REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL, REVENUE,
Petitioner,

- versus -

ORICA PHILIPPINES, INC.,
Respondent.

CTA EB NO. 2635
(CTA Case No. 9974)

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

Promulgated:

FEB 12 2024 3:05 p.m.

x - x

DECISION

FERRER-FLORES, J.:

This is a Petition for Review filed by petitioner Commissioner of Internal Revenue (CIR/petitioner) appealing the Court of Tax Appeals (CTA) First Division's Decision dated July 16, 2021[1] (assailed Decision) and Resolution dated May 24, 2022[2] (assailed Resolution) partially granting the claim for refund or issuance of a tax credit certificate of respondent Orica Philippines, Inc. (Orica/respondent) in the amount of ₱4,015,125.16, out of the total claim of ₱18,757,113.07, representing unutilized input value-added tax (VAT) attributable to zero-rated export sales for the 3rd quarter of fiscal year (FY) 2016 or from April 1, 2016 to June 30, 2016.

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[1] *Rollo,* pp. 27-64. Penned by Hon. Associate Justice Catherine T. Manahan with concurrence of Presiding Justice Roman G. Del Rosario.

[2] *Rollo,* pp. 66-73. Penned by Hon. Associate Justice Catherine T. Manahan with concurrence of Presiding Justice Roman G. Del Rosario and Associate Justice Marian Ivy F. Reyes-Fajardo.

THE PARTIES

Petitioner is the duly appointed CIR vested with the authority to act as such, including, *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the tax laws.[3]

Respondent is a domestic corporation duly organized and existing under the laws of the Philippines.[4]

THE FACTS

The facts as narrated by the Court in Division[5] are as follows:

> On June 28, 2018, petitioner [**herein respondent**] filed an application/request for refund with the BIR of its alleged excess input VAT covering the period April 1, 2016 to June 30, 2016.
>
> On October 17, 2018, petitioner received the Letter dated September 19, 2018 from the BIR Assessment Service, denying its administrative claim for refund of unutilized input tax attributable to its export (zero-rated) sales in the amount of ₱18,757,113.07. Although the VAT Credit Audit Division recommended the grant of the refund in the amount of P14,563,456.59, respondent [**herein petitioner**] still denied the administrative claim due to the following reasons:
>
> a. Disallowed input VAT attributable to sales without approved zero-rating certificates and the word "zero-rated" was not stamped on its official receipts; and
> b. Disallowed ripened portion of deferred input tax on capital goods purchases exceeding ₱1 million.
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> The detailed computation upon which the denial was based is shown as follows, to wit:
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> xxx xxx xxx
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> Due to the denial of its claim for refund, petitioner elevated an appeal by filing a Petition for Review with the Court on November 16, 2018.
>
> Respondent transmitted to the Court the BIR Records of the case on December 28, 2018.
>
> On January 7, 2019, respondent filed his Answer to the Petition for Review.

[3] Paragraph 1, Parties, Petition for Review, *Rollo*, p. 2.
[4] Paragraph 2, Parties, Petition for Review, *Rollo*, p. 2.
[5] Court of Tax Appeals (CTA) First Division.

The Pre-Trial Conference was set and held on March 7, 2019. Prior thereto, respondent filed his Pre-Trial Brief on February 7, 20 19. The pre-Trial Brief of petitioner was filed on March 1, 2019.

On March 22, 2019, the parties submitted their Joint Stipulation of Facts and Issues (JSFI).

In the Resolution dated April 1, 2019, the Court approved the said JSFI and deemed the termination of the Pre-Trial.

The Court subsequently issued a Pre-Trial Order on May 6, 2019.

During trial, petitioner presented its documentary and testimonial evidence. Petitioner presented the testimonies of the following individuals, namely: (1) Ms. Krista V. Bambao, the Court duly-commissioned Independent Certified Public Accountant (ICPA); and (2) Ms. Teresa S. Gonzales, petitioner's Tax Specialist.

On April 8, 2019, the ICPA submitted her report.

On June 17, 2019, petitioner filed its Formal Offer of Evidence. Respondent submitted his Comment (RE: Petitioner's Formal Offer of Evidence) on June 18, 2019. In the Resolution dated July 12, 2019, petitioner's exhibits were admitted, *except* for the following:

1) Exhibits "P-582" and "P-1301", for not being found in the records of the case;

2) Exhibits "P-27", "P-27 -1", "P-52" to "P-69", "P-71" to "P-86", "P-87", "P-615", "P-621", "P-625", "P-661", "P-662", "P-728", "P-738", "P-769" to "P-773", "P-792" to "P-795", "P-838" to "P-843", "P-845" to "P-84 7", "P-1261", "P-1362", "P-1369" to P-1373", "P-1375", "P-1543" to "P-1615", "P-1692", "P-1693", for failure to present the originals for comparison;

3) Exhibits "P-808", "P-809", "P-818", and "P-819" for being illegible; and

4) Exhibits "P-70", "P-659", and "P-844", for failure to present the originals for comparison and for being illegible.

On August 1, 2019, petitioner filed its Motion for Reconsideration with Leave of Court to Admit Evidence (RE: Resolution on the Formal Offer of Evidence dated 12 July 2019). Respondent did not file any comment thereon.

In the Resolution dated October 9, 2019, the Court partially granted petitioner's Motion for Reconsideration, and admitted Exhibits "P-584" and "P-1031" in evidence.

Respondent likewise presented his documentary and testimonial evidence. He offered the sole testimony of Mr. Daniel Carlo S. Perez, Revenue Officer II of the BIR.

On December 13, 2019, respondent filed his Formal Offer of Evidence. Petitioner failed to comment thereon.

In the Resolution dated February 7, 2020, the exhibits of respondent were admitted, *except* Exhibit "R-3", for respondent's failure to identify the same.

On June 10, 2020, respondent posted his Memorandum, while petitioner's Memorandum was filed on June 30, 2020.[6]

On July 16, 2021, the Court in Division rendered its decision partially granting respondent's claim for refund, the dipositive portions of which read as follows:

> **WHEREFORE**, in view of the foregoing, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO REFUND/ISSUE TAX CREDIT CERTIFICATE** in favor of petitioner Orica Philippines, Inc. the amount of **₱4,015, 125.16**, representing the latter's unutilized excess input VAT attributable to its zero-rated sales for the 3rd quarter of FY 2016 or the period covering April 1, 2016 to June 30, 2016.
>
> The Letter dated September 19, 2018 of the Assessment Service of the Bureau of Internal Revenue, denying petitioner's administrative claim for refund of unutilized input VAT attributable to zero-rated export sales in the amount of **₱18,757,113.07,** is **REVERSED** and **SET ASIDE**.
>
> **SO ORDERED.**

Unsatisfied, petitioner filed his Motion for Partial Reconsideration (Re: Decision promulgated 16 July 2021). The Court in Division, however, denied the same in the now assailed Resolution. The *fallo* of which reads:

> **WHEREFORE**, premises considered, respondent's Motion for Partial Reconsideration (Re: Decision promulgated 16 July 2021) is **DENIED** for lack of merit.
>
> **SO ORDERED.**

Still unconvinced, petitioner filed the instant Petition for Review[7] before the Court *En Banc*, on June 8, 2022, praying that the "*Decision promulgated [on] 16 July 2021 and the Resolution dated 24 May 2022 be PARTIALLY REVERSED and SET ASIDE and another one be rendered denying the entire claim for refund*".[8]

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[6] Footnotes omitted.
[7] *Rollo*, pp. 1-20.
[8] *Rollo*, p. 16.

On the other hand, respondent in its Comment (to the Petition for Review filed by Petitioner, Commissioner of Internal Revenue), prays that this Court render judgment to:[9]

1. **DENY** the Petitioner's 06 June 2022 Petition for Review for lack of merit;

2. **AFFIRM** the 16 July 2021 Decision of the Honorable Court – *First Division* PARTIALLY GRANTING ORICA PHILIPPINES, INC.'s claim for refund in the amount of Pesos: **Four Million Fifteen Thousand and One Hundred Twenty-Five & 16/100 (P4,015,125.16);**

3. **ORDER** the petitioner to refund and/or issue a Tax Credit Certificate for the above amount in favor of Respondent ORICA PHILPPINES, INC.

This case was submitted for decision on July 22, 2022.[10]

ISSUE

The lone issue raised by petitioner for the Court *En Banc's* resolution is:

> WHETHER OR NOT THE FIRST DIVISION OF THE HONORABLE COURT ERRED IN RULING THAT THE LAW DOES NOT REQUIRE THAT THE INPUT VAT SUBJECT OF THE CLAIM BE DIRECTLY ATTRIBUTABLE TO ZERO-RATED SALES.

Petitioner's arguments:

Petitioner posits that the law requires that only "creditable input taxes" that are "directly attributable" may be refunded. Petitioner cites the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*[11] (*Atlas case*) to support his argument. Further, he opines that the case should have been dismissed by the CTA First Division for failure of the respondent to substantiate its claim for refund. Petitioner avers that respondent failed to secure an approved zero-rating for the sales to its local customers, who are direct exporters as certified by the Board of Investments, which is a requirement under Section 2.13 of the Revised Checklist of Mandatory Requirements, under Annex A.1 of Revenue Memorandum

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[9] *Rollo*, p. 92.
[10] *Rollo*, p. 95.
[11] G.R. No. 159471, January 26, 2011.

Circular (RMC) No. 17-2018.[12] Lastly, respondent claims that since the respondent's claim for refund was denied in the administrative level, the jurisdiction of the Court in Division becomes strictly appellate in nature. The judicial review is not a trial *de novo* in the sense that a totally new first instance trial is conducted, rather, it is an inquiry whether the findings of the administrative bodies are consistent with the law.

Respondent's counter-arguments:

Respondent maintains that its failure to submit supporting documents in the administrative level is not fatal to its claim for refund. Petitioner failed to prove that respondent did not substantially comply with the requirements for VAT refund claim. It avers that the input taxes need not be directly attributable to the zero-rated sales to be refundable or creditable.

RULING OF THE COURT *EN BANC*

A perusal of the arguments in the Petition for Review shows that the same are mere reiterations of petitioner's arguments in his pleadings and in his Motion for Reconsideration raised in CTA Case No. 9974 which were already discussed and passed upon by the Court in Division in its assailed Decision and Resolution, thus, at the outset, the instant petition is without merit.

Nevertheless, the Court *En Banc* shall address the issues raised by petitioner before this Court.

Timeliness of the Petition for Review

Before proceeding to the merits of the arguments of the parties, the Court *En Banc* deems it necessary to delve on the timeliness of the instant Petition for Review.

Records show that, on May 24, 2022, the CTA First Division issued the assailed Resolution denying petitioner's Motion for Partial Reconsideration (Re: Decision promulgated 16 July 2021) which was received by the latter on June 1, 2022. Consequently, petitioner had fifteen (15) days from such receipt, or until June 16, 2022, within which to file a petition for review before the

[12] Amending Revenue memorandum Circular No. 89-2017 and Certain Provisions of RMC No. 54-2014 Regarding the Processing of Claims for Issuance of Tax Refund/Tax Credit Certificate in Relation to Amendments Made in the national Internal Revenue Code of 1997, As Amended by Republic Act No. 10963, known as the Tax Reform for Acceleration and Inclusion (TRAIN).

CTA *En Banc* pursuant to Section 2(a)(1), Rule 4[13] in relation to Section 3(b), Rule 8[14] of the Revised Rules of the Court of Tax Appeals (RRCTA).

On June 8, 2022, petitioner timely filed the present Petition for Review.

We shall now proceed to the merits of the case.

Section 112(A) does not require that the input taxes subject of the claim for refund be directly attributable to zero-rated sales.

Petitioner insists that the law requires that only "creditable input taxes" that are "directly attributable" may be refunded. Petitioner claims that the input taxes on purchases of goods must be a factor in the chain of production to be "creditable" or the said input taxes must come from purchases of goods that form part of the finished product of the respondent. Petitioner, banking that the Philippine VAT system was adopted from Europe, opines that, as it is in Europe, not all input tax from purchases by a business is creditable as input tax, only those related to the supplies made can be claimed.

Petitioner is mistaken.

Section 112 (A) of the National Internal Revenue Code (NIRC) of 1997, as amended, does not require that the input taxes must be directly attributable to zero-rated sales before the same can be a subject of a claim for refund, to quote:

> **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**

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[13] 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**:

(1) **Cases arising from** administrative agencies — **Bureau of Internal Revenue**, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture; (Boldfacing supplied)

[14] SEC. 3. *Who may appeal; period to file petition.* —

(a) 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. (Boldfacing supplied)

> **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 of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.** Provided, finally, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales. (Boldfacing supplied)

There is nothing in the above provision which states that the input tax needs to be directly attributable or must be a factor in the chain of production of the zero-rated sale in order for it to be creditable or refundable. Moreover, the above provision allows as tax credit an allocable portion of a taxpayer's input tax that is not directly and entirely attributable to the zero-rated sales, that is, when the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods/properties/services.

It is the rule in statutory construction that if the words and phrases of a statute are not obscure or ambiguous, its meaning and the intention of the legislature must be determined from the language employed, and, where there is no ambiguity in the words, there is no room for construction. The courts may not speculate as to the probable intent of the legislature apart from the words.[15] The Court may not construe a statute that is free from doubt and neither can it impose conditions nor limitations when none is provided for.[16]

Further, Section 110(A) of the NIRC of 1997, as amended, enumerates the transactions upon which creditable input tax may be claimed. The only requirements are: (1) that it is evidenced by a VAT invoice or official receipt; and, (2) that the transaction must be incurred or paid in connection with the taxpayer's trade or business whether directly or indirectly, to wit:

> **SEC. 110. Tax Credits. —**
>
> **A. Creditable Input Tax. —**

[15] *Republic of the Philippines vs. Atty. Richard B. Rambuyong*, G.R. No. 167810, October 4, 2010, citing *Appari vs. Court of Appeals, et al.*, G.R. No. L-30057, January 31, 1984.
[16] *Commissioner of Internal Revenue vs. Philex Mining Corp.*, G.R. No. 230016, November 23, 2020.

(1) Any **input tax evidenced by a VAT invoice or official receipt** issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

(a) Purchase or importation of goods:
(i) For sale; or
(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or
(iii) For use as supplies in the course of business; or
(iv) For use as materials supplied in the sale of service; or
(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.
(b) **Purchase of services on which a value-added tax has been actually paid**.

(2) The **input tax on domestic purchase** or importation of goods or properties by a VAT-registered person shall be creditable:

(a) **To the purchaser upon consummation of sale** and on importation of goods or properties; and

(b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.

xxx xxx xxx

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

Clearly, based on the foregoing provisions of the law, there is no requirement that the input tax must be directly attributable to zero-rated sales to be refundable or creditable.

This Court has already settled this very same issue in the cases of:

1. *Deutsche Knowledge Services Pte. Ltd. vs. Commissioner of Internal Revenue*, CTA EB Nos. 1917 and 1919 (CTA Case No. 9079), February 5, 2020;

2. *Air Liquide Philippines, Inc. vs. Commissioner of Internal Revenue* CTA EB Nos. 1844 and 1897 (CTA Case No. 8017), February 26, 2020;

3. *Commissioner of Internal Revenue vs. Gargill Philippines, Inc.*, CTA EB Nos. 1986 and 2001 (CTA Case Nos. 6714 and 7262), June 30, 2020;

4. *Deutsche Knowledge Services Pte. Ltd vs. Commissioner of Internal Revenue*, CTA EB No. 2082 (CTA Case No. 9496), July 21, 2020;

5. *Commissioner of Internal Revenue vs. S&Woo Construction Philippines, Inc.*, CTA EB No. 2340 (CTA Case No. 9731), December 10, 2021;

6. *Commissioner of Internal Revenue vs. Lepanto Consolidated Mining Co.*, CTA EB No. 2230 (CTA Case No. 9649), March 31, 2022; and,

7. *Commissioner of Internal Revenue vs. Oceanagold (Philippines), Inc.* CTA EB Nos. 2552 and 2571 (CTA Case Nos. 9207, 9277, and 9416), May 12, 2023.

In fact, our ruling was upheld by the Supreme Court in the recent case of *Commissioner of Internal Revenue vs. Cargill Philippines, Inc.*,[17] where it disposed of this pressing issue in this wise:

> In CTA EB No. 1986, petitioner contended that only creditable input taxes incurred from purchases of goods that *form part of the finished product of the taxpayer or directly used in the chain of production* are refundable. Consequently, respondent had the burden of establishing the direct connection of the purchase or input tax to the finished product, failing which the claim for refund must be denied.
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> **RULING OF THE COURT**
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> ***The Petition deserves short shrift.***
>
> The jugular legal issue cast in this instant Petition is whether or not respondent, in its claim for refund of excess/unutilized input VAT, is required by law to prove *direct* attributability of its purchases or the input VAT to its zero-rated sales.
>
> Petitioner posits that input VAT must be directly attributable to the zero rated sales of the respondent in order to be refundable. Along this grain, it argues that the input VAT must come from purchases of goods that form part of the finished product of the taxpayer or it must be directly used in the chain of production.
>
> *Petitioner is clutching at straws.*

[17] G.R. Nos. 255470-71, January 30, 2023. Citations omitted.

Section 112(A) of the Tax Code elucidates:

> SECTION 112. Refunds or Tax Credits of Input Tax. –
>
> (A) *Zero-rated or Effectively Zero-rated Sales.* — **Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may**, within two (2) years after the close of the taxable quarter when the sales were made, **apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales**, except transitional input tax, **to the extent that such input tax has not been applied against output tax**: x x x 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. [Emphasis supplied]

Evidently, contrary to petitioner's contention, **the law does not require *direct* attributability** of the input VAT from the purchase of goods to the finished product whose sale is zero-rated, in order for such input VAT to be refundable. *Ubi lex non distinguit nec nos distinguere debemos.* When the law has made no distinction, the courts ought not to recognize any distinction.

Thence, it suffices that the purchase of goods, properties, or services upon which the input VAT is based, **can be attributed to the zero-rated sales**. This conclusion is further bolstered by Section 110(A)(1) of the Tax Code, which explicitly sets forth the sources of creditable input VAT:

> SECTION 110. Tax Credits. —
>
> (A) *Creditable Input Tax.* —
>
> (1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:
>
> (a) Purchase or importation of goods:
>
> (i) For sale; or
> (ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or
> (iii) For use as supplies in the course of business; or
> (iv) For use as materials supplied in the sale of service; or
> (v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code, except automobiles, aircraft and yachts.

> (b) Purchase of services on which a value-added tax has been actually paid.
>
> Verily, the law does not limit itself to purchases of goods which are to be converted into or intended to form part of a finished product for sale, or to be used in the chain of production.

Settled, then, is the rule that the law does not require the taxpayer's input taxes to be ***directly*** attributable to zero-rated sales before it may seek a refund.

Likewise, in light of the afore-cited case law,[18] the petitioner's argument that the *Atlas case* supported his view is now rendered nugatory. The Supreme Court categorically ruled that the *Atlas case* is no longer applicable because of the latter-day revenue regulations, to wit:

> In a last-ditch effort to convince this Court to rule in its favor, petitioner zeroes in on its previous pronouncements in the 2007 and 2011 cases of *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue* —
>
> > The formal offer of evidence of the petitioner failed to include photocopy of its export documents, as required. There is no way therefore, in determining the kind of goods and actual amount of export sales it allegedly made during the quarter involved. This finding is very crucial when we try to relate it with the requirement of the aforementioned regulations that the input tax being claimed for refund or tax credit must be shown to be ***entirely*** attributable to the zero-rated transaction, in this case, export sales of goods. Without the export documents, the purchase invoice/receipts submitted by the petitioner as proof of its input taxes cannot be verified as being ***directly*** attributable to the goods so exported. [Emphasis supplied]
>
> The foregoing cases, however, were decided on the basis of **Revenue Regulations No. 5-87, as amended by RR No. 3-88**, which limited the amount of refund or tax credit to the amount of VAT paid directly and entirely attributable to the zero-rated transaction during the period covered by the application for credit or refund.
>
> Nevertheless, the Secretary of Finance, upon the recommendation of herein petitioner, issued **Revenue Regulations No. 14-2005** on June 22, 2005, which was later superseded by Revenue Regulations No. 16-2005. This latter BIR issuance has undergone a series of amendments, the most recent of which is **Revenue Regulations No. 21-2021**.
>
> A meticulous study of these latter-day revenue regulations reveals that **the requirement for input VAT being claimed for refund to**

[18] *Commissioner of Internal Revenue vs. Cargill Philippines, Inc., supra.*

be *directly* and *entirely* attributable to the zero-rated sales was not retained. The pertinent portion of the relevant regulation, **Revenue Regulations No. 16-2005**, is plain as day –

> SEC. 4. 106-5. *Zero-Rated Sales of Goods or Properties.* – A zero rated sale of goods or properties (by a VAT-registered person) is a taxable transaction for VAT purposes, but shall not result in any output tax. However, the input tax on purchases of goods, properties, or services, **related to such zero-rated sale**, shall be available as tax credit or refund in accordance with these Regulations.
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> x x x
>
> SEC. 4.108-5. *Zero-Rated Sales of Services.* –
>
> (a) *In general.* — A zero-rated sale of service (by a VAT-registered person) is a taxable transaction for VAT purposes, but shall not result in any output tax. However, the input tax on purchases of goods, properties or services **related to such zero-rated sale** shall be available as tax credit or refund in accordance with these Regulations. [Emphasis supplied]

This Court **cannot** be bound by Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88, requiring *direct* attributability of input VAT *vis-à-vis* zero-rated sales.

All told, the CTA *En Banc* committed no reversible error in affirming the CTA Division's findings that respondent is entitled to the amount of PHP1,779,377.16 representing its unutilized excess input VAT for the period covering March 1, 2003 to August 31, 2004 *attributable to its zero-rated sales* for the same period.

This Court adopts the above pronouncements of the Supreme Court to negate and settle the argument of petitioner regarding the requirement of "direct attributability" of input taxes to zero-rated sales in order to be refundable.

An approved application for zero-rating is not required.

We find untenable the averment of the petitioner that an approved application for zero-rating is required pursuant to RMC No. 17-2018 for the sale of respondent to be zero-rated. Foremost, the period covered in the instant case is April 1, 2016 to June 30, 2016 while RMC No. 17-2018 was issued on February 27, 2018. Moreover, the BIR requirement of a prior approved application for VAT zero-rating has no basis in law as expounded by the

Supreme Court in the case of *Commissioner of Internal Revenue vs. Seagate Technology (Philippines)*,[19] quoted in part:

> **The BIR regulations additionally requiring an approved prior application for effective zero rating cannot prevail over the clear VAT nature of respondent's *transactions*. The scope of such regulations is not "within the statutory authority x x x granted by the legislature.**
>
> *First*, **a mere administrative issuance, like a BIR regulation, cannot amend the law**; the former cannot purport to do any more than interpret the latter. The courts will not countenance one that overrides the statute it seeks to apply and implement.
>
> Other than the general registration of a taxpayer the VAT status of which is aptly determined, no provision under our VAT law requires an additional application to be made for such taxpayer's *transactions* to be considered effectively zero-rated. An effectively zero-rated transaction does not and cannot become exempt simply because an application therefor was not made or, if made, was denied. **To allow the additional requirement is to give unfettered discretion to those officials or agents who, without fluid consideration, are bent on denying a valid application**. Moreover, the State can never be estopped by the omissions, mistakes or errors of its officials or agents.
>
> xxx xxx xxx
>
> A VAT-registered status, as well as **compliance with the invoicing requirements, is sufficient for the effective zero rating of the *transactions* of a taxpayer**. The nature of its business and *transactions* can easily be perused from, as already clearly indicated in, its VAT registration papers and photocopied documents attached thereto. Hence, **its *transactions* cannot be exempted by its mere failure to apply for their effective zero rating**. Otherwise, their VAT exemption would be determined, not by their nature, but by the taxpayer's negligence -- a result not at all contemplated. Administrative convenience cannot thwart legislative mandate. (Boldfacing supplied)

Therefore, the requirement of the BIR of a prior approved application for zero-rating is not within the statutory authority granted to it; and, requiring the taxpayer to secure one finds no basis in law.

Cases brought before the Court of Tax Appeals are litigated de novo.

In the present petition, petitioner asserts that the jurisdiction of the CTA is strictly appellate in nature since the CIR has rendered a decision on the respondent's claim for refund in the administrative level. The Court allegedly

[19] G.R. No. 153866, February 11, 2005. Citations omitted.

should confine itself to whether the findings of petitioner are consistent with the law.

The petitioner's contention is without merit.

The appellate jurisdiction of the CTA over decisions of the Bureau of Internal Revenue (BIR) is not confined in reviewing its actions or limited in evaluating the same documents submitted by the taxpayer in support of a claim for refund filed before it. The CTA is not precluded in considering evidence that was not presented in the administrative claim in the BIR pursuant to Section 8[20] of Republic Act (R.A.) No. 1125,[21] as amended by R.A. No. 9282.[22] Being a court of record, the claimant may present new and additional evidence to the CTA to support its case for a tax refund.[23]

We adopt with approval, the ruling of the Court in Division in its assailed Decision[24] when it disposed of this issue citing the case of *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.)*,[25] in this manner:

> It is well-established that cases brought before this Court are litigated *de novo*.
>
> The Court is not precluded from accepting respondent's evidence assuming these were not presented at the administrative level.
>
> XXX XXX XXX
>
> The Court of Tax Appeals as a court of record has the authority to determine issues raised by the parties even if these were not raised in the administrative level to achieve a judicious administration of justice. To stretch this ruling further, the Court may even resolve issues that were not raised by both parties in both the administrative and judicial levels to achieve an orderly disposition of the case. We quote the decision of the Supreme Court in the case of *CIR vs. Lancaster*, to wit:

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[20] SEC. 8. *Court of record; seal; proceedings.* — The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence.

[21] AN ACT CREATING THE COURT OF TAX APPEALS.

[22] 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.

[23] *Philippine Airlines, Inc. vs. Commissioner of Internal Revenue, G.R Nos. 206079-80 &206309, January 17, 2018.*

[24] *Rollo*, pp. 34-36. Citations omitted.

[25] G.R. No. 231581, April 10, 2019.

> "On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.
>
> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA or the Revised Rules of the Court of Tax Appeals, **the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.**" xxx xxx xxx (emphasis supplied)

In the recently decided case of *CIR vs. Univation Motor Phils., Inc.*, the Supreme Court acknowledged that the cases filed in the CTA are litigated *de novo*, when it ruled, thus:

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

Indeed, the taxpayer may present new and additional evidence before the CTA because the case will be litigated *de novo* and will be decided based on what has been presented and formally offered during trial. The documentary evidence submitted to the BIR will not be considered unless formally offered and admitted by the Court.[26]

Respondent is entitled to a partial refund.

Based on the Amended 3rd Quarterly VAT Return for FY 2016,[27] respondent computed its claim for refund of unutilized input VAT attributable to zero-rated as follows:

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[26] *Philippine Airlines, Inc. vs. Commissioner of Internal Revenue*, G.R. Nos. 206079-80 and 206309, January 17, 2018.

[27] Exhibits "P-4", "P-4-1, and "P-4-2", Docket, pp. 384-385.

	Amount	Output Tax Due for the Quarter
Vatable Sales/Receipt	₱266,485,235.84	₱ 31,978,228.30
Zero-Rated Sales/ Receipt	459,667,643.67	
Total Sales/Receipts and Output Tax Due	₱726,152,879.51	₱ 31,978,228.30
Less: Allowable Input Tax		
Input Tax Deferred on Capital Goods Exceeding P1Million from Previous Quarter	₱ 1,949,287.88	
Less: Input Tax on Purchases of Capital Goods exceeding P1 Million differed for the succeeding period	1,737,895.86	
Input Tax Claimed During the Quarter		₱ 211,392.02
Current Transactions:		
Domestic Purchases of Goods Other than Capital Goods	₱ 50,468,468.61	6,056,216.23
Importation of Goods Other than Capital Goods	290,724,785.33	34,886,974.24
Domestic Purchases of Services	73,463,354.37	8,815,602.52
Services Rendered by Non-residents	6,376,302.92	765,156.35
Total Available Input Tax		₱ 50,735,341.37
Less: Allowable Input Tax		**₱ (18,757,113)**

We note that in its Amended 3rd Quarterly VAT Return, respondent has an "Input Tax Carried Over from Previous Period" in the amount of ₱104,389,398.79. Respondent, however, did not utilize the same to pay the 3rd quarter output VAT liability, instead, it opted that the input tax earned during the 3rd quarter of FY 2016 be utilized to pay its output VAT for the period and the excess/unutilized is what respondent claimed as a refund.

In *Chevron Holdings, Inc. (Formerly Caltex Asia Limited) vs. Commissioner of Internal Revenue,*[28] *(Chevron case)* the Supreme Court pronounced that the taxpayer has two options with respect to its input tax attributable to zero rated sales, as follows:

> 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 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.** (Boldfacing supplied)

Respondent here chose option number one.

[28] G.R. No. 215159, January 25, 2023.

Respondent, by choosing only its excess/unutilized input VAT during the 3rd quarter of FY 2016 to be refunded, the Court may not, on its own, alter such option. Neither can the Court re-compute, on the basis of evidence, as to how the creditable input tax ("from previous period") be utilized or refunded. That choice belongs to the taxpayer. It follows, therefore, that in computing the refundable input VAT attributable to zero-rated sales, this Court will no longer consider the input tax carried over from the previous period as additional creditable input tax to be offset against the output VAT liability for 3rd quarter of FY 2016.

While it appears that in the *Chevron case,* the Supreme Court also provided how the unutilized input tax may be computed, this Court finds the same not in all fours to the case at bar. In the *Chevron case,* Chevron chose option number two (2), i.e., it sought the refund of input tax attributable to zero-rated sales in its entirety. Unlike in the present case, where the respondent chose to refund only the unutilized/excess input tax attributable to zero-rated sales after deducting its output tax liability during the same period which is option number one (1).

We now determine respondent's entitlement to the refund sought.

After scrutiny of the computation made by the Court in Division, this Court finds no reversible error which needs a re-computation. The Court in Division exhaustively discussed respondents' compliance with the requirements of claim for refund of unutilized/excess input VAT attributable to zero-rated sales[29] and this Court finds the same to be in order.

Moreover, respondent in its comment, prayed that this Court affirm the Decision of the court *a quo* which partially granted its claim for refund in the amount of ₱4,015,125.16. Thus, finding no error in the computation of the Court in Division, this Court finds no reason other than to grant respondent's prayer.

It is settled that courts cannot grant a relief not prayed for in the pleadings or in excess of what is being sought by the party.[30]

WHEREFORE, in light of the foregoing considerations, the Petition for Review is **DENIED** for lack of merit. Accordingly, the assailed Decision dated July 16, 2021 and Resolution dated May 24, 2022, both rendered by the Court First Division in CTA Case No. 9974 are **AFFIRMED**.

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[29] *Rollo*, pp. 37-63.
[30] *Diona vs. Balangue,* G.R. No. 173559, January 7, 2013.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

(With due respect, please see my
Dissenting Opinion)
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

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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

ORICA PHILIPPINES, INC.,
Respondent.

CTA EB NO. 2635
(CTA Case No. 9974)

Present:

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

Promulgated:
FEB 12 2024
3:05 p.m.

x - x

DISSENTING OPINION

BACORRO-VILLENA, J.:

With all due respect to the *ponencia* of our esteemed colleague, Associate Justice Corazon G. Ferrer-Flores, I submit that the First Division's Decision 16 July 2021[1] (**assailed Decision**) and Resolution dated 24 May 2022[2] (**assailed Resolution**) should be reversed and set aside, but *only* to the extent that it grants a partial refund to respondent Orica Philippines, Inc. (**respondent/OPI**) in the amount of ₱4,015,125.16.

Following a recomputation of the refundable amount based on the recent Supreme Court decision in *Chevron Holdings, Inc. (formerly Caltex*

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[1] Division Docket, pp. 523-560; Penned by Hon. Associate Justice Catherine T. Manahan with Hon. Presiding Justice Roman G. Del Rosario, concurring.

[2] Id., pp. 586-593.

Asia Limited) v. Commissioner of Internal Revenue[3] (**Chevron**), it is my opinion that respondent is not entitled to any refund of excess and unutilized input Value-Added Tax (**VAT**) attributable to its zero-rated sales for the 3rd Quarter of the fiscal year (**FY**) ended 30 September 2016 or the period 01 April 2016 to 30 June 2016.

As the basis for the said 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 as held in *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, which is computed by deducting against output VAT due on VATable sales the portion of the total declared input VAT (as distinguished from the substantiated or valid input VAT, which is what the Court typically uses in apportioning input VAT based on sales volume) allocated to VATable sales;

6. If the 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 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;

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[3] G.R. No. 215159. 05 July 2022.

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 the case at bar, there is no excess and unutilized input VAT attributable to valid zero-rated sales (or the refundable amount) for the 3rd Quarter of the FY ended 30 September 2016, as computed below:

Step 1. It is observable from the First Division's Assailed Decision[4] that the amount of substantiated or valid input VAT is ₱40,854,903.49.

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	₱207,918,289.18
Divided by Reported Total Sales *per* 3rd Quarterly VAT Return for FY 2016	726,152,879.51
Multiplied by Total Valid Input VAT	40,854,903.49
Valid Input VAT Allocated to Total Valid Zero-Rated Sales	**₱11,697,924.61**

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

Step 5. Output VAT still due is:

Output VAT		₱31,978,228.30
Total VATable Sales	₱266,485,235.84	
Divided by Reported Total Sales	726,152,879.51	
Multiplied by Total Input VAT Declared[5]	50,735,341.36	
Less: Declared Input VAT Allocated to VATable sales		18,618,971.00
Output VAT Still Due		**₱13,359,257.30**

[4] Supra at note 1.

[5]

Input Tax During the Period of Claim	**Amount**
Amortized Input Tax on Capital Goods exceeding ₱1 million	₱211.392.02
Input Tax on Domestic Purchases of Goods other than Capital Goods	6.056.216.23
Input Tax on Importation of Goods other than Capital Goods	34.886.974.24
Input Tax on Domestic Purchases of Services	8.815.602.52
Input Tax on Services Rendered by Non-Residents	765.156.35
Total	**₱50,735,341.36**

Step 6. The output VAT still due of ₱13,359,257.30 may be deemed applied against substantiated or valid input VAT attributable to valid zero-rated sales since petitioner itself opted to charge the input VAT attributable to zero-rated sales against output VAT in arriving at its refund claim of ₱18,757,113.07[6] (notwithstanding that it has "Input VAT Carried Over from Previous Period" of ₱104,389,398.79[7] sufficient to pay or "cover" the same), as shown below:

Output VAT Still Due		₱13,359,257.30
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)	104,389,398.79	-
Net Output VAT Still Due [a]		₱13,359,257.30
Valid Input VAT Allocated to Total Valid Zero-Rated Sales [b]		11,697,924.61
Amount Effectively Applied Against Output VAT Still Due (whichever is lower between [a] and [b])		**₱11,697,924.61**

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	₱11,697,924.61
Less: Valid Input VAT Allocated to Total Valid Zero-Rated Sales Effectively Applied Against Output VAT Still Due	11,697,924.61
Less: Input VAT Deemed Carried-Over	-
Refundable Excess Input VAT attributable to Valid Zero-Rated Sales	**₱-**

In contrast, the Court's First Division, as affirmed by the Court *En Banc* through the *ponencia*, computed an excess input VAT attributable to valid zero-rated sales of ₱4,015,125.16 in the following manner:

Output VAT	₱31,978,228.30
Less: Valid Input VAT allocated to Sales subject to 12% VAT	14,993,025.43
Output VAT Still Due	**₱16,985,202.87**
Valid Input VAT allocated to Total *Declared* Zero-Rated Sales	₱25,861,878.07
Less: Output VAT Still Due	16,985,202.87

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6 VAT Refund/TCC Claimed *per* 2nd Quarter VAT Return for FY ending 30 September 2018 (Line Item 23D). Exhibit "P-14". Division Docket, p. 407.

7 Input VAT Carried Over from Previous Period *per* 3rd Quarter VAT Return for FY ending 30 September 2016 (Line Item 20A). Exhibit "P-4". id., p. 384.

Excess Input VAT allocated to Total *Declared* Zero-Rated Sales	**₱8,876,675.20**
Excess Input VAT allocated to Total *Declared* Zero-Rated Sales	₱8,876,675.20
Divided by Total *Declared* Zero-Rated Sales	459,667,643.67
Multiplied by Total *Valid* Zero-Rated Sales	207,918,289.18
Excess Input VAT attributable to Total *Valid* Zero-Rated Sales	**₱4,015,125.16**

The key differences between the foregoing computations is the determination and treatment of the resulting "**Output VAT Still Due**" of **₱16,985,202.87**, as *per* the First Division's computation, and herein recomputed to be **₱13,359,257.30**. Applying *Chevron*, I submit that:

(1) It should be computed by deducting against "Output VAT" the portion of the "**Total Declared Input VAT**" (and *not* the "**Substantiated or Valid Input VAT**", which is what this Court typically uses in apportioning input VAT based on sales volume) allocated to VATable sales; and,

(2) 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*[8], it is not for the Court of Tax Appeals (**CTA**) to determine and rule in a judicial claim for refund under Section 112(A)[9] 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, 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.** 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**

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8 Supra at note 3: Citations omitted. emphasis and italics in the original text and supplied. and underscoring supplied.

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

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

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. **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.** These procedures find no basis in law and jurisprudence.

...

...[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.

As to my first point on the computation of the "Output VAT Still Due", it is my humble opinion that it is the "**Total Declared Input VAT**" that should be used in apportioning input VAT and determining the portion allocated to VATable sales since the Supreme Court categorically held in *Chevron* that "**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" and thus, **"it is not for the CTA ... to determine and rule in a judicial claim for refund under Section 112(A)**[10] **of the [NIRC of 1997, as amended] that the taxpayer had insufficient or unsubstantiated input taxes to cover its output tax liability. This is for the [Bureau of Internal Revenue (BIR)] to determine in an administrative proceeding for assessment of deficiency taxes."**

To my mind, the Supreme Court's clear declaration in *Chevron* aims to correct this Court's practice concerning the use of **"Substantiated or Valid Input VAT"** in the apportionment of input VAT and in calculating the portion thereof allocable to VATable sales, which is deductible from "Output VAT". The High Court explained that this practice is akin to the CTA itself making an assessment for deficiency output VAT liability without prior determination from the BIR. This situation arises because the "Substantiated or Valid Input VAT" is usually lower than the "Total Declared Input VAT" (after the removal of any unsubstantiated portion). Consequently, the amount of creditable input VAT is reduced by the difference between these two (2) figures. In effect, the Court is making an assessment for output VAT to the extent of the remaining "Output VAT Still Due", against which the "Substantiated or Valid Input VAT" attributable to valid zero-rated sales will be offset.

Accordingly, I take this opportunity to take a firm stance towards changing this Court's formula for calculating the "Output VAT Still Due" to the end that this Court veers away from reducing the amount of creditable input VAT that unwittingly sanctions a judicial assessment of output VAT.

Furthermore, as to my second point, 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

10 Supra at note 9.

Court in *Chevron*[11], citing Section 4.110-4[12] of RR No. 16-2005[13], as amended by RR No. 4-2007[14]:

> ...
>
> 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:

---

11 Supra at note 3: Citation omitted and emphasis supplied.

12 SEC. 4.110-4. *Apportionment of Input Tax on Mixed Transactions.* — . . .
...
Illustration: ERA Corporation has the following sales during the month:

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

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

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

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

Input tax directly attributable to zero-rated sale			— ₱	3,000.00
Ratable portion of the input tax not directly attributable to any activity:				
Taxable sales (0%) / Total Sales	x	**Amount of input tax not directly attributable to any activity**		
P100,000.00 / 400,000.00	x	P20,000.00	— ₱	5,000.00
Total input tax attributable to zero-rated sales for the month			₱	8,000.00

13 Consolidated Value-Added Tax Regulations of 2005.

14 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 First 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.*, ₱14,163,953.45) and deducted the output VAT still due only against the "valid" portion thereof (*i.e.*, ₱11,697,924.61), 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	₱207,918,289.18		28.63%	₱11,697,924.61	
Disallowed Zero-Rated Sales	251,749,354.49		34.67%	14,163,953.45	
VATable Sales	266,485,235.84		36.70%	14,993,025.43	
Total Declared Sales[15]	**₱726,152,879.51**	(b)	**100.00%**	**₱40,854,903.49**	(d)

Table 2. Computation of Output VAT Still Due

Output VAT	₱31,978,228.30
Less: Declared Input VAT allocated to VATable Sales	18,618,971.00
Output VAT Still Due	**₱13,359,257.30**

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

Valid Input VAT allocated to *Valid* Zero-Rated Sales	₱11,697,924.61
Less: Valid Input VAT attributable to Valid Zero-Rated Sales Effectively Applied Against Output VAT Still Due	11,697,924.61
Less: Input VAT Deemed Carried-Over	-
Refundable Excess Input VAT attributable to Valid Zero-Rated Sales	**₱-**

To reiterate, only the "Substantiated or Valid Input VAT" attributable to valid zero-rated sales of ₱11,697,924.61 may be offset against "Output VAT Still Due" of ₱13,359,257.30 since respondent itself opted to charge the input VAT attributable to zero-rated sales against output VAT in arriving at its

[15] Total Sales/Receipts (Line Item 19A). Exhibit "P-10-3", supra at note 7.

refund claim of ₱18,757,113.07[16] notwithstanding that it has "Input VAT Carried Over from Previous Period" of ₱104,389,398.79[17] sufficient to pay or "cover" the same.

Additionally, I further submit that the *ponencia*'s computation of deducting the "Output VAT Still Due" from the valid input VAT allocated to **total zero-rated sales,** rather than from the valid input VAT allocated to **total *valid* zero-rated sales** would result in a double tax benefit to the taxpayers, *i.e.*, input VAT allocated to total *invalid* zero-rated sales may be used to reduce the amount of output VAT and may also be claimed as an expense pursuant to Q-13 and A-13 of Revenue Memorandum Circular (**RMC**) No. 42-03[18], since the same is ultimately disallowed for VAT refund purposes.

To illustrate what I perceive as a considerable flaw in the majority's computation of the refundable amount of input VAT attributable to zero-rated sales, I invite you to consider the following set of hypothetical facts. Let's assume that the substantiated/valid input VAT allocated to zero-rated sales is ₱1,000.00 and the output VAT still due is ₱50.00. Suppose further that the invalid zero-rated sales is ₱90.00 and the valid zero-rated sales ₱10.00, totaling ₱100.00 in declared zero-rated sales. Following the majority's computation, the refundable amount of excess input VAT attributable to zero-rated sales would then be ₱95.00.[19] In addition, pursuant to RMC No. 42-03, the amount of ₱900.00 pertaining to input VAT related to invalid zero-rated sales may either be claimed as expense or recorded as part of an asset account subject to depreciation. Moreover, the amount of ₱50.00 will be applied against the output VAT still due. Effectively, the taxpayer stands to gain a total tax benefit of ₱1,045.00[20], notwithstanding that only ₱1,000.00 is the substantiated/valid input VAT allocated to zero-rated sales.

In contrast, the proposed computation herein laid out (based on what I deem to be the proper construction of *Chevron*) aims to rectify the above-illustrated error by *only* awarding a refundable amount *if and only if* there is an excess of substantiated/valid input allocated to *valid* zero-rated sales after applying the output VAT still due. Notably, under this proposed method, the Court would only award a refund of ₱50.00[21], resulting in a potential total tax benefit of ₱1,000.00.

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16 VAT Refund/TCC Claimed *per* 2nd Quarter VAT Return for FY ending 30 September 2018 (Line Item 23D). Exhibit "P-14", supra at note 6.

17 Input VAT Carried Over from Previous Period *per* 3rd Quarter VAT Return for FY ending 30 September 2016 (Line Item 20A). Exhibit "P-4", supra at note 7.

18 Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters.

19 Computed as: (₱1,000.00 – ₱50.00) x (₱10.00/₱100.00).

20 Computed as: ₱95.00 + ₱900.00 + ₱50.00.

21 Computed as: ₱1,000.00 x (₱10.00/₱100.00) – ₱50.00.

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[22] 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.[23] 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.[24] 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.[25]

Having recomputed a zero amount of refundable excess input VAT attributable to valid zero-rated sales following the procedure laid down in *Chevron*, respondent is not entitled to a refund or issuance of a TCC.

All told, I vote to **GRANT** the instant Petition for Review and thereby, **REVERSE** and **SET ASIDE** the First Division's Assailed Decision and Resolution to the extent that it grants a partial refund to respondent in the amount of ₱4,015,125.16.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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

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

24 Id.

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