REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 2721** (CTA Case No. 9957)
- versus -	Present: **DEL ROSARIO**, *PJ*, **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES**, *and* **ANGELES**, *JJ.*
OCEANAGOLD (PHILIPPINES), INC. *Respondent.*	Promulgated: MAY 10 2024

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DECISION

REYES-FAJARDO, *J.*:

For action is the Petition for Review filed by the Commissioner of Internal Revenue (CIR), challenging the Decision[1] dated June 3, 2022 and the Resolution[2] dated November 3, 2022 in CTA Case No. 9957, whereby the Second Division of the Court (Court in Division) partially granted Oceanagold (Philippines), Inc.'s refund of unutilized input value-added tax (VAT), attributable to its zero-rated sales for the 2nd, 3rd, and 4th quarters of calendar year (CY) 2016, to the extent of ₱23,596,992.30.

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1 *Rollo*, pp. 25-58.
2 *Id.* at pp. 59-64.

PARTIES

Petitioner is a corporation organized under the laws of the Philippines, engaged in large-scale exploration, development and utilization of mineral resources. It has its office address at 2nd Floor Carlos J. Valdes Building, 108 Aguirre Street, Legaspi Village, 1229 Makati City, Philippines. Petitioner is a VAT-registered entity with Tax Identification Number (TIN)/VAT Registration No. 004-870-171-000 with the Bureau of Internal Revenue (BIR) Certificate of Registration No. OCN8RC0000048136.

On the other hand, respondent is the duly appointed CIR with the power among others, to abate tax liabilities and provide tax refunds.

FACTS

On December 16, 2011, the Board of Investments issued to respondent a Certificate of Registration No. 2011-270 as "New Export Producer of Doré Bars and Copper Concentrate." On 29 January 2015, respondent's registration was renewed as indicated in the Revenue Memorandum Order (RMO) No. 9-2000/BOI ID-Certificate No. 2015-033.

Respondent was engaged in zero-rated sales of minerals in the 2nd, 3rd, and 4th quarters of CY 2016, out of which it had claimed an aggregate input VAT of ₱54,431,590.09 (which remained unapplied to the same quarters).

On June 28, 2018, respondent filed with the BIR VAT Credit Audit Division, an administrative claim for refund of input VAT for the period from April 1, 2016 to December 31, 2016 in the amount of ₱54,431,590.09.

On September 25, 2018, respondent received a copy of the letter dated September 12, 2018 of the CIR, through Arnel SD. Guballa, Deputy Commissioner of Internal Revenue Operations Group of the BIR, denying its application for refund since total deductions exceeded the amount of claim.

On October 23, 2018, respondent filed a Petition for Review with the Court of Tax Appeals (CTA). It seeks the refund in the amount of ₱54,431,590.09, representing its alleged unutilized input VAT for the 2nd, 3rd, and 4th quarters of CY 2016.

On June 3, 2022, the Court in Division rendered the challenged Decision, the dispositive portion of which reads:

> **WHEREFORE**, the foregoing premises considered, the Petition for Review filed by petitioner Oceanagold (Philippines), Inc. on 23 October 2018 is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED** to issue a **REFUND** or **TAX CREDIT CERTIFICATE** in the amount of **₱23,596,992.30** in favor of petitioner.
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> **SO ORDERED.**

On June 14, 2022, petitioner filed a Motion for Partial Reconsideration (Re: Decision promulgated 3 June 2022) with the Court in Division.

On November 3, 2022, the Court in Division rendered the challenged Resolution, denying petitioner's Motion for Partial Reconsideration, the dispositive portion of which reads:

> **WHEREFORE**, the foregoing considered, respondent's "Motion for Partial Reconsideration (Re: Decision promulgated 3 June 2022)" filed on 14 June 2022 is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**

On November 29, 2022, petitioner filed a Petition for Review with the Court *En Banc*,[3] to which respondent filed its comment on February 23, 2023.[4]

Under Resolution dated May 12, 2023, CTA EB No. 2721 was submitted for decision.[5]

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3 *Id.* at pp. 1-16.
4 *Id.* at pp. 68-85.
5 *Id.* at pp. 88-89

ISSUE

Did the Court in Division err in ruling that respondent is entitled to a partial refund of its unutilized input VAT attributable to zero-rated sales for the 2nd, 3rd and 4th quarters of CY 2016 amounting to ₱23,596,992.30?

ARGUMENTS

Petitioner states that he rendered a decision denying respondent's administrative claim for input VAT refund. Due to the appellate nature of the Court in Division's jurisdiction over such decision, petitioner argues that the Court in Division may only review whether the decision he rendered is proper, solely taking into account respondent's evidence submitted at the administrative level. Therefore, the Court in Division erred in considering respondent's evidence presented for the first time at the judicial level in the partial grant of its input VAT refund claim. In support thereof, petitioner invokes *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue* (*Pilipinas Total Gas*),[6] as authority.

Petitioner, too, imputes fault on the Court in Division's ruling that respondent is entitled to a partial refund amounting to ₱23,596,992.30 representing unutilized input VAT attributable to its zero-rated sales covering the 2nd, 3rd and 4th quarters of CY 2016 because respondent failed to demonstrate that there was direct attributability between the input tax on purchases and the zero-rated sales of respondent for said quarters. Petitioner added that to be creditable, the input taxes on purchase of goods must be a factor in the chain of production.

On the other hand, respondent points out that petitioner's Petition for Review is a reiteration of his contentions in his Answer and his Motion for Partial Reconsideration (Re: Decision promulgated 3 June 2022), all of which have already been weighed, and found wanting by the Court in Division in the challenged Decision and Resolution.

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6 G.R. No. 207112, December 8, 2015, citing *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007.

Respondent counters that documents not submitted at the administrative level may be presented, formally offered and submitted to the Court in Division, to support its case for tax refund.

Respondent further avers that Section 112(A) of the National Internal Revenue Code of 1997 (NIRC), as amended, does not require that only input taxes that are directly attributable or a factor in the chain of production to its zero-rated sales could be the subject of a claim for refund.

RULING

The Petition for Review lacks merit.

The Court *En Banc* finds that the arguments put forward by petitioner in his Petition for Review are the very same flawed contentions he advanced in his Motion for Partial Reconsideration (Re: Decision promulgated 3 June 2022), all of which have already been weighed, and found wanting by the Court in Division in the challenged Decision and Resolution. In any event, the Court *En Banc* shall again discuss the salient points in the challenged Decision and Resolution.

The case is litigated anew before the Court. Hence, the Court may accept evidence that was not presented by respondent at the administrative level.

In an administrative claim for input VAT refund, *Pilipinas Total Gas*[7] envisioned two (2) scenarios, namely: (1) dismissal thereof by the BIR due to the taxpayer's failure to submit complete documents, despite the former's notice or request; or (2) inaction tantamount to a denial, or denial *other than* due to taxpayer's failure to submit complete documents despite notice or request.

In the *first* situation, the refund claimant must show the Court its entitlement to a VAT refund under substantive law, and submission of

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7 *Id.*

complete supporting documents at administrative level requested by the BIR. In the *second* situation, the refund claimant may present all evidence to prove its entitlement to a VAT refund, and the Court will consider all evidence offered even those not presented before respondent at the administrative level.[8]

Petitioner's partial denial of respondent's administrative claim for input VAT refund falls under the *second* situation. Specifically, the BIR did not deny said administrative claim on account of respondent's failure to submit complete documents, despite its express notice or request. Rather, petitioner rejected respondent's administrative claim for input VAT refund because the total deductions exceeded the amount of claim for VAT refund.[9]

Following *Pilipinas Total Gas*, the Court may give credence to all evidence presented by respondent to support its prayer for refund, irrespective of whether such evidence was presented at administrative level.

Further, *Commissioner of Internal Revenue v. Philippine Bank of Communications (PBC)*[10] pronounced that in a judicial claim for refund, what is crucial is the evidence presented by the claimant before the Court:

> 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....

PBC[11] citing *Commissioner of Internal Revenue v. Univation Motor Philippines (Univation),*[12] likewise confirmed that:

> 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...to the Court of Tax

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8 See *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*, G.R. No. 207112, December 8, 2015 citing *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007.

9 Exhibit "P-40," Docket, Volume III, pp. 1367-1368.

10 G.R. No. 211348, February 23, 2022.

11 *Id.*

12 G.R. No. 231581, April 10, 2019.

> Appeals all evidence...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.[13]

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

Section 112(A)[14] of the NIRC of 1997, as amended, does not require that the input taxes must be directly attributable to zero-rated sales. *Commissioner of Internal Revenue v. Cargill Philippines, Inc.*[15] is instructive:

> **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.
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> **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

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13 Citations omitted.

14 SEC. 112. Refunds or Tax Credits of Input Tax. -

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

15 G.R. Nos. 255470-71, January 30, 2023.

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.[16]

In fine, respondent satisfactorily demonstrated compliance with the requisites for the availment of refund or tax credit under Section 112(A) of the NIRC of 1997, as amended. Precisely, the Court in Division is correct in partially granting respondent's unutilized input VAT refund attributable to zero-rated sales for the 2nd, 3rd, and 4th quarters of CY 2016, to the extent of ₱23,596,992.30.

To conclude, "[a]lthough 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

16 Boldfacing supplied.

by law, the burden is shifted to the opposing party, *i.e.*, the BIR, to disprove such claim."[17]

WHEREFORE, the Petition for Review, filed by the Commissioner of Internal Revenue on November 29, 2022 in CTA EB No. 2721, is **DENIED**, for lack of merit. The Decision dated June 3, 2022 and the Resolution dated November 3, 2022 in CTA Case No. 9957 are **AFFIRMED**.

SO ORDERED.

MARIAN IVY F. REYES-FAJARDO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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17 *Chevron Holdings, Inc. (Formerly Caltex Asia Limited) v. Commissioner of Internal Revenue*, G.R. No. 215159, July 5, 2022. Citations omitted.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice