option, *i.e.*, its output taxes were offset against the available input tax carried over from previous periods, hence, there is no output tax against which it can apply the input tax credits attributable to its zero-rated sales.<sup>27</sup>

It is clear then that petitioner opted to claim for refund its input taxes Php85,050,889.33 and Php90,953,374.67, for the respective first and second quarters of TY 2015, or a total

<sup>26</sup> G.R. No. 215159. July 5, 2022.

<sup>27</sup> See Petitions for Review, Division Docket, (CTA Case No. 9655), Vol. 1, par. 12 to 14, p. 13 and (CTA Case No. 9695), par. 12 to 14, p. 13.

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of Php176,004,264.00, without charging any output tax liability therefrom.

Considering the foregoing, the refundable input VAT shall be computed using the adjusted valid zero-rated sales as determined earlier and without deducting from the valid input VAT attributable to such sales any output tax liability.

Accordingly, out of petitioner's valid input VAT due or paid for the first and second quarters of TY 2015, in the respective amounts of Php70,994,007.89 and Php79,328,016.33, or a total of Php150,322,024.22, only the input VAT of Php12,440,507.57 and Php19,598,970.06, or a total of Php32,039,477.63 are attributable to its adjusted valid zero-rated sales of Php329,660,185.77 and Php503,812,114.84, or a total of Php833,472,300.61, computed as follows:

	<b>First Quarter</b>	<b>Second Quarter</b>	<b>Total</b>
Valid Input VAT per <i>Decision</i> <sup>28</sup>	Php 70,994,007.89	Php 79,328,016.33	Php 150,322,024.22
Divided by the Total Reported Sales per <i>Decision</i> <sup>29</sup>	1,881,265,510.54	2,039,209,996.99	3,920,475,507.53
Multiply by Adjusted Valid Zero-Rated Sales	329,660,185.77	503,812,114.84	833,472,300.61
<b>Valid Input VAT Attributable to Adjusted Valid Zero-Rated Sales</b>	<b>Php 12,440,507.57</b>	<b>Php 19,598,970.06</b>	<b>Php 32,039,477.63</b>

**WHEREFORE**, the Petition for Review, docketed as CTA EB No. 2632, filed by the Commissioner of Internal Revenue, is **DENIED** for lack of merit.

The Petition for Review, docketed as CTA EB No. 2636, filed by Philip Morris Philippines Manufacturing, Inc. is **PARTIALLY GRANTED**. The Decision and Resolution, dated January 20, 2021 and May 11, 2022, respectively, are **AFFIRMED WITH MODIFICATIONS**.

Accordingly, the Commissioner of Internal Revenue is **ORDERED** to refund or issue a tax credit certificate in favor of Philip Morris Philippines Manufacturing, Inc. the amounts of **Php12,440,507.57** for CTA Case No. 9655 and **Php19,598,970.06** for CTA Case No. 9695 or a total of **Php32,039,477.63**, representing the latter's unutilized input


<sup>28</sup> Division Docket, (CTA Case No. 9655), Vol, 2, p. 940.

<sup>29</sup> Division Docket, (CTA Case No. 9655), Vol, 2, pp. 873 to 874.


*Om*


VAT attributable to its zero-rated sales for the first and second quarters of taxable year 2015, respectively.

**SO ORDERED.**

  
**CATHERINE T. MANAHAN**  
Associate Justice

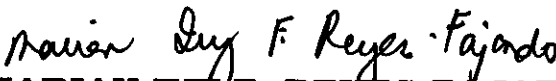
**WE CONCUR:**


  
**ROMAN G. DEL ROSARIO**  
Presiding Justice

  
**MA. BELEN M. RINGPIS-LIBAN**  
Associate Justice

  
**JEAN MARIE A. BACORRO-VILLENA**  
Associate Justice

  
**MARIA ROWENA MODESTO-SAN PEDRO**  
Associate Justice


  
**MARIAN IVY F. REYES-FAJARDO**  
Associate Justice

  
**LANEE S. CUI-DAVID**  
Associate Justice

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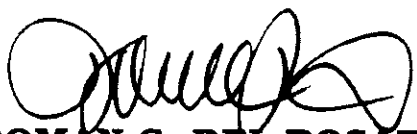
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**CORAZON G. FERRER-FLORES**  
Associate Justice

**(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 cases were assigned to the writer of the opinion of the Court.

  
**ROMAN G. DEL ROSARIO**  
Presiding Justice

*am*