REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PILIPINAS KYOHRITSU INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 2659
(CTA Case No. 9757)

x- x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

PILIPINAS KYOHRITSU INC.,
Respondent.

CTA EB No. 2660
(CTA Case No. 9757)

Present:

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

Promulgated:
NOV 17 2023 11:59am

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DECISION

REYES-FAJARDO, ***J.*:**

In these consolidated Petitions for Review, both Pilipinas Kyohritsu Inc. (PKI) and Commissioner of Internal Revenue (CIR) assail the Decision[1] dated July 6, 2021 and Resolution[2] dated June 23, 2022, rendered by the Second Division of the Court (the "Court in Division"") in CTA Case No. 9757, entitled *"Pilipinas Kyohritsu Inc. v. Commissioner of Internal Revenue."*

In its Petition for Review filed on July 20, 2022, docketed as CTA EB No. 2659, PKI prays that in addition to the amount of ₱6,583,578.11 granted by the Court in Division for refund, the amount of ₱3,888,469.38, representing the unutilized input Value-Added Tax (VAT) attributable to zero-rated sales for the periods January 1, 2016 to March 31, 2016 must also be refunded.

On the other hand, in his Petition for Review filed on August 8, 2022 docketed as CTA EB No. 2660, the CIR prays that PKI's claim for refund in the amount of ₱10,472,047.49 must be denied in its entirety.

PARTIES

PKI is a domestic corporation registered with the Securities and Exchange Commission with Company Registration No. 157828. It is engaged in the business of manufacturing and exporting parts and accessories, specifically wiring harness, weld cap, and engineering design activity. It is duly registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer with Taxpayer's Identification No. (TIN) 000-269-082-000, as evidenced by BIR Certificate of Registration No. OCN 8RC0000906901E. It is also registered with the Board of Investments (BOI) as an export producer of automotive wiring harness and weld cap for automotive application with BOI Registration Nos. 2003-046, 2005-177, 2007-060, and 2015-080.

The CIR, is the duly appointed official empowered to perform the duties of his office, including the power to grant or deny tax refunds pursuant to Section 112 (C) of the 1997 National Internal Revenue Code (NIRC), as amended, with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City.

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1 Assailed Decision, EB 2659, Docket - pp. 56 to 108; EB 2660, Docket - pp. 25 to 77.
2 Assailed Resolution, EB 2659, Docket - pp. 119 to 128; EB 2660, Docket - pp. 79 to 88.

FACTS

On August 29, 2017, PKI filed with the BIR Large Taxpayers Division, its Application for Tax Credits or Refunds (BIR Form No. 1914), for its unutilized input VAT for the period from January 1, 2016 to March 1, 2016 in the total amount of ₱10,923,055.28.

On January 10, 2018, PKI received a letter dated December 12, 2017, issued by CIR, through Ms. Teresita M. Angeles, OIC- Assistant Commissioner Large Taxpayer Service of the BIR, denying its claim for VAT refund.[3]

On January 26, 2018, PKI filed a Petition for Review before the Court in Division, docketed as CTA Case No. 9757.

On July 6, 2021, the Court in Division rendered a Decision, disposing CTA Case No. 9757 as follows:

> **WHEREFORE,** the instant Petition for Review filed on 26 January 2018 by petitioner Pilipinas Kyohritsu, Inc. is hereby **PARTIALLY GRANTED.** Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO REFUND** petitioner the amount of **SIX MILLION FIVE HUNDRED EIGHTY THREE THOUSAND FIVE HUNDRED SEVENTY EIGHT PESOS and ELEVEN CENTAVOS (₱6,583,578.11),** representing the unutilized input value-added tax (VAT) attributable to zero-rated sales or receipts for the period covering the 4th quarter of fiscal year ending 31 March 2016, or from 01 January 2016 to 31 March 2016.
>
> **SO ORDERED.**

Unsatisfied, both PKI and CIR filed their respective Motions for Partial Reconsideration which were denied in the equally assailed Resolution of June 23, 2022.

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3 As found by the Court in Division, the CIR had 120 days from August 29, 2017, or until December 27, 2017 to decide on PKI's claim. However, PKI received a copy of the Denial Letter only on January 10, 2018. Considering the rule that inaction on the part of CIR is deemed a denial, PKI's claim is deemed denied as early as December 27, 2017, or the expiration of the 120-day waiting period. Thus, PKI had 30 days, or until January 26, 2018, to appeal such inaction to the Court. Evidently, PKI's judicial claim for refund was timely filed on January 26, 2018. (Cited in page 18 of the assailed Decision)

On July 20, 2022, PKI filed a Petition for Review, docketed as CTA EB No. 2659.

On August 8, 2022, the CIR filed his Petition for Review, docketed as CTA EB No. 2660.

In a Minute Resolution dated August 10, 2022, the above-captioned cases were consolidated pursuant to Section 1, Rule 31 of the Revised Rules of Court.

By Resolution dated November 17, 2022, the consolidated cases were submitted for decision.

ISSUES

In CTA EB No. 2659, PKI submits that the Court in Division erred in denying a portion of its total claim for refund in the amount of ₱3,888,469.38.

In CTA EB No. 2660, the CIR submits that the Court in Division erred in finding that PKI is entitled to the refund of its unutilized input VAT attributable to zero-rated sales for the period from January 1, 2016 to March 31, 2016 in the amount of ₱6,583,578.11.

ARGUMENTS

PKI's Petition for Review
(CTA EB No. 2659)

PKI argues that it was prejudiced by the Court in Division's retroactive application of Revenue Memorandum Circular (RMC) No. 61-2016[4] because it was issued only on June 14, 2016, or after the recording of PKI's transactions covering the periods January 1, 2016 to March 31, 2016. PKI as well asserts that it adhered with all the requisites for the grant of input VAT refund under Section 112 (A)

[4] Subject: Prescribing Policies and Guidelines for Accounting and Recording Transactions Involving "Netting" or "Offsetting."

and (C) of the NIRC, as amended. For these reasons, it is entitled to a refund in the amount of ₱10,472,047.49.

The CIR counters that the Court in Division committed no reversible error in ruling that offsetting of assets and liabilities is contrary to RMC No. 61-2016.

The CIR's Petition for Review (CTA EB No. 2660)

The CIR ascribes error on the Court in Division's finding that PKI's transactions with International Wiring Systems (Phils.) Corporation (IWSPC) and Sumi Philippines Wiring Systems Corporation (SPWSC) are export sales not subject to VAT pursuant to the Cross Border Doctrine. Specifically, while the IWSPC and SPWSC are PEZA-Registered entities, PKI failed to establish that the goods it sold to IWSPC and SPWSC were destined for consumption within the Special Economic Zone (ECOZONE).

PKI counters that its sales of goods to IWSPC and SPWSC, qualify for VAT zero-rating under Section 106 (A)(2)(a)(5) of the NIRC, as amended. In particular: 1) it is a VAT-Registered person; 2) its customers, IWSPC and SPWSC are registered with PEZA; and 3) PKI's sale of goods are evidenced by compliant VAT zero-rated sales invoices and related delivery receipts amounting to US$100,884.00, or equivalent to ₱4,781,927.02.

RULING

The Petitions for Review are denied.

At the outset, the Court finds no compelling ground to merit reversal of the assailed Decision and Resolution.

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PKI's Petition for Review
(CTA EB No. 2659)

Only the export sales of goods to Sumitomo Wiring Systems, Ltd. (SWS-Japan) and Sumitomo Electric Wiring Systems, Inc. (SEWS-USA) amounting to ₱1,274,943,827.29 qualified for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC, as amended.

PKI argues that the Court-commissioned Independent Certified Public Accountant, Neil U. Sison, was able to explain the offsetting of receivables and payables between PKI and its non-resident foreign affiliates, namely, SWS-Japan and SEWS-USA, whereby payments made by SWS-Japan and SEWS-USA for goods sold by PKI shall be offset against the payments for the materials purchased by PKI from SWS-Japan and SEWS-USA.

PKI further asserts that the Court in Division's reliance on RMC No. 61-2016 which prohibits arrangements/practices of offsetting the amounts recognized as accrued/trade receivables against amounts recognized as accrued/trade payables is invalid, for having been applied retroactively.

The Court is not persuaded.

On the assumption that RMC No. 61-2016 cannot be retroactively applied as intimated by PKI, the Court in Division is still correct in ruling that only the export sales of ₱1,274,943,827.29 qualified for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC, as amended. Said provision states:

> 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:

ON

> (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);[5]

To accord 0% VAT on sales made pursuant to Section 106(A)(2)(a)(1) of the NIRC, as amended, the following conditions must be present: *first,* the sale was made by a VAT-registered person; *second,* there was sale and actual shipment of goods from the Philippines to a foreign country; and *third,* said sale was paid for in acceptable foreign currency accounted for in accordance with the rules and regulations of the BSP.

For the *first* condition, PKI's status as a VAT-Registered person is undisputed.[6]

For the *second* condition, petitioner presented its Schedule of Zero-Rated Sale of Goods,[7] the corresponding VAT zero-rated sales invoices, bills of lading or airway bills and export declaration documents,[8] to prove direct exportation of its goods to SWS-Japan and SEWS-USA.

For the *third* condition, PKI presented the following documents: (1) Certificate of Inward Remittance CIR17-356899[9] issued by The Bank of Tokyo-Mitsubishi UFJ, Ltd. Manila Branch; (2) Reconciliation of Export Sales and Dollar Remittances[10] (Reconciliation); and, (3) Schedule of Offsetting of Receivables and Payables[11] (Schedule of Offsetting).[12] Yet, an examination of these documents shows that PKI

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5 Boldfacing supplied.
6 JSFI, Division Docket, Volume I., p.566.
7 ICPA Exhibit "P-37-N-3," CD.
8 ICPA Exhibit "P-37-T-1" to "P-37-T-274," "P-37-U-1" to "P-37-U-2," and "P-37-W-1," *id.*
9 ICPA Exhibit "P-37-BA," *id.*
10 ICPA Exhibit "P-37-BD," *id.*
11 ICPA Exhibit "P-37-BC," *id.*
12 Based on the Court's independent verification, the adjustments can be categorized as follows: (1) sales adjustments based on the date of delivery of exported goods and invoice price differences; (2) offsetting of receivables and payables between petitioner and its non-resident foreign affiliates; and, (3) deductions for importation of raw materials from petitioner's non-resident foreign affiliates. Below is the breakdown of the adjustments:

was not able to substantiate the adjustments of its export sales of goods for offsetting of receivables and payables and deductions for importation of raw materials from SWS-Japan and SEWS-USA. PKI failed to provide any supporting document for each of the additions for "other receivables credited" and the deductions for "importation of raw materials" and "other charges debited."

Therefore, the Court agrees with the Court in Division that out of the ₱2,030,790,316.26[13] (equivalent to US$42,815,841.40)[14] reported zero-rated sales arising from export sales of goods to SWS-Japan and SEWS-USA, the amount of ₱1,274,943,827.29 (or the peso equivalent of US$26,840,364.53, which is the sum of the adjusted sales or net proceeds, whichever is lower, on a *per* remittance basis) qualified for VAT zero-rating under Section 106 (A)(2)(a)(1) of the NIRC, as amended, as summarized below:

4th Quarter of FY ending 31 March 2016	Adjusted Sales (USD)	Net Proceeds (USD)	Valid Zero-Rated Sales (USD)	Date of Remittance	Exchange Rate	Valid Zero-Rated Sales (PHP)
	(a)	(b)	(c) = (a) or (b), whichever is lower		(d)	(e) = (c) * (d)
SWS-Japan						
January	$6,298,301.80	$250,788.81	$250,788.81	26 February 2016	47.0600	P11,802,121.40
February	7,575,655.90	3,917,436.19	3,917,436.19	28 March 2016	47.6500	186,665,834.45
March	6,708,572.82	2,164,103.13	2,164,103.13	25 April 2016	47.5450	102,892,283.32
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4th Quarter of FY ending 31 March 2016	Unadjusted Sales (USD)	Sales Adjustments 122 (USD)	Adjusted Sales (USD)	Other Receivables Credited (USD)	Importation of Raw Materials (USD)	Other Charges Debited (USD)	New Proceeds 123 (USD)
	(a)	(b)	(c)	(d)	(e)	(f)	(g) = (b) + (c) + (d) + (e) + (f)
SWS-Japan							
January	$7,613,466.89	$(1,315,165.09)	$6,298,301.80	$33,776.03	$(5,800,241.26)	$(281,047.76)	$250,788.81
February	7,486,810.08	88,845.82	7,575,655.90	48,034.65	(3,357,729.41)	(348,524.95)	3,917,436.19
March	5,788,956.75	919,616.07	6,708,572.82	94,715.61	(4,293,907.60)	(345,277.70)	2,164,103.13
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Subtotal	**$20,889,233.72**	**$(306,703.20)**	**$20,582,530.52**	**$176,526.29**	**$(13,451,878.27)**	**$(974,850.41)**	**$6,332,328.13**
SEWS-USA							
January	$6,925,925.49	$(1,598,300.25)	$5,327,625.24	$24,167.22	$0.00	$(562,280.00)	$4,789,512.46
February	8,057,104.83	598,658.62	8,655,763.45	8,588.84	0.00	(550,914.00)	8,113,438.29
March	6,943,577.34	661,508.31	7,605,085.65	2,341.64	0.00	0.00	7,607,427.29
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Subtotal	**$21,926,607.66**	**$(338,133.32)**	**$21,588,474.34**	**$35,097.70**	**$0.00**	**$(1,113,194.00)**	**$20,510,378.04**
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Total	**$42,815,841.38 124**	**$(644,836.52)**	**$42,171,004.86**	**$211,623.99**	**$(13,451,878.27)**	**$(2,088,044.41)**	**$26,842,706.17**
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Cited in page 24-25 of the assailed Decision.

13 ICPA Exhibit "P-37-T," "p-37-U" and "P-37-W," *id.*

14 Id.

Subtotal	**$20,582,530.52**	**$6,332,328.13**	**$6,332,328.13**			**P301,360,239.17**
SEWS-USA						
January	$5,327,625.24	$4,789,512.46	$4,789,512.46	16 March 2016	47.0600	P225,394,456.37
February	8,655,763.45	8,113,438.29	8,113,438.29	15 April 2016	47.6500	386,605,334.52
March	7,605,085.65	7,607,427.29	7,605,085.65	13 May 2016	47.5450	361,583,797.23
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Subtotal	**$21,588,474.34**	**$20,510,378.04**	**$20,508,036.40**			**P973,583,588.12**
Total	**42,171,004.86**	**$26,842,706.17**	**$26,840,364.53**			**P1,274,943,827.29**
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The CIR's Petition for Review (CTA EB No. 2660)

Sales of goods to PEZA-Registered entities are "export sales" subject to zero percent (0%) VAT rate under Section 106(A)(2)(a)(5) of the NIRC, as amended.

The CIR asserts that PKI's sales of good to IWSPC and SPWSC should be disallowed in the computation of the refundable amount as it has not sufficiently proven that such goods were for consumption within the ECOZONE.

The Court disagrees.

Section 106 (A)(2)(a)(5)[15] of the NIRC, as amended, subjects to VAT at the rate of 0%, those considered export sales under special

15 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:

...

laws. Among these special laws is Republic Act (RA) No. 7916.[16] Section 8[17] thereof provides that PEZA shall manage and operate the ECOZONE as a separate customs territory. Indeed, this provision establishes the legal fiction that an ECOZONE is a foreign territory separate and distinct from the customs territory. Accordingly, the sales made by suppliers from a customs territory to a purchaser located within an ECOZONE will be considered as exportations.[18] Stated otherwise, sale by a VAT-registered person to entities within the ECOZONE are subject to 0% VAT.

Significantly, Section 4.106-5 of RR No. 16-2005 implements Section 106(A)(2)(a)(5) of the NIRC, as amended, in relation to Section 8 of RA No. 7916 in this wise:

> SECTION 4.106-5. *Zero-Rated Sales of Goods or Properties.- ...*
>
> The following sales by VAT -registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export sales. - 'Export Sales'* shall mean:
>
> ...
>
> (5) Transactions considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws.
>
> ***"Considered export sales under Executive Order No. 226"*** 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 products 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

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

16 The Special Economic Zone Act of 1995.

17 SECTION 8. *ECOZONE to be Operated and Managed as Separate Customs Territory.* - **The ECOZONE shall be managed and operated by the PEZA as separate customs territory.**

The PEZA is hereby vested with the authority to issue certificates of origin for products manufactured or processed in each ECOZONE in accordance with the prevailing rules of origin, and the pertinent regulations of the Department of Trade and Industry and/or the Department of Finance. (Boldfacing supplied)

18 See *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue,* G.R. No. 190506, June 13, 2016.

> certificates or similar commercial documents; *Provided, further,* That *pursuant to EO 226 and other special laws,* even without actual exportation, the following shall be considered constructively exported: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; **(2) sales to export processing zones *pursuant to Republic Act (RA) Nos. 7916, as amended, 7903, 7922 and other similar export processing zones;*** ...[19]

To confer 0% VAT on sale of goods pursuant to Section 106(A)(2)(a)(5) of the NIRC, as amended, in relation to Section 8 of RA No. 7916, as implemented by Section 4.106-5 of RR No. 16-2005, the following conditions must concur: *first,* the sale was made by a VAT registered person; and *second,* the sale of goods must be to an entity entitled to incentives under Executive Order (EO) No. 226, otherwise known as the "Omnibus Investment Code of 1987," and other special laws, *i.e.,* RA No. 7916.

In relation to the *second* condition, the following documents must be presented: *one,* VAT zero-rated sales invoice, in accordance with invoicing requirements under Sections 113(A) and (B), and 237 of the NIRC, as amended, as implemented by Section 4.113-1 (A) and (B) of RR No. 16-2005; and *two,* proof of buyer's entitlement to zero-rating under EO No. 226 or special laws (*i.e.,* Certificates of Registration with the PEZA pursuant to RA No. 7916 for the pertinent period involved).

Here, PKI, a VAT-registered person,[20] sold goods to IWSPC and SPWSC, both PEZA-Registered entities. This is evidenced by: *first,* compliant VAT zero-rated sales invoices and related delivery receipts amounting to US$100,884.00 or equivalent to ₱4,781,927.02[21]; and *second,* PEZA Certification,[22] stating that IWSPC and SPWSC are entities duly registered with the PEZA and are qualified for the purpose of VAT zero-rating of its transactions with its local suppliers for the year 2016.

Hence, the amount of US$100,884.00 or ₱4,781,927.02, qualify as PKI's VAT zero-rated sales based on Section 106(A)(2)(a)(5) of the NIRC, as amended.[23]

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19 Emphasis supplied.
20 *Supra* note 8.
21 ICPA Exhibits "P-37-R-1" to "P-37-R-6" and "P-37-S-1" to "P-37-S-10," CD.
22 ICPA Exhibit "P-37-Q," *id.*
23

Summing it up, PKI had valid zero-sales amounting to ₱1,279,725,754.31 for the period January 1, 2016 to March 31, 2016, computed as follows:

Particulars	Zero-Rated Sales
Actual export sale of goods	₱1,274,943,827.29
Sale to PEZA-registered entities	4,781,927.02
Total Zero-Rated Sales	**₱1,279,725,754.31**

As correctly determined by the Court in Division, out of the unutilized input VAT allocated to the total zero-rated sales in the amount of ₱10,520,679.93, only the remaining input VAT of ₱6,583,578.11 is attributable to its valid zero-rated sales of ₱1,279,725,754.31, as determined below:

Valid Input VAT Allocated to the Total Zero-Rated Sales	₱10,592,965.65
Less: Output VAT still due	72,285.72
Unutilized Input VAT Allocated to the Total Zero-Rated Sales	**₱10,520,679.93**
Divided by the Total Zero-Rated Sales	2,045,025,490.06
Multiplied by the Valid Zero-Rated Sales	1,279,725,794.31
Unutilized Input VAT Attributable to Valid Zero-Rated Sales	**₱6,583,578.11**

ICPA Exhibit No.	**Name of Client**	**Invoice No.**	**Date**	**Amount (USD)**	**Conversion Rate**	**Amount (PHP)**
"P-37-R-1"	IWSPC	2140	08 January 2016	$11,025.00	47.06	P518,836.50
"P-37-S-1"	SPWSC	2141	08 January 2016	4,599.00	47.06	216,428.94
"P-37-S-2"	SPWSC	2142	08 January 2016	9,870.00	47.06	464,482.20
"P-37-S-3"	IWSPC	2144	21 January 2016	63.00	47.06	2,964.78
"P-37-R-2"	IWSPC	2145	21 January 2016	11,235.00	47.06	528,719.10
"P-37-R-3"	IWSPC	2146	04 February 2016	63.00	47.65	3,001.95
"P-37-R-4"	IWSPC	2147	04 February 2016	10,605.00	47.65	505,328.25
"P-37-S-4"	SPWSC	2148	04 February 2016	3,969.00	47.65	189,122.85
"P-37-S-5"	SPWSC	2149	04 February 2016	8,505.00	47.65	405,263.25
"P-37-S-6"	IWSPC	2153	18 February 2016	63.00	47.65	3,001.95
"P-37-R-5"	IWSPC	2154	18 February 2016	7,665.00	47.65	365,237.25
"P-37-S-7"	IWSPC	2155	03 March 2016	63.00	47.5451	2,995.34
"P-37-R-6"	IWSPC	2156	03 March 2016	9,450.00	47.5450	449,300.25
"P-37-S-8"	SPWSC	2157	03 March 2016	2,394.00	47.5450	113,822.73
"P-37-S-9"	SPWSC	2158	03 March 2016	7,560.00	47.5450	359,440.20
"P-37-S-10"	IWSPC	2159	17 March 2016	13,755.00	47.5450	653,981.48
Total				**$100,884.00**		**P4,781,927.02**

All in all, the Court in Division is correct in partially granting PKI's unutilized input VAT refund attributable to zero-rated sales for the periods January 1, 2016 to March 31, 2016 to the extent of ₱6,583,578.11.

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

WHEREFORE, the Petition for Review filed by PKI in CTA EB No. 2659, and the Petition for Review filed by the CIR in CTA EB No. 2660 are **DENIED** for lack of merit. Accordingly, the Decision dated July 6, 2021 and the Resolution dated June 23, 2022, both rendered by the Court in Division in CTA Case No. 9757 are **AFFIRMED.**

SO ORDERED.

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ON OFFICIAL BUSINESS
CATHERINE T. MANAHAN
Associate Justice

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24 See *Republic of the Philippines, Represented by the Commissioner of Internal Revenue, v. Team (PHILS.) Energy Corporation (formerly Mirant (PHILS.) Energy Corporation)*, G.R. No. 188016, January 14, 2015. (Citations omitted)

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

ON LEAVE
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

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 consolidated cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

PILIPINAS KYOHRITSU INC.,
Petitioner,

CTA EB No. 2659
(CTA Case No. 9757)

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x---x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 2660
(CTA Case No. 9757)

Present:

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

- versus -

PILIPINAS KYOHRITSU INC.,
Respondent.

Promulgated:
NOV 17 2023 11:59 am

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SEPARATE OPINION

BACORRO-VILLENA, J.:

I concur with the decision to deny both Petitions for Review in CTA EB Nos. 2659 and 2660 (filed by Pilipinas Kyohritsu Inc. [**PKI**] and the Commissioner of Internal Revenue [**CIR**], respectively) for lack of merit. *However*, I respectfully submit that the Second Division's Decision dated 06 July 2021 (**Assailed Decision**) and Resolution dated 23 June 2022 (**Assailed Resolution**) should be affirmed with modification. Specifically, PKI is entitled to a lower amount of refundable excess input Value-Added Tax (**VAT**) attributable to valid zero-rated sales for the subject period of claim, hereby recomputed to be ₱6,556,527.20.

As the basis for this recomputation, I hereby outline what I deem to be the correct steps for computing the refundable amount of excess and unutilized input VAT attributable to zero-rated sales when the taxpayer-claimant is engaged in mixed transactions based on the recent Supreme Court decision in *Chevron Holdings, Inc. (formerly Caltex Asia Limited) v. Commissioner of Internal Revenue*[1] (**Chevron**):

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. If the taxpayer-claimant opts to charge the input VAT attributable to zero-rated sales against output VAT, the entire amount of output

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

VAT still due may be deemed applied against substantiated or valid input VAT directly attributable to zero-rated sales; otherwise, or if the taxpayer-claimant opts to claim for refund or tax credit in its entirety, 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 as aforesaid;

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) for the 4th quarter of the fiscal year (**FY**) ending 31 March 2016 should be **₱6,556,527.20**, as computed below:

Step 1. It is observable from the Second Division's Assailed Decision that the amount of substantiated or valid input VAT is ₱10,596,226.68.

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	₱1,279,725,794.31
Divided by Total Sales	2,045,655,046.25
Multiplied by Total Valid Input VAT	10,596,226.68
Valid Input VAT Allocated to Total Valid Zero-Rated Sales	**₱6,628,812.92**

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

Step 5. Output VAT still due is:

Output VAT		₱75,546.74
Total VATable Sales	₱629,556.19	
Divided by Total Sales	2,045,655,046.25	
Multiplied by Total Valid Input VAT	10,596,226.68	
Less: Valid Input VAT Allocated to VATable sales		3,261.02
Output VAT Still Due		**₱72,285.72**

Step 6. The output VAT still due of ₱72,285.72 may be deemed applied against substantiated or valid input VAT attributable to valid zero-rated sales of ₱6,628,812.92 since PKI itself opted to charge the input VAT attributable to zero-rated sales against output VAT in arriving at its refund claim of ₱10,923,055.28[2] (notwithstanding that it has "Input VAT Carried Over from Previous Period" of ₱13,746,385.09[3] sufficient to pay or "cover" the same), as shown below:

Output VAT Still Due		₱72,285.72
Less:		
Option 1 (Charge the Input VAT attributable to Zero-Rated Sales against Output VAT)	-	
Option 2 (Claim for Refund or Tax Credit in its entirety)	13,746,385.09	-
Valid Input VAT attributable to Valid Zero-Rated Sales Effectively Applied Against Output VAT (since PKI elected Option 1)		**₱72,285.72**

Step 7. No input VAT deemed carried-over.

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

Valid Input VAT allocated to Total Valid Zero-Rated Sales	₱6,628,812.92
Less: Valid Input VAT attributable to Valid Zero-Rated Sales Effectively Applied Against Output VAT	72,285.72
Less: Input VAT Deemed Carried-Over	-
Excess Input VAT attributable to Valid Zero-Rated Sales	**₱6,556,527.20**

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 ₱6,583,578.11 in the following manner:

Output VAT	₱75,546.74
Less: Valid Input VAT allocated to Sales subject to 12% VAT	3,261.02
Output VAT Still Due	**₱72,285.72**
Valid Input VAT allocated to Total *Declared* Zero-Rated Sales	₱10,592,965.65
Less: Output VAT Still Due	72,285.72
Excess Input VAT allocated to Total *Declared* Zero-Rated Sales	**₱10,520,679.93**

2 VAT Refund/TCC Claimed (Line Item 23D), Exhibit "P-10-3", Division Docket, Volume II, p. 756.
3 Input VAT Carried Over from Previous Period *per* 4th Quarter VAT Returns for FY ending 31 March 2016 (Line Item 20A), id, p. 755.

Excess Input VAT allocated to Total *Declared* Zero-Rated Sales	₱10,520,679.93
Divided by Total *Declared* Zero-Rated Sales	2,045,025,490.06
Multiplied by Total *Valid* Zero-Rated Sales	1,279,725,754.31
Excess Input VAT attributable to Total *Valid* Zero-Rated Sales	**₱6,583,578.11**

The key difference between the foregoing computations is the treatment of the resulting "Output VAT Still Due" amounting to **₱72,285.72**. 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 National Internal Revenue Code (**NIRC**) of 1997, as amended, that the taxpayer had insufficient or unsubstantiated input VAT to pay or "cover" 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*:

> ...
>
> **[T]he input tax attributable to zero-rated sales may, <u>at the option of the VAT-registered taxpayer</u>, 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.** 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. It goes without saying that **the CTA, and even the Court, may not, on its own, deduct the input tax attributable to zero-rated sales from the output tax derived from the regular twelve percent (12%) VAT-able sales first and use the resultant amount as the basis in computing the allowable amount for refund. <u>The courts cannot condition the refund of input taxes allocable to zero-rated sales on the existence of "excess" creditable input taxes, which includes the input taxes carried over from the previous periods, from the output taxes.</u>** These procedures find no basis in law and jurisprudence.
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> ...

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

5 **SEC. 112.** *Refunds or Tax Credits of Input Tax.* —

(A) *Zero-Rated or Effectively Zero-Rated Sales.* — ...

...[B]efore the input tax from zero-rated sales may even form part of the total allowable or creditable input taxes to be charged against the output taxes and undergo the computation of "excess output or input tax" in Section 110 (B), it may already be removed from the formula once the taxpayer opted to claim the entire amount for refund.

These were echoed by Associate Justice Japar B. Dimaampao, opining that "nowhere in Section 112 (A) does it require that the taxpayer must first offset its input tax with any output tax before its claim for refund may prosper. Notably, the word "excess" does not even appear in this section. Instead, what recurs is the refundability of input tax that has not been applied against output tax or that has simply remained unused."

Moreover, **the crediting of input taxes, including input tax attributable to zero-rated sales, from the output tax should be discretionary to the taxpayer as it is the taxpayer who is more interested in reducing its output tax payable.** In fact, the legislature put a cap on the input tax that may be deducted from the output tax to generate cash flow for the government. Therefore, to require entities engaged in zero-rated transactions to charge their input tax from zero-rated sales against their output VAT from regular twelve percent (12%) VAT-able sales would defeat the very object of the tax measure, which is to generate more income for the government.

...

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 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 opts to *claim* for refund or tax credit *in its entirety* and it 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 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.

On the other hand, when a taxpayer-claimant opts to *charge* the input VAT attributable to zero-rated sales *against output VAT*, the entire amount of output VAT still due may be deemed applied against the substantiated or valid input VAT attributable to zero-rated sales. This is because the crediting of input VAT, including that attributable to zero-rated sales, from the output VAT is at the taxpayer's discretion.

Furthermore, it must be noted that the option of a VAT-registered taxpayer to charge the input VAT attributable to zero-rated sales 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 a tax credit certificate (**TCC**), or claim for refund or tax credit in its entirety, *only* applies to the 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 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.
>
> ...
>
> 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:

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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:

$\frac{\text{Taxable sales (0\%)}}{\text{Total Sales}}$ x **Amount of input tax not directly attributable to any activity**

$\frac{\text{P100,000.00}}{\text{400,000.00}}$ 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, Revenue Regulations No. 04-07.

	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 result had it *first* separated or excluded the "disallowed" portion of the input VAT allocated to *declared* zero-rated sales (*i.e.*, ₱3,964,152.74) and deducted the output VAT still due (*i.e.*, ₱72,285.72) only against the "valid" portion thereof (*i.e.*, ₱6,628,812.92), 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	₱1,279,725,794.31		62.56%	₱6,628,812.92	
Disallowed Zero-Rated Sales	765,299,695.75		37.41%	3,964,152.74	
VATable Sales	629,556.19		0.03%	3,261.02	
Total Declared Sales[10]	**₱2,045,655,046.25**	(b)	100.00%	**₱10,596,226.68**	(d)

Table 2. Computation of Output VAT Still Due

Output VAT	₱75,546.74
Less: Valid Input VAT allocated to VATable Sales	3,261.02
Output VAT Still Due	**₱72,285.72**

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

Valid Input VAT allocated to *Valid* Zero-Rated Sales	₱6,628,812.92
Less: Valid Input VAT attributable to Valid Zero-Rated Sales Effectively Applied Against Output VAT	72,285.72
Less: Input VAT Deemed Carried-Over	-
Refundable Excess Input VAT attributable to Valid Zero-Rated Sales	**₱6,556,527.20**

To reiterate, the output VAT still due of ₱72,285.72 may be deemed applied against substantiated or valid input VAT attributable to valid zero-rated sales of ₱6,628,812.92 since PKI itself opted to charge the input VAT attributable to zero-rated sales against output VAT in arriving at its refund

10 Total Sales/Receipts (Line Item 19A), Exhibit "P-10-3", supra at note 3.

claim of ₱10,923,055.28[11] (notwithstanding that it has "Input VAT Carried Over from Previous Period" of ₱13,746,385.09[12] sufficient to pay or "cover" the same).

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[13] 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.[14] 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.[15] 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.[16]

Having recomputed a lower refundable excess input VAT, in the amount of **₱6,556,527.20**, attributable to valid zero-rated sales following the procedure laid down in *Chevron*, and given that this amount is well within the subject input VAT claim of ₱10,923,055.28 — which was reflected as 'VAT Refund/TCC Claimed' in PKI's 4th Quarterly VAT Return for FY ending 31 March 2016 — PKI has sufficiently proven its entitlement to a refund or issuance of a TCC for this adjusted amount.

All told, I vote to **DENY** the instant Petitions for Review for lack of merit and **AFFIRM WITH MODIFICATION** the Second Division's Assailed Decision and Resolution.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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11 VAT Refund/TCC Claimed (Line Item 23D), Exhibit "P-10-3", supra at note 3.

12 Input VAT Carried Over from Previous Period *per* 4th Quarter VAT Returns for FY ending 31 March 2016 (Line Item 20A), supra at note 3.

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

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

15 Id.

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