REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2720** *(CTA Case Nos. 9882, 9959, & 10010)*
-versus-	Present: **DEL ROSARIO, P.J., RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
PHILIPPINE GEOTHERMAL PRODUCTION COMPANY, INC., *Respondent.*	Promulgated: FEB 20 2024 3:56

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* is a **PETITION FOR REVIEW ("Petition")**, filed on 29 November 2022,[1] with respondent's **COMMENT (On Petitioner's Petition for Review dated November 22, 2022) ("Comment")** filed last 20 January 2023.[2]

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1 Records, pp. 1-67.
2 *Id.*, pp. 69-81.

The Parties

Petitioner **COMMISSIONER OF INTERNAL REVENUE** ("CIR") is the head of the Bureau of Internal Revenue ("BIR") with office address at the BIR National Office Building, Diliman, Quezon City. He is empowered to perform the duties of his office, including, among others, the duty to act upon and approve claims for refund or tax credit as provided by law.[3]

Respondent **PHILIPPINE GEOTHERMAL PRODUCTION COMPANY, INC.** is a domestic corporation, duly organized and existing under and by virtue of the laws of the Republic of the Philippines.[4]

The Facts

The following are the undisputed facts as provided in the Assailed Decision, dated 3 June 2022:[5]

> "On 27 March 2018, [respondent] filed an application for tax refund of unutilized input value-added tax (["VAT"])] for the 1st quarter of [calendar year ("CY")] 2016 amounting to P14,418,095.54 with the BIR. Later, or on 26 June 2018, [respondent] received an Authority to Issue VAT Refund and a VAT Refund Notice partially granting its claim for refund. [Respondent] was granted a total VAT refund of P6,637,325.77.
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> On 24 July 2018, [respondent] filed the present Petition for Review before the Court claiming a refund or issuance of a TCC in the amount of P14,418,095.54 for alleged unutilized input VAT for the 1st quarter of CY 2016. The case was docketed as CTA Case No. 9882...
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> On 26 June 2018, [respondent] filed with the [BIR] an application for tax refund of unutilized input VAT for the 2nd quarter of CY 2016 amounting to P10,885,442.20. On 24 September 2018, [respondent] received an Authority to Issue VAT Refund and a VAT Refund Notice partially granting its claim for refund. [Respondent] was granted a total VAT refund of P10,846,915.98.
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> Later, on 24 October 2018, [respondent] filed another Petition for Review claiming a refund or issuance of a TCC amounting to P10,885,442.20, allegedly representing unutilized input VAT for the 2nd quarter of CY 2016. The case was docketed as CTA Case No. 9959...
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3 Assailed Decision, dated 3 June 2022, p. 28.
4 *Ibid.*
5 *Id.*, pp. 28-30.

> Still later, on 27 September 2018, [respondent] filed with the BIR an application for tax refund of unutilized input VAT for the 3rd quarter of CY 2016 amounting to P3,036,629.01 On 21 December 2018, [respondent] received an Authority to Issue VAT Refund and a VAT Refund Notice partially granting its claim for refund. [Respondent] was granted a total VAT refund of P3,015,281.60.
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> On 18 January 2019, [respondent] filed yet again another Petition for Review claiming a refund or issuance of a TCC amounting to P3,036,629.01, allegedly representing unutilized input VAT for the 3rd quarter of CY 2016. This was docketed as CTA Case. No. 10010…
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> xxx xxx xxx"

Thereafter, these cases were consolidated before the Court in Division.[6]

On 3 June 2022, the Assailed Decision was issued by the Court in Division partially granting respondent's claim for value added tax ("VAT") refund in the reduced amount of Php23,371,346.09 representing the excess and unutilized input VAT attributable to its zero-rated sales for the 1st, 2nd and 3rd quarters of calendar year ("CY") 2016.

After petitioner filed a Motion for Partial Reconsideration (Re: Decision promulgated 3 June 2022),[7] the Court in Division promulgated the Assailed Resolution, dated 3 November 2022, denying the same.[8]

On 29 November 2022, petitioner filed the instant Petition before this Court.

The Court *En Banc* then issued a Resolution, dated 5 January 2023, requiring respondent to file its Comment to the Petition within ten (10) days from notice.[9] Respondent then filed its Comment on 20 January 2023.

On 15 February 2023, this Court *En Banc* issued a Resolution submitting the instant case for Decision.[10]

Hence, this Decision.

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6 *Id.*, p. 30.
7 Assailed Resolution, dated 3 November 2022, *Id.*, p. 62.
8 *Id.*, pp. 61-67.
9 *Id.*, p. 68.
10 *Id.*, pp. 82-83.

The Assigned Errors[11]

In the Petition, petitioner alleges that the Court in Division erred in partially granting respondent's claim for refund in the amount of Php23,371,346.09 representing alleged excess and unutilized input VAT for the 1st, 2nd and 3rd quarters of CY 2016.

Arguments of the Parties

Petitioner presents the following arguments:[12]

1. Since petitioner rendered a Decision in the administrative level, the Court's jurisdiction becomes strictly appellate in nature. The Court should confine itself to whether the findings of petitioner are consistent with the law. This Court is not allowed to act as a trial court considering that petitioner rendered a Decision on respondent's VAT refund claim. It should only act as an appellate tribunal;

2. A judicial review is not a trial de novo in the sense that a totally new first instance trial be conducted. Rather, this Court is constrained into making an inquiry as to whether the findings of the administrative bodies are consistent with law. Since a Decision has been rendered in this case partially denying petitioner's administrative claim for refund for failure to substantiate the same, respondent cannot submit documents it did not submit at the administrative level. Moreso, the Court is confined to a more limited issue of whether the denial was proper given the evidence submitted at the administrative level; and

3. The law requires that only "creditable input taxes" that are "directly attributable" may be refunded. The fact is that no attributability was established between the input tax on purchases vis-à-vis the zero-rated sales of respondent. This is a claim for refund and respondent must establish its claim by the quantum of evidence and not by assumption..

In the Comment, respondent counter-argues as follows:[13]

1. This Court is a highly specialized body that reviews tax cases and conducts trial de novo. As a court of record, this Court cannot exclude pieces of evidence which have been newly submitted at the judicial level; and

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11 *Id.*, p. 3.
12 *Id.*, pp. 3-16.
13 *Id.*, pp. 70-77.

2. The law does not require that the input tax be directly attributable to respondent's zero-rated sales. The input VAT of a taxpayer engaged in purely zero-rated sales is entirely attributable to its zero-rated sales.

The Ruling of the Court En Banc

The Court *En Banc* resolves to **DENY** the Petition for lack of merit.

The arguments alleged in the Petition have already been adequately and judiciously passed upon by the Court in Division in the Assailed Decision, dated 3 June 2022, and Assailed Resolution dated 3 November 2022. The Petition posits no cogent reason for the Court *En Banc* to reverse, modify or, at the very least, revisit the dispositions made by the Court in Division of the present case. On this note alone, this Petition deserves scant consideration. As such, this Court *En Banc* has no other recourse but to deny the same. But to finally resolve any doubt existing in the mind of petitioner, we shall tackle once again these same issues.

The Court *En Banc* has jurisdiction over the present Petition.

Jurisdiction by the Court *En Banc* is shown under ***Section 2 (a) (1), Rule 4 of the Revised Rules of the Court of Tax Appeals ("RRCTA"),*** *to wit:*

> 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;

As clearly provided above, this Court has exclusive appellate jurisdiction over decisions or resolutions by the Court in Division in the exercise of its exclusive appellate jurisdiction over cases arising from administrative agencies such as the BIR. In the present Petition, petitioner is appealing the Assailed Resolution and Assailed Decision promulgated by the Court in Division which partially granted respondent's claim for VAT refund. Certainly, both the Assailed Resolution and Assailed Decision are decisions or resolutions of the Court in Division in the exercise of its exclusive appellate jurisdiction over an action by the BIR (*i.e.*, determining whether a taxpayer is entitled to a VAT refund). Accordingly, the Court *En Banc* has exclusive

appellate jurisdiction over such Assailed Resolution and Assailed Decision subject of the instant Petition.

Now, the question that should be determined is whether petitioner timely filed the instant Petition.

Under ***Section 3 (b), Rule 8 of the RRCTA***, "[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."

Petitioner received the Assailed Resolution on 14 November 2022.[14] Accordingly, petitioner had fifteen (15) days from 14 November 2022, or until 29 November 2022, within which to file a Petition for Review before the Court *En Banc*. As petitioner filed the instant **Petition** on 29 November 2022, the Court *En Banc* properly assumed jurisdiction over the instant case.

The CTA is a court of record. As such, it conducts trial de novo.

The initial contention of petitioner is that the Court in Division erred in admitting evidence leading to a partial grant of respondent's VAT refund claim which were not previously presented and substantiated by respondent before him during the proceedings for the administrative claim for refund.

This is baseless. This Court, in deciding judicial refund cases, is not limited to evidence presented during the administrative claim.

First and foremost, both this Court *En Banc* and the Court in Division[15] are in the dark as to what new evidence was presented by respondent before the Court in Division that it did not substantiate before petitioner during the proceedings for the administrative claim for VAT refund. Petitioner merely generally alleged that he required certain documents from respondent during the administrative proceedings which the latter then failed to present before him but presented anew before the Court in Division during the judicial claim for VAT refund. However, petitioner did not specify in either the Petition for

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[14] Assailed Resolution, *Id.*, p. 61.
[15] Assailed Decision, *Id.*, p. 55.

Review before the Court in Division or the instant Petition what such documents are. Further, petitioner did not present in evidence the particular request it made to respondent to submit such documents which the latter failed to comply with during the administrative proceedings. Absent such allegation and evidence, this Court cannot simply accept petitioner's assertions (that respondent failed to present documents it requested during the administrative proceedings but subsequently such documents were offered in evidence during the judicial claim for refund). These are mere declarations without any basis in evidence.

Further, this Court *En Banc* agrees with the findings by the Court in Division that the case of ***Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue ("Total Gas Case")***[16] has no application in the case at bar. In said case, the Supreme Court held that "[i]f an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but for the taxpayer's failure to substantiate the claim at the administrative level. When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim." Thus, in order that the declarations by the Supreme Court under the ***Total Gas Case*** be applicable, it must be proven that: a) the BIR requested certain documents from a taxpayer-claimant during the administrative VAT refund proceedings; b) the latter failed to present the same; and c) this resulted in the claim being dismissed for failure to substantiate.

In the instant case, there is no dismissal of the administrative VAT refund claim simply because petitioner partially granted respondent's administrative claims for VAT refund for the 1st, 2nd and 3rd quarters of CY 2016. As there is a partial grant of the VAT refund claim, there is no dismissal based on failure to substantiate. Instead, this shows that petitioner ruled on respondents' claims based on the facts and applicable law.[17]

Further, petitioner failed to present any requests sent to respondent asking for additional evidence to substantiate the latter's VAT refund claims.[18] How can there be a dismissal based on failure to substantiate when the taxpayer-claimant, herein respondent, was not even apprised that its VAT refund claims are lacking documentary support, and as such, did not have opportunity to comply with and submit the lacking evidence?

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16 G.R. No. 207112, 8 December 2015.
17 Assailed Resolution, Records, pp. 64-65.
18 *Id.*, p. 65.

And even if the partial denial of respondent's administrative VAT refund claim was due to failure to supply the BIR with requested documents, petitioner failed to specify which of respondent's documents shown before the Court in Division were not submitted at the administrative level. This circumstance leaves this Court guessing as to which documents are at issue here.[19]

More importantly, this Court is a court of record which has the power to conduct a trial *de novo.* In ***Commissioner of Internal Revenue v. Manila Mining Corporation***,[20] the Supreme Court discussed this matter, as follows:

> "This Court thus notes with approval the following findings of the CTA:
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> xxx xxx xxx
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> > Section 8 of Republic Act 1125 (An Act Creating the Court of Tax Appeals) provides categorically that the Court of Tax Appeals shall be a court of record and as such it is required to conduct a formal trial (trial de novo) **where the parties must present their evidence accordingly if they desire the Court to take such evidence into consideration."**
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> (Emphasis, Ours)

Considering this, every minute aspect of a taxpayer's judicial claim for refund must be proven before this Court. This means that in order that a judicial claim for refund may be granted by this Court, all necessary documentary proof proving a taxpayer's entitlement to a tax refund must be offered and presented before this Court. This is true regardless if such documentary evidence had been presented or not before the BIR during the administrative claim for refund. ***Commissioner of Internal Revenue v. Philippine Bank of Communications***,[21] is instructive, to wit:

> "The failure in proving an administrative claim for a CWT refund/credit does not preclude the judicial claim of the same.
>
> We agree with the CTA en banc's ruling that the failure of PBCOM to comply with the requirements of its administrative claim for CWT refund/credit does not preclude its judicial claim.
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> In the case of Commisioner of Internal Revenue v. Manila Mining Corporation, this Court held that **cases before the CTA are litigated de novo where party litigants should prove every minute aspect of their cases,** to wit:

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19 *Ibid.*

20 G.R. No. 153204, 31 August 2005.

21 G.R. No. 211348, 23 February 2022, *citing* Commissioner of Internal Revenue v. Univation Motor Philippines, Inc., G.R. No. 231581, 10 April 2019.

> **Under Section 8 of Republic Act No. 1125 (RA 1125), the CTA is described as a court of record. As cases filed before it are litigated de novo, party litigants should prove every minute aspect of their cases. No evidentiary value can be given the purchase invoices or receipts submitted to the BIR as the rules on documentary evidence require that these documents must be formally offered before the CTA.**

As applied in the instant case, since the claim for tax refund/credit was litigated anew before the CTA, the latter's decision should be solely based on the evidence formally presented before it, notwithstanding any pieces of evidence that may have been submitted (or not submitted) to the CIR. Thus, what is vital in the determination of a judicial claim for a tax credit/refund of CWT is the evidence presented before the CTA, regardless of the body of evidence found in the administrative claim.

In Commissioner of Internal Revenue v. Univation Motor Philippines, Inc. (Formerly Nissan Motor Philippines, Inc.), this Court has explained that the CTA is not limited by the evidence presented in the administrative claim, to wit:

> 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 as such, respondent 'should prove every minute aspect of its case by presenting, formally offering and submitting x x x to the Court of Tax Appeals all evidence x x x required for the successful prosecution of its administrative claim.' Consequently, the CTA may give credence to all evidence presented by respondent, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance."

(Emphasis and underscoring, Ours)

Given the foregoing, in deciding judicial claims for refund, the Court of Tax Appeals ("CTA") is not solely limited to evidence presented during the administrative claim. The CTA may also admit new evidence not presented during the administrative claim to make a complete determination of a taxpayer's judicial claim for refund. The CTA is not precluded from accepting evidence even if the same was not presented at the administrative level.[22] This is because the proceedings before the CTA are entirely different from that before the BIR. A taxpayer is given a fresh chance to prove his or her entitlement to a judicial claim for refund before the CTA. To reiterate, cases filed before this Court are litigated de novo,[23] and a taxpayer-claimant may present new and additional evidence before this Court to support its claim for refund. A taxpayer's failure to present a particular documentary evidence before the BIR to prove his or her administrative claim does not affect his or

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22 Philippine Airlines, Inc. v. Commissioner of Internal Revenue, G.R. Nos. 206079-80, 17 January 2018.
23 Commissioner of Internal Revenue v. Philippine National Bank, G.R. No. 180290, 29 September 2014.

her judicial claim for refund or lessen the taxpayer's chance of having his or her judicial claim being granted by this Court. In essence, proceedings before the CTA in relation to a judicial claim for refund is a fresh opportunity for a taxpayer to prove his or her claim for refund. The only question that remains is whether the evidence submitted by a taxpayer is sufficient to warrant the granting of the VAT refund prayed for by the taxpayer-claimant.[24]

Consequently, assuming that respondent indeed failed to present certain documents during the administrative proceedings before the BIR, the Court in Division still properly admitted new documentary evidence offered by respondent when it sought to prove its judicial claim.

Section 112 of the National Internal Revenue Code, as amended ("NIRC") does not require that input taxes subject of a refund claim be directly attributable to zero-rated sales.

Petitioner's other contention for the allowance of his Petition is that respondent failed to prove that the input taxes sought to be refunded are directly attributable to its alleged zero-rated sales. Consequently, this failure on the part of respondent should result in the denial of its claim for input VAT refund.

This is terribly misplaced.

The issue of whether an input VAT subject of a refund should be directly attributable to zero-rated sales has already long been settled. ***Section 112 of the NIRC*** does not require absolute direct attribution of the purchases (the input VAT of which is subject of a refund claim) to zero-rated sales. In fact, said provision allows the allocation of input VAT that cannot be directly attributed to any of the taxpayer's sales (*i.e.,* zero-rated sales, taxable sales or exempt sales), *viz.*:

> **"SEC. 112.** ***Refunds or Tax Credits of Input Tax.*** **-**
> **(A)** ***Zero-Rated or Effectively Zero-Rated Sales.***- any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency

[24] Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue, G.R. No. 207112, 8 December 2015.

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."
(Emphasis and Underscoring, Ours)

Indeed, in ***Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.,***[25] this Court *En Banc* has ruled on a similar issue, as follows:

"The Court in Division correctly ruled that an input tax need not be directly and entirely attributable to the zero-rated sales to be refundable or creditable.

The petitioner's claim that the assailed Decision and Resolution of the Court in Division are erroneous for having failed to establish the direct attributability between respondent's input tax on purchases and its zero-rated sales is bereft of merit.

Section 112(A) of the Tax Code provides for the grounds when input tax may be refunded or claimed as tax credit in cases of zero-rated sales, to wit:

'**SEC. 112.***Refunds or Tax Credits of Input Tax. –*

(A) Zero-rated or Effectively Zero-rated Sales. -**Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales,** except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(8)(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 sales 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:***Provided, finally,* That for a person making sales that are zero-rated under Section 108(8)(6), the input taxes shall be allocated ratably between his zero-rated and nonzero-rated sales.'

[25] C.T.A. EB No. 2082, CTA Case No. 9496, 21 July 2020.

Contrary to the argument of the petitioner, there is nothing in the provision which states that the input tax needs to be directly attributable or a factor in the chain of production to the zero-rated sale in order for it to be creditable or refundable. In fact, the aforementioned 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.

Further, ***Section 110(A) of the Tax Code,*** which enumerates the transactions upon which creditable input tax may be claimed, only requires that the transaction was incurred or paid in connection with the taxpayer's trade or business whether directly or indirectly and that it is evidenced by a VAT invoice or official receipt, to wit:

> 'SEC. 110. Tax Credits.-
>
> A. Creditable Input Tax. –
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> (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:**
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> **(a) Purchase or importation of goods:**
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> **(i) For sale; or**
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> **(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or**
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> **(iii) For use as supplies in the course of business; or**
>
> **(iv) For use as materials supplied in the sale of service; or**
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> **(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.**
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> **XXX XXX XXX**
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> **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.'

Clearly, based on the foregoing provisions, the Tax Code does not require the input tax to be directly attributable to zero-rated sales to be refundable or creditable.

In fact, this is not the first time the Court En Bane resolved the issue raised by the petitioner. In ***Deutsche Knowledge Services Pte. Ltd. v. Commissioner of Internal Revenue***, this Court ruled, to wit:

> 'The CIR's insistence that 'to be creditable, the input tax 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' is not entirely consistent with the above-quoted

> Section 110. **This is so because the said provision, as clearly stated, did not limit itself to purchases or importation 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; but also includes, inter alia, purchases or importation of goods for use as supplies in the course of business, or for use in trade or business for which deduction for depreciation or amortization is allowed; as well as purchase of services for which VAT has been actually paid.**
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> **Accordingly, provided that the subject input tax is evidenced by a VAT invoice or official receipt issued in accordance with Section 113 of the NIRC of 1997, as amended, the same may be creditable against the output VAT.**
>
> We likewise do not find merit in the CIR's allegation that for an input tax to be attributable to zero-rated sales, it must be shown that 'the connection between the purchases and finished product is 'concrete' and not 'imaginary' or 'remote'.
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> Based from the foregoing, creditable input taxes which cannot be directly or entirely attributable to any sale transaction (i.e., zero- rated or effectively zero-rated sale and taxable or exempt sale of goods of properties or services), shall be allocated proportionally on the basis of the volume of sales. Evidently, contrary to the CIR's allegation, the attribution of the input VAT to the zero-rated sales need not always be direct.
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> Moreover, the word 'attribute', the adjective form of which is 'attributable', is defined as 'to explain as to cause or origin', or simply, to 'ascribe'. Thus, when Section 112(A) of the NIRC of 1997, as amended, states that the input VAT must be attributable to the zero-rated or effectively zero-rated sales, it simply means that the input VAT must be regarded as being caused by such sales. Accordingly, We sustain the Court in Division's ruling that is it not required that the claimed input tax be directly attributable to zero- rated sales in order to be creditable.'

Moreover, we find that petitioner's reliance in the ***Atlas Cases*** is misplaced.

In the said cases, the Supreme Court decided the same under the defunct Revenue Regulations ('RR') No. 5-87 dated 1 September 1987, as amended by RR No. 3-88 dated 15 February 1988, Section 16 of which provides, to wit:

> 'In all cases, the amount of refund or tax credit that may be granted shall be limited to the amount of value- added tax (VAT) paid **directly and entirely attributable to the zero-rated transaction** during the period covered by the application for credit or refund.'

However, the requirement that the input tax being claimed for tax credit or refund should be directly and entirely attributable to the zero-rated sales, has not been retained in RR No. 14-2005 and in its amendments, which is the applicable VAT regulation in the present case.

> Given the foregoing, we affirm the assailed Decision and Resolution and find that the input tax need not be directly attributable to the zero-rated sales in order for it to be refunded or claimed as tax credit."
> (Emphasis and underscoring, Ours)

Thus, it is not necessary for input taxes to be directly attributable to zero-rated sales so that they can be validly refunded.

Mere allegations cannot overturn a ruling by the Court in Division duly supported by evidence on record.

Basic is the rule that allegations without corresponding proof cannot overturn a judgment which has been rendered painstakingly through the thorough examination of the pieces of evidence adduced during trial. Thus, in ***Republic of the Philippines v. Team (Phils.) Energy Corporation (formerly, Mirant (Phils.) Energy Corporation)***,[26] the High Court ruled that "the findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties."

In the instant Petition, petitioner simply alleged that respondent offered evidence for the first time before the Court in Division which it did not present before the BIR during the administrative proceedings for VAT refund claim. He did so without identifying what these pieces of documentary evidence are and without stating whether the BIR actually requested the same documents from respondents during the administrative proceedings. Moreover, petitioner just generally alleged that respondent failed to prove direct attributability of the input VAT it seeks to refund with its zero-rated sales of services and that a tax refund is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer. He did not raise a particular error committed by the Court in Division which shows a misappreciation of the evidence presented and offered during trial.

Consequently, such general allegations by petitioner cannot overturn the findings by the Court in Division in the Assailed Decision, dated 3 June 2022, which was made through circumspect examination of the pieces of evidence adduced during trial.

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[26] G.R. No. 188016, 14 January 2015.

After a thorough review of the evidence on record, this Court *En Banc* agrees with the detailed findings by the Court in Division in the Assailed Decision[27] and Assailed Resolution[28] that respondent proved, albeit partially, the requisites necessary for the grant of its judicial claim for VAT refund.

This Court *En Banc* therefore agrees with the findings of fact made by the Court in Division.

Tax refunds are construed strictly against the taxpayer. Despite the odds stacked against it, however, respondent was able to prove in the present case by a preponderance of evidence that it is entitled to a partial VAT refund. Respondent must thus be granted such.

ACCORDINGLY, the instant Petition is hereby **DENIED** for lack of merit. The Assailed Decision, dated 3 June 2022, and Assailed Resolution, dated 3 November 2022, promulgated by the Court in Division are hereby **AFFIRMED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

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27 Records, pp. 26-60.
28 *Id.*, pp. 61-67.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

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