REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus-

CARMEN COPPER CORPORATION,
Respondent.

CTA EB No. 2735
(CTA Case No. 10201)

x- x

CARMEN COPPER CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 2743
(CTA Case No. 10201)

Present:

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

Promulgated:
NOV 26 2024 4:16 pm

x- x

DECISION

REYES-FAJARDO, *J.*:

Before the Court *En Banc* are the Petitions for Review, separately filed by the Commissioner of Internal Revenue (CIR) and Carmen

Copper Corporation (Carmen Copper), assailing the Decision dated July 15, 2022[1] and Resolution dated January 31, 2023,[2] rendered by the Court's Special Second Division (Court in Division) in CTA Case No. 10201, entitled "*Carmen Copper Corporation v. Commissioner of Internal Revenue.*"

PARTIES

The CIR is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of said office including, among others, the power to decide, approve, and grant tax refunds or tax credits as provided by law. He may be served summons, pleadings, and other processes at his office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Carmen Copper is a domestic corporation duly organized and existing under Philippine laws, with registered address at Unit 502-P & 503-P, 5/F, Five E-Com Center, Palm Coast Avenue corner Pacific Drive, Mall of Asia Complex, Barangay 76, Pasay City. It is registered with the Bureau of Internal Revenue (BIR) as a value-added tax (VAT) taxpayer with Certificate of Registration (COR) No. OCN 8RC0000791446E issued by the Large Taxpayers Service, Revenue District Office No. 121 (RDO No. 121)-Excise LT Division I. Petitioner likewise maintains a branch at Atlas Mining Complex, Bo. Don Andres Soriano, Toledo City, Cebu 6038, under its COR No. OCN 8RC0000068157.

FACTS

The facts as found by the Court in Division are as follows:

Carmen Copper is engaged in the business of mining and sale of minerals for domestic and foreign markets. Its respective CORs from the BIR and the Board of Investments (BOI) indicate that it is

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1 Assailed Decision, *Rollo* (CTA EB No. 2735), pp. 26 to 65; *Rollo* (CTA EB No. 2743), pp. 32 to 71.

2 Assailed Resolution, *Rollo* (CTA EB No. 2735), pp. 67 to 82; *Rollo* (CTA EB No. 2743), pp. 73 to 88

engaged in the business of copper ore mining and is a "New Producer of Copper Concentrate."

For the 2nd quarter of taxable year (TY) 2017, Carmen Copper had the following sales, with the corresponding output tax:

	Amount	Output Tax
VATable Sales/Receipts	₱5,923,404.96	₱710,808.60
Sales to Government	842,523.43	101,102.82
Zero-Rated Sales/Receipts	2,366,032,147.53	-
Exempt sales	1,002,644.35	-
Total sales	**₱2,373,800,720.27**	**₱811,911.42**

On the other hand, Carmen Copper's allowable input tax for the 2nd quarter of TY 2017 totaled to ₱52,294,997.38. After applying a portion thereof to output tax in the sum of ₱811,911.42, the unutilized input taxes for the same period amounted to ₱51,483,085.96.

On June 28, 2019, Carmen Copper filed with the BIR VAT Credit Audit Division (VCAD), its Application for Tax Credits or Refunds (BIR Form No. 1914), for its unutilized input VAT for the (2nd) quarter of taxable year ended December 31, 2017 in the amount of ₱51,483,085.96.

On September 26, 2019, Carmen Copper received a VAT refund notice letter dated September 2, 2019, issued by Arnel SD Guballa, OIC- Deputy Commissioner Operations Group, partially granting its claim for refund in the reduced amount of ₱34,258,134.20, resulting in the denial of the amount of ₱17,224,951.76:[3]

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3 Exhibit "P-12," Division Docket, Volume II, pp. 468-469.

	Local	Importation	Total
Amount of Claims	**₱ 893,254.08**	**₱ 50,589,831.88**	**₱ 51,483,085.96**
Deductions on claim			
Not in compliance with the invoicing requirements	₱ 578,328.09	₱ 41,871.34	₱ 620,199.43
Disallowed Amortized Input Tax from previous period	316,545.44		316,545.44
Disallowed amortized input VAT due to non-compliance with item 6.2 of Annex "A.1" of RMC No. 47-2019	-	16,259,111.88	
Additional output tax as a result of reclassification of sales	-	385.72	385.72
Compromise penalty	-	6,250.00	6,250.00
Input tax allocated on sales to government	-	12,459.29	12,459.29
Overclaim	-	10,000.00	10,000.00
Total Deductions	**₱894,873.53**	**₱16,330,078.23**	**₱965,839.88**
Balances	**₱(1,619.45)**	**₱34,259,753.65**	**₱34,258,134.20**
Offset of negative balance	₱1,619.45	₱(1,619.45)	₱
FINAL AMOUNT APPROVED FOR VAT REFUND	**₱(0.00)**	**₱34,258,134.20**	**₱34,258,134.20**

On October 25, 2019, Carmen Copper filed a Petition for Review before the Court in Division, docketed as CTA Case No. 10201.

On July 15, 2022, the Court in Division rendered a Decision in CTA Case No. 10201, as follows:

> **WHEREFORE**, in view of the foregoing, the Petition for Review filed by [Carmen Copper Corporation] on 25 October 2019 is hereby **PARTIALLY GRANTED**. Accordingly, [Commissioner of Internal Revenue] is hereby **ORDERED TO REFUND** in favor of petitioner Carmen Copper Corporation the reduced amount of ₱6,474,060.17, representing unutilized excess input tax attributable to its zero-rated sales for the second (2nd) quarter of taxable year ended 31 December 2017.
>
> **SO ORDERED.**

Both the CIR and Carmen Copper filed their respective Motion for Partial Reconsideration (Re: Decision promulgated 15 July 2022) and Motion for Reconsideration (With Motion for Leave of Court to Reopen the Case for the Recall of a Witness), which were denied in the assailed Resolution of January 31, 2023.

On February 23, 2023, the CIR filed his Petition for Review with the Court *En Banc*, docketed as CTA EB No. 2735.[4] The CIR prays that Carmen Copper's claim for refund in the amount of ₱17,224,951.76 must be denied in its entirety. On April 24, 2023, Carmen Copper filed its Comment via LBC Express, Inc.[5]

On April 11, 2023, Carmen Copper filed a Petition for Review with the Court *En Banc*, docketed as CTA EB No. 2743,[6] *sans* comment from the CIR.[7] In its Petition for Review, Carmen Copper prays that in addition to the amount of ₱6,474,060.17 granted by the Court in Division for refund, the amount of ₱10,750,891.59, representing the unutilized input VAT attributable to zero-rated sales for the second (2nd) quarter of TY ended December 31, 2017 must also be refunded.

In a Minute Resolution dated April 20, 2023, the above-captioned cases were consolidated pursuant to Section 1, Rule 31 of the Rules of Court, as amended.[8]

On May 30, 2023, the Court promulgated a Resolution submitting the consolidated cases for decision.[9]

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4 *Rollo* (CTA EB No. 2735), pp. 1-19. The CIR had fifteen (15) days from the date of receipt of the resolution on February 9, 2023 or until February 24, 2023 within which to file a petition for review. Thus, the CIR's Petition for Review was timely filed.

5 *Rollo* (CTA EB No. 2735), pp. 86-92.

6 *Rollo* (CTA EB No. 2743), pp. 5-30. Carmen Copper had fifteen (15) days from the date of receipt of the resolution on March 9, 2023 or until March 24, 2023 within which to file a petition for review. On March 24, 2023, Carmen Copper filed a Motion for Extension of Time to File Petition for Review. On March 28, 2023, the Court *En Banc* issued a Minute Resolution giving Carmen Copper until April 8, 2023 to file its Petition for Review. Carmen Copper timely filed its Petition for Review within the extended period granted by the Court considering that April 8, 2023, fell on a Saturday and April 10, 2023 was declared a regular holiday in commemoration of the Day of Valor, pursuant to Proclamation No. 90 dated November 9, 2022 (Amending Proclamation No. 42, s. 2022, Declaring the Regular Holiday and Special (Non-working) days for the year 2023).

7 Records Verification dated May 25, 2023, Rollo (CTA EB No. 2735), p. 95.

8 *Rollo* (CTA EB No. 2735), unpaginated.

9 *Rollo* (CTA EB No. 2735), p.96.

ISSUE

Is Carmen Copper wholly entitled to a refund of its unutilized input VAT attributable to zero-rated sales for the 2nd quarter of TY ended December 31, 2017 in the amount of ₱17,224,951.76?

ARGUMENTS

The CIR's Petition for Review (CTA EB No. 2735)

The CIR argues that he rendered a decision partially denying a portion of Carmen Copper's administrative claim for input VAT refund due to violation of invoicing requirements, among others. 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 consistent with law, 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 support thereof, petitioner invokes *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue* (*Pilipinas Total Gas*)[10] as authority.

The CIR too, contends that Carmen Copper failed to demonstrate that there was direct attributability between the input tax on purchases and its zero-rated sales for said quarter. For the CIR, to be creditable, the input taxes on purchase of goods must be a factor in the chain of production.

Carmen Copper counters that the present Petition for Review is a reiteration of the CIR's arguments in his Answer and his Motion for Reconsideration, 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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10 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.

Carmen Copper points out that documents not submitted at the administrative level may be submitted to the Court in Division, where the denial of the refund by the BIR is due to inaction of the BIR, or when no express request for submission of the questioned documents was given to the taxpayer. In this case, the CIR has not required Carmen Copper to submit any specific document.

Carmen Copper further retorts that the National Internal Revenue Code of 1997 (NIRC), as amended, does not require that only input taxes that are "directly attributable" could be creditable and be the subject of a claim for refund. In addition, the CIR failed to present evidence that would controvert its evidence supporting its claim that its input taxes are attributable to its zero-rated sales.

Carmen Copper's Petition for Review (CTA EB No. 2743)

Carmen Copper asserts that it had adhered with all the requisites for the grant of input VAT refund under Section 112 of the NIRC, as amended. Carmen Copper maintains that the Court has no reason to deny its input VAT refund claim and points out the following:

a. Its export sale covered by Provisional Invoice No. 1810000103 dated July 4, 2017 in the amount ₱398,294,291.54 or US$8,218,602.79, was correctly reported in the 2nd quarter of TY 2017. According to Carmen Copper, the actual sale happened on June 29, 2017 when the export declaration covering the sale was approved by the Bureau of Customs. For Carmen Copper, the date indicated in the sales invoice should only be indicative of the date of the issuance of the sales invoice and not the occurrence of the sale.

b. The disallowance of its export sales in the amount of ₱1,004,743.37 or US$20,176.65 due to failure to prove that corresponding payments therefor were inwardly remitted to the Philippines in accordance with the regulations of the Bangko Sentral ng Pilipinas (BSP) is improper. Carmen Copper further states that as a Board of Investments-registered enterprise, it is not required to prove the corresponding foreign currency remittances, so long as there is proof of actual exportation under Section 106(A)(2)(a)(5) of the NIRC, as amended.

c. The doctrine in *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue* applies only to Philippine Economic Zone Authority (PEZA)-registered enterprises, not to BOI-registered enterprise. It asserts that a BOI-registered entity cannot be passed on with VAT by all of its local suppliers of goods and services. Thus, it is entitled to offset its output tax due with input taxes from its local purchases or to refund the same.

d. The disallowance of its input VAT from importations in the amount of ₱202,509.60 for failure to present the Single Administrative Document (SAD) or Import Entry and Internal Revenue Declaration (IEIRD) is improper. Carmen Copper maintains that the Statement of Settlement of Duties and Taxes (SSDT) and VAT payment certification issued by the BOC is sufficient to substantiate the input VAT for the importation of goods.

e. The CIR is required by law and the Constitution to provide sufficient explanation and specific legal bases for its partial denial of its claim for refund in compliance with due process.

f. The Court in Division's allocation of valid input taxes only on valid zero-rated sales created another class of sale which is the invalid zero-rated sales; Thereby, treating the disallowed zero-rated sales as either subject to 12% VAT or exempt from VAT.

g. The Court in Division acted beyond its jurisdiction when it partially denied Carmen Copper's claim for refund based on grounds not raised by the parties.

RULING

The Petitions for Review are denied.

CIR's Petition for Review (CTA EB No. 2745)

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

In an administrative claim for input VAT refund, *Pilipinas Total Gas*[11] 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 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.[12]

The CIR's partial denial of Carmen Copper's administrative claim for input VAT refund falls under the *second* situation. Specifically, Carmen Copper's VAT refund claim was partially denied because of non-compliance with invoicing requirements and with item 6.2 of Annex "A.1" of Revenue Memorandum Circular (RMC) No. 47-2019, among others.[13]

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.

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11 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.

12 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.

13 Exhibit "P-12," Docket, Volume II, pp. 468-469.

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

Commissioner of Internal Revenue v. Cargill Philippines, Inc.[14] declares:

> **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)(l) 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.

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

> **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.**[15]

In fine, Carmen Copper satisfactorily demonstrated compliance with the requisite that its input taxes claimed are attributable to zero-rated sales for the availment of refund or tax credit under Section 112(A) of the NIRC of 1997, as amended. Thus, the Court in Division is correct in partially granting respondent's unutilized input VAT refund attributable to zero-rated sales for the second (2nd) quarter of TY ended 31 December 2017, to the extent of ₱6,474,060.17.

Carmen Copper's Petition for Review (CTA EB No. 2743)

The export sale made by Carmen Copper to MRI Trading MG in the amount of ₱398,294,291.54 or US$8,218,602.79 on July 4, 2017, does not qualify for zero-rating.

Section 106(A)(2)(a)(1) of the NIRC, as amended, states:

> SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* –
>
> (A) *Rate and Base of Tax.* – ...
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export Sales.* - The term **"export sales"** means:
>
> (1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or

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15 Boldfacing supplied.

> services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);[16]

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

In relation to the *second* condition, any VAT-registered person claiming VAT zero-rated direct export sales must present, among others: *one,* sales invoice as proof of sale of goods;[17] and *two,* bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country.[18]

Said sales invoice must also comply with the pertinent invoicing and substantiation requirements, containing all the required information under Sections 113(A) and (B), and 237 of the NIRC, as amended, in relation to Section 4.113-1(A) and (B) of Revenue Regulations (RR) No. 16-2005.[19]

Here, petitioner presented its Schedule of Zero-Rated Sale of Goods,[20] the corresponding provisional sales invoice,[21] and bill of lading (BOL),[22] to prove direct exportation of its goods.

As correctly found by the Court in Division, the amount of ₱398,294,291.54 or US$8,218,602.79 must be denied VAT zero-rating

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16 Boldfacing supplied.

17 Section 113(A)(1) of the NIRC, as amended, requires a VAT-registered person to issue a VAT invoice for every sale of goods, among others. See *Takenaka Corporation-Philippine Branch v. Commissioner of Internal Revenue,* G.R. No. 193321, October 19, 2016.

18 *Commissioner of Internal Revenue v. Colt Commercial, Inc.* and *Colt Commercial, Inc. v. Commissioner of Internal Revenue,* CTA EB Nos. 2006 and 2012, June 29, 2020, citing *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue,* G.R. No. 166732, April 27, 2007.

19 See *Commissioner of Internal Revenue v. Filminera Resources Corporation,* G.R. No. 236325, September 16, 2020.

20 Exhibit "P-27," Universal Serial Bus (USB).

21 Exhibit "P-64-i," USB.

22 Exhibit "P-66-q," USB.

because the provisional invoice pertaining thereto is dated July 4, 2017 or outside the period of claim.[23] Moreover, the subject goods were actually shipped only on July 4, 2017 as said export sale was covered by Bill of Lading (BOL) bearing the notation "CLEAN SHIPPED ON BOARD DATED 04.07.2017."

Proof of foreign currency inward remittance is required for Carmen Copper's direct export sales pursuant to Section 106 (A)(2)(a)(1) and Section 112 (A) of the NIRC, as amended to qualify as zero-rated.

Carmen Copper argues that its direct export sales in the amount of ₱1,004,743.37 or US$20,176.65 are zero-rated based on both paragraphs (1) and (5) of Section 106(A)(2)(a) of the NIRC, as amended. Thus, Carmen Copper claims that as a BOI-registered enterprises within the purview of Section 106(A)(2)(a)(5) of the NIRC, as amended, it is no longer required to prove that the sales were paid in acceptable foreign currency duly accounted for in accordance with the rules and regulations of the BSP.

The Court does not agree.

Paragraphs (1) and (5) of Section 106(A)(2)(a) of the NIRC, as amended, provide:

> SEC. 106. Value-Added Tax on Sale of Goods or Properties. -
>
> (A) Rate and Base of Tax. -
>
> ...
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

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23 The period of claim covers 2nd quarter of TY 2017 (April 1, 2017 to June 30, 2017). Exhibit "P-9," Docket, Volume II, p. 464.

(a) Export Sales. - The term "export sales" means:

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

...

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

...

Relative thereto, Section 4.106-5 of RR No. 16-2005, implements Section 106(A)(2)(a)(5) of the NIRC, as amended:

SECTION 4.106-5. *Zero-Rated Sales of Goods or Properties.- ...*

The following sales by VAT -registered persons shall be subject to zero percent (0%) rate:

(a) *Export sales.* – *'Export Sales'* shall mean:

...

(5) Transactions considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws.

"Considered export sales under Executive Order No. 226" shall mean the Philippine port F.O.B. value determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer, or the net selling price of export products sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same; *Provided*, That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents; *Provided, further*, That *pursuant to EO 226 and other special laws*, even without actual exportation, the following shall be

> considered constructively exported: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) sales to export processing zones pursuant to Republic Act (RA) Nos. 7916, as amended, 7903, 7922 and other similar export processing zones; (3) sale to enterprises duly registered and accredited with the Subic Bay Metropolitan Authority pursuant to RA 7227; (4) sales to registered export traders operating bonded trading warehouses supplying raw materials in the manufacture of export products under guidelines to be set by the Board in consultation with the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC); (5) sales to diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products whether paid for in foreign currency or not.

In *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue, (Atlas)*[24] the Supreme Court explained that Executive Order (EO) No. 226 comprehensively defined the term "export sales" which includes *"export products exported directly by a registered export producer"* and *"considered export sales"*:

> The Tax Code of 1977, as amended, gave a limited definition of export sales, to wit: "The sale and shipment or exportation of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported, or foreign currency denominated sales." Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987 – which, in the years concerned (i.e., 1990 and 1992), governed enterprises registered with both the BOI and EPZA, provided a more comprehensive definition of export sales, as quoted below:
>
> > "ART. 23. "Export sales" shall mean the Philippine port F.O.B. value, determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer or the net selling price of **export product sold by a registered export producer or to an export trader that subsequently exports the same:** Provided, That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates of similar commercial documents: Provided, further, That **without actual exportation the following shall be considered**

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24 G.R. Nos. 141104 & 148763, June 8, 2007.

> **constructively exported** for purposes of this provision: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) sales to export processing zones; (3) sales to registered export traders operating bonded trading warehouses supplying raw materials used in the manufacture of export products under guidelines to be set by the Board in consultation with the Bureau of Internal Revenue and the Bureau of Customs; (4) sales to foreign military bases, diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products whether paid for in foreign currency or not: Provided, further, That export sales of registered export trader may include commission income; and Provided, finally, That exportation of goods on consignment shall not be deemed export sales until the export products consigned are in fact sold by the consignee.
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> ...
>
> Without actual exportation, Article 23 of the Omnibus Investments Code of 1987 also considers constructive exportation as export sales. Among other types of constructive exportation specifically identified by the said provision are sales to export processing zones. ...

Consistent with *Atlas*, the definition of *"export products exported directly by a registered export producer"* contemplates direct export sales as defined in paragraph (1) of Section 106(A)(2)(a) of the NIRC, as amended. On the other hand, *"considered export sales"* or those without actual exportation under Article 23 of EO No. 226, otherwise known as the Omnibus Investments Code of 1987 contemplates export sales as defined in paragraph (5) of Section 106(A)(2)(a) of the NIRC, as amended.

It is established that a statute must be construed to be consistent with itself and to be harmonious with other laws on the same subject matter to form a complete, coherent, and intelligible system, as expressed in the maxim, "*interpretare et concordare legibus est optimus interpretandi.*"[25]

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25 *La Suerte Cigar and Cigarette Factory v. Court of Appeals*, G.R. Nos. 125346, 136328-29, 144942, 148605, 158197, 165499, November 11, 2014 citing *Philippine Economic Zone Authority v. Green Asia Construction & Development Corporation*, G.R. No. 188866, October 19, 2011.

Relevantly, in *Commissioner of Internal Revenue v. Carmen Copper Corporation*, CTA EB No. 2480 (CTA Case No. 10016) and *Carmen Copper Corporation v. Commissioner of Internal Revenue*, CTA EB No. 2515 (CTA Case No. 10016),[26] a case involving the same parties, the Court explained that *Atlas*[27] case illustrates that there is no inconsistency between paragraphs (1) and (5) of Section 106(A)(2)(a) of the NIRC, as amended. The Court explained that the non-requirement of proof that the sales were paid in foreign currency duly accounted for under the rules and regulations of the BSP under paragraph (5) of Section 106(A)(2)(a) pertains to export sales of a VAT-registered seller to a BOI-registered buyer as in the case of *Commissioner of Internal Revenue v. Filminera Resources Corporation*[28]:

> Moreover, the non-requirement of proof that the sales were paid in foreign currency duly accounted for under the rules and regulations of the BSP under paragraph (5) of Section 106(A)(2)(a) pertains to export sales of a VAT-registered seller to a BOI-registered buyer as in the case of *Commissioner of Internal Revenue v. Filminera Resources Corporation (Filminera)*. In contrast, Carmen Copper is challenging the disallowed zero-rated sales to MRI Trading AG, a non-resident foreign corporation, whose sales were supported by VAT sales invoices but cannot be properly traced to the certificate of inward remittance by the Court in Division.[29]

Here, the Court in Division correctly required the proof of inward remittance for Carmen Copper's actual export sales pursuant to paragraph (1) of Section 106(A)(2)(a) and Section 112(A) of the NIRC, as amended. As such, the sales of Carmen Copper which cannot be traced to the certificate of inward remittance in the amount of ₱1,004,743.37 or US$20,176.65 was properly disallowed as zero-rated sales.

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26 January 10, 2023.
27 G.R. Nos. 141104 & 148763, June 8, 2007.
28 G.R. No. 236325, September 16, 2020.
29 Citations omitted.

Carmen Copper's proper recourse, as a taxpayer enjoying zero-rated preference, is to claim from its suppliers the amount of VAT that was erroneously shifted by them following the principle laid down in Coral Bay Nickel Corp. v. Commissioner of Internal Revenue (Coral Bay).[30]

Carmen Copper sought to refund input VAT that arose from its domestic purchases of goods and services. It insists that *Coral Bay* applies only to PEZA-registered enterprises and not to BOI-registered enterprises.

The Court does not agree.

Revenue Memorandum Order (RMO) No. 9-00[31] provides that sales of goods, properties or services made by a VAT-registered supplier to a BOI-registered entity, whose products are 100% exported, shall be automatically subject to 0% VAT. Section 3 thereof prescribes the reportorial and documentary requirements, as follows:

> SECTION.3. *Sales of goods, properties or services made by a VAT registered supplier to a BOI registered exporter shall be accorded automatic zero-rating, i.e., without necessity of applying for and securing approval of the application for zero-rating as provided in Revenue Regulations No.7-95, subject to the following conditions:*
>
> (1) The supplier must be VAT-registered;
>
> (2) The BOI-registered buyer must likewise be VAT-registered;
>
> (3) The buyer must be a BOI-registered manufacturer/producer whose products are 100% exported. For this purpose, a Certification to this effect must be issued

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30 G.R. No. 190506, June 13, 2016.

31 SUBJECT: Tax Treatment of Sales of Goods, Properties and Services Made by VAT-registered Suppliers to BOI-registered Manufacturers-Exporters With 100% Export Sales.

by the Board of Investments (BOI) and which certification shall be good for one year unless subsequently re-issued by the BOI;

(4) The BOI-registered buyer shall furnish each of its suppliers with a copy of the aforementioned BOI Certification which shall serve as authority for the supplier to avail of the benefits of zero-rating for its sales to said BOI-registered buyers; and

(5) The VAT-registered supplier shall issue for each sale to BOI-registered manufacturer/exporters a duly registered VAT invoice with the words 'zero-rated' stamped thereon in compliance with Sec.4.108-1(5) of Revenue Regulations No.7-95. The supplier must likewise indicate in the VAT-invoice the name and BOI-registry number of the buyer.

The *rationale* for VAT zero-rating on sales by a supplier of a BOI-Registered enterprise to the latter, who exported 100% of its products was discussed in Section 2 of RMO No. 9-00, in this wise:

SECTION 2. Rationale. – In Revenue Memorandum Circular No. 74-99, promulgated on October 15, 1999, it has been clarified that sales of goods, property and services made by VAT-registered suppliers to PEZA-registered enterprises shall qualify for zero-rating pursuant to the provisions of Section 106(A)(2)(a)(5) of the National Internal Revenue Code of 1997, in relation to Section 23 of R A. No. 7916 (the PEZA Law) and Article 77(2) of Executive Order No. 226 (the Omnibus Investments Code of 1987). **This treatment is anchored on the "Cross Border Doctrine" of the VAT System, which in essence means that no value-added tax shall form part of the cost component of products which are destined for consumption outside of the territorial border of the Philippines. This principle is achieved through the application of VAT zero-rating products exported from the Philippines to foreign countries.** Furthermore, Article 25 of the Omnibus Investments Code provides among others, that products sold "to bonded manufacturing warehouses of export-oriented manufacturers shall be considered "constructively exported" while Section 106(A)(2)(a)(5) NIRC of 1997, provides for the application of zero rating to "those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws."

The rationale of RMC. 74-99 may also find application to sales made by VAT registered suppliers to BOI-registered enterprises whose manufactured products are 100% exported to foreign countries and

therefore said sales can likewise be accorded automatic zero-rating treatment.[32]

In *Coral Bay,*[33] the refund claimant therein is an ECOZONE enterprise. It sought to recover among others, input taxes arising from local purchases passed on to it by its suppliers. In holding said recovery infeasible, the Supreme Court pronounced:

> ... the purchases of goods and services by the petitioner that were destined for consumption within the ECOZONE should be free of VAT; hence, no input VAT should then be paid on such purchases, rendering the petitioner not entitled to claim a tax refund or credit. Verily, if the petitioner had paid the input VAT, the CTA was correct in holding that the petitioner's proper recourse was not against the Government but against the seller who had shifted to it the output VAT following RMC No. 42-03, which provides:
>
> > In case the supplier alleges that it reported such sale as a taxable sale, the substantiation of remittance of the output taxes of the seller (input taxes of the exporter-buyer) can only be established upon the thorough audit of the suppliers' VAT returns and corresponding books and records. It is, therefore, imperative that the processing office recommends to the concerned BIR Office the audit of the records of the seller.
> >
> > In the meantime, the claim for input tax credit by the exporter-buyer should be denied without prejudice to the claimant's right to seek reimbursement of the VAT paid, if any, from its supplier.
>
> We should also take into consideration the nature of VAT as an indirect tax. **Although the seller is statutorily liable for the payment of VAT, the amount of the tax is allowed to be shifted or passed on to the buyer. However, reporting and remittance of the VAT paid to the BIR remained to be the seller/supplier's obligation. Hence, the proper party to seek the tax refund or credit should be the suppliers, not the petitioner.**[34]

Just as the suppliers of a PEZA-Registered entity were not allowed to shift VAT to the latter, as ruled in *Coral,* so too must be the same

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32 Boldfacing supplied.
33 G.R. No. 190506, June 13, 2016.
34 Boldfacing supplied.

standard be applied on suppliers of a BOI-Registered enterprise who exported 100% of its produce, such as petitioner. The reason is not that difficult to perceive—VAT may not be passed on to PEZA-Registered entity, and BOI Registered entity, who exported 100% of its produce, alike, by virtue of the cross-border doctrine.

Consistent with the above observations, the BOI issued a certification,[35] attesting that petitioner is a BOI-registered entity with 100% exports for the year covering January 1 to December 31, 2017. Indeed, "... the BOI Certification is vital for the seller-taxpayer to avail the benefits of zero-rating. The certification is evidence that the buyer exported its entire products and shall serve as authority for the seller to claim for refund or tax credit."[36]

Sales of Carmen Copper's *local suppliers* to it are automatically subject to 0% VAT. Given that said sales are accorded 0% VAT, there was nothing to be legally shifted on Carmen Copper. Being so, taxes erroneously passed on by petitioner's local suppliers to it, may not be refunded by petitioner from the government.

Therefore, the Court in Division correctly ruled that only Carmen Copper's input tax arising from importations and services rendered by non-residents shall be considered in determining the amount of unutilized input tax that may be refunded for the 2nd quarter of TY 2017.

Absent the Single Administrative Document (SAD) or Import Entry and Internal Revenue Declaration (IEIRD), the input VAT from importation of goods supported only by the Statement of Settlement of Duties and Taxes (SSDT) and Value-Added Tax

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35 Exhibit "P-6," Docket, Volume II, pp. 460-462.

36 *Commissioner of Internal Revenue v. Filminera Resources Corporation*, G.R. No. 236325, September 16, 2020.

(VAT) Payment Certification issued by the BOC must be disallowed.

The Court in Division disallowed the input VAT from importations in the amount of ₱202,509.60 for not being supported by the corresponding SAD or IEIRD. It is not enough that the input VAT from importations were supported by corresponding SSDT and VAT Payment Certification issued by the BOC as these documents merely prove the fact of payment. On the other hand, the SAD or IEIRD, proves the fact of importation and the nature of the goods imported. Thus, without the SAD or IEIRD, the Court cannot reasonably verify or link a payment of customs duties and taxes recorded in the SSDT to the specific import declaration of the goods subject of the case.

Section 4.110-8(a)(1) and (d) of RR No. 16-2005 provides for the substantiation requirements of input tax credits from importation of goods and input taxes withheld from services rendered by non-residents, as follows:

> **SEC. 4.110-8.** *Substantiation of Input Tax Credits.* –
>
> (a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:
>
> (1) For the importation of goods – **import entry or other equivalent document showing actual payment of VAT on the imported goods.** ....[37]

Thus, the relevant import entry, or other equivalent documents, showing actual payment of VAT must be presented to claim input VAT credit for importation of goods.

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37 Boldfacing supplied.

On this point, the Court in *Philex Mining Corporation v. Commissioner of Internal Revenue*[38] considered the SSDT and SAD collectively (and not the SSDT alone) as sufficient proof of actual payment in place of the IEIRD. This Court ruled in this wise:

> ...
>
> Under Section 4.110-8(a)(1) of RR No. 16-2005 cited above, input taxes for the importation of goods must be substantiated by the import entry or other equivalent document showing actual payment of VAT on the imported goods.
>
> In *Taratino Mining Corporation v. Commissioner of Internal Revenue*, the Supreme Court emphasized that an IEIRD is the required document to substantiate the payment of duties and taxes on imported goods, thus:
>
> Even assuming that the proper year was indicated, these official receipts would still not comply with the substantiation requirements provided by law. Indeed, under Sections 100 (A) and 113 (A) of the NIRC, any input tax that is subject of a claim for refund must be evidenced by a VAT invoice or official receipt. **With regard to the importation of goods or properties, however, Section 4.110-8 of R.R. No. 16-05, as amended, further requires that an import entry or other equivalent document showing actual payment of VAT on the imported goods must also be submitted,** to wit:
>
> ...
>
> In relation to this requirement, Customs Administrative Order No. 2-95 provides:
>
> > 2.3 The Bureau of Customs Official Receipt (BCOR) will no longer be issued by the AABs (Authorized Agent Banks) for the duties and taxes collected. In lieu thereof, **the amount of duty and tax collected including other required information must be machine validated directly on the following import documents and signed by the duly authorized bank official:**
> >
> > 2.3.1 **Import Entry and Internal Revenue Declaration (IEIRD) for final payment of duties and taxes.**
>
> From the foregoing, it is apparent that **an IEIRD is required to properly substantiate the payment of duties and taxes on imported goods.** Considering that the petitioner failed to submit the import

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38 CTA EB No. 2497 (CTA Case No. 10037), September 29, 2022.

entries relevant to its claim, the CTA did not err in ruling that the petitioner's claim was not sufficiently proven.

Apart from the IEIRD, Section 4.110-8(a)(1) of RR No. 16-2005 provides that other equivalent document showing actual payment of VAT on the imported goods may be presented to substantiate input tax credits for imported goods.

Under II(3) of RMC No. 047-19, claims for refund of unutilized input VAT on importation may be supported by the IEIRD and/or the SSDT and SAD, as follows:

II. DOCUMENTS TO BE SUBMITTED BY THE TAXPAYER-CLAIMANTS UPON FILING OF THE APPLICATIONS FOR VAT REFUND

...

3. Claims for refund of unutilized input VAT on importations shall be supported with a "VAT Payment Certification" issued by the Revenue Accounting Division (RAD) of the BOC, including the supporting IEIRD **and/or SAD, SSDT**. Only the duly authenticated copies of documents by the BOC shall be accepted for processing and considered in the computation of refundable amount.

Likewise, under III(A)(3) of CMO No. 028-14, SSDTs and SADs are sufficient proof of payment of input VAT on importations, as follows:

III. Operational Provisions

A. Upon receipt of the docket from the BIR approving the claim of a particular importer for refund of the input VAT on his importation, the Tax Credit Secretariat (TCS) shall check that the following supporting documents are attached to the docket forwarded by the BIR:

...

3. Original or Certified True Copies of the Import Entry and Internal Revenue Declarations (IEIRDs), BOC Official Receipts (BCORs) or the Statement of Settlement of Duties and Taxes, Single Administrative Documents and List of Importations for the period of the claim.

Further, under Section 2(a) of CMO No. 29-15, the use of the IEIRD is discontinued and is replaced by the SAD, thus:

> Section 2. Operational Provisions.
>
> a) The use of the Import Entry and Internal Revenue Declaration (IEIRD) or BC Form 236 is discontinued **and in its place shall be the (SAD)** secured through the e2m Customs System and printed. The SAD shall serve as the entry declaration as required by existing rules and regulations.

Clearly from the foregoing, the SAD or IEIRD serves as a vital piece of evidence that the importation and the corresponding VAT payment occurred, thereby justifying the claim for input tax credit. Absent such, as in this case, the subject input VAT from importation of goods supported only by the SSDT and VAT Payment Certification issued by the BOC must be disallowed.

Carmen Copper was not denied due process in its claim for input VAT refund

Carmen Copper asserts that the VAT refund notice letter dated September 2, 2019 lacks factual and legal bases to properly inform it on the denial of a portion of its claim. It also insists that no further communication was provided to it after the issuance thereof. Thus, violative of Carmen Copper's right to due process.

The Court does not agree.

> Due process has been described as a "malleable concept anchored on fairness and equity." Indeed, at its core is simply the reasonable opportunity for every party to be heard. The late constitutionalist Father Joaquin G. Bernas, S.J., further expounds on this concept:
>
> Whether in judicial or administrative proceedings, therefore, the heart of procedural due process is the need for notice and an opportunity to be heard. **Moreover, what is required is not actual hearing but a real opportunity to be heard. Thus, one who refuses to appear at a hearing is not thereby denied due process if a decision is**

reached without waiting for him. Likewise, the requirement of due process can be satisfied by subsequent due hearing.[39]

Here, Carmen Copper was able to file an administrative claim for refund of its unutilized input VAT payments with the BIR. After having been accorded ample opportunity to present its side, the CIR rendered a decision partially granting its administrative claim for refund in the amount of ₱34,258,134.20, resulting in the denial of the amount of ₱17,224,951.76. The latter amount was denied due to, among others, its alleged non-compliance with item 6.2 of Annex A.1 of RMC No. 47-2019. Carmen Copper, within thirty (30) days from receipt of the CIR's decision was able to appeal with the Court of Tax Appeals the partial denial of its claim for tax refund. The case that Carmen Copper filed with the CTA as a court of record, is litigated *de novo* where it can prove every minute aspect of its case.[40]

Besides, entitlement to a tax refund is for the taxpayer to prove and not for the government to disprove.[41]

The disallowance of Carmen Copper's zero-rated sales does not make the sale subject to 12% VAT or VAT-exempt.

Carmen Copper faults the formula used by the Court in Division in allocating the input VAT. According to Carmen Copper, there are three (3) types of sales for VAT purposes, namely: (1) VATable sale; (2) Zero-Rated Sales; and, (3) VAT-Exempt Sale. By disallowing valid input taxes pertaining to *invalid* zero-rated sales, the CTA in Division effectively categorized such sale as subject to 12% VAT or VAT-Exempt Sales.

Carmen Copper is in error.

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39 *Ariel M. Reyes v. Rural Bank of San Rafael (Bulacan) Inc. et al.*, G.R. No. 230597. March 23, 2022.

40 *Commissioner of Internal Revenue v. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

41 *Commissioner of Internal Revenue v. Far East Bank & Trust Company (Now Bank of The Philippine Islands)*, G.R. No. 173854, March 15, 2010.

First. The disallowance made by the CTA in Division on **valid** input taxes pertaining to **invalid** zero-rated sales is justified because the effect of such invalid zero-rated sales is as if, no zero-rated sales were generated. Without the corresponding zero-rated sales from which the valid input taxes may be imputed,[42] said input taxes should indeed be rejected for refund.

Second. To disregard the invalid zero-rated sales in the computation and allocation of the refundable amount of input VAT is to render the substantiation requirements enjoined by law and jurisprudence nugatory.[43]

Third. Commissioner of Internal Revenue v. Euro-Philippines Airline Services, Inc.(EPASI)[44] is inapplicable here due to disparity in the nature between *EPASI* and this case. Specifically, *EPASI* is a tax assessment case whereas this case is an input VAT refund case.

Fourth. The Court in Division did not categorize the invalid zero-rated sales as one subject to 12% VAT or one subject to VAT-exempt sale in the assailed Decision and Resolution. The Court in Division simply verified whether the sales of Carmen Copper complied with the conditions under the law. Consider the following presentation made by the Court in Division:

Particulars	Zero-Rated Sales
Declared Zero-Rated Sales	₱1,581,916,673.22
Less: Disallowances	
Export sales supported by a provisional invoice and Bill of Lading dated outside the period of claim	398,294,291.54
Export sales not traced to inward remittance per bank certification	1,004,743.37
Total Valid Zero-Rated Sales	₱1,182,617,638.31

42 See *Maibarara Geothermal, Inc. v. Commissioner of Internal Revenue*, G.R. No. 250479, July 18, 2022.

43 See *Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue*, G.R. No. 191495, July 23, 2018.

44 G.R. No. 222436, July 23, 2018.

The Court in Division may rule on a matter not raised by the parties.

The Court in Division was justified in ruling on issues not disputed by the parties. Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals [45] provides:

> RULE 14
> JUDGMENT, ITS ENTRY AND EXECUTION
>
> ...
>
> **In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.**[46]

In *Commissioner of Internal Revenue v. Lancaster Philippines, Inc,*[47] the Supreme Court affirmed the authority of the CTA to rule on issues not raised by the parties:

> The above section [Section 1, Rule 14 of the Revised Rules of the CTA] is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA **even though the parties had not raised the same in their pleadings or memoranda.** The CTA *En Banc* was likewise correct in sustaining the CTA Division's view concerning such matter.

Findings of fact by the Court in Division are not to be disturbed without any showing of grave abuse of discretion. The members of the Court in Division are in the best position to analyze the documents presented by the parties.[48]

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45 A.M. No. 05-11-07-CTA.

46 Boldfacing supplied.

47 G.R. No. 183408, July 12, 2017.

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

In fine, the Court in Division is correct in partially granting Carmen Copper's unutilized input VAT refund attributable to its zero-rated sales for the 2nd quarter of TY 2017 ended December 31, 2017 to the extent of ₱6,474,060.17.

WHEREFORE, the Petition for Review filed by the Commissioner of Internal Revenue in CTA EB No. 2735, and the Petition for Review filed by Carmen Copper Corporation in CTA EB No. 2743 are **DENIED** for lack of merit. Accordingly, the Decision dated July 15, 2022 and the Resolution dated January 31, 2023 in CTA Case No. 10201 are **AFFIRMED.**

SO ORDERED.

MARIAN IVY F. REYES-FAJARDO
Associate Justice

WE CONCUR:

(See Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(I concur with dissent to the portion, "to run after its suppliers" for being inconsistent with Court's partial grant of refund.)
CATHERINE T. MANAHAN
Associate Justice

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

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(I Join J. Villena's Separate Opinion)
LANEE S. CUI-DAVID
Associate Justice

(I join J. Villena's Separate Opinion)
CORAZON G. FERRER-FLORES
Associate Justice

(I respectfully adopt the CDO of Presiding Justice)
HENRY S. ANGELES
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

CARMEN COPPER CORPORATION,
Respondent.

CTA EB No. 2735
(CTA Case No. 10201)

x- -x

CARMEN COPPER CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 2743
(CTA Case No. 10201)

Present:

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

Promulgated:
NOV 26 2024 4:16 pm

x- -x

CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

I concur in the *ponencia* in denying the Petition for Review filed by the Commissioner of Internal Revenue (CIR) in CTA EB No. 2735.

In CTA EB No. 2743, I, likewise, concur with the following findings of the *ponencia*:

1. The export sale made by Carmen Copper Corporation (CCC) to MRI Trading MG in the amount of ₱398,294,291.54 or US$8,218,602.79 on July 4, 2017 does not qualify for zero-rating for being supported by a provisional invoice and Bill of Lading dated outside the period of claim;

2. CCC's proper recourse, as a taxpayer enjoying zero-rated preference, is to claim from its local suppliers the amount of value-added tax (VAT) on local purchases that was erroneously shifted by them following the principle laid down in *Coral Bay Nickel Corp.* vs. *CIR*;[1]

3. Absent the Single Administrative Document (SAD) or Import Entry and Internal Revenue Declaration (IEIRD), the input VAT from importation of goods supported only by the Statement of Settlement of Duties and Taxes (SSDT) and VAT Payment Certification issued by the Bureau of Customs must be disallowed;

4. CCC was not denied due process in its claim for input VAT refund; and,

5. The disallowance of CCC's zero-rated sales does not make the sale subject to 12% VAT or VAT-exempt.

With due respect, however, I submit that direct export sales of BOI-registered enterprises, like Carmen Copper Corporation (CCC), fall under Section 106(A)(2)(a)**(5)** of the Tax Code, as amended, which need not be substantiated with payment of acceptable foreign currency duly accounted for in accordance with the BSP rules and regulations.

CCC is a BOI-registered enterprise; as such, its export sales are transactions within the ambit of **Section** 106(A)(2)(a)**(5) of the Tax Code**, being transactions considered as **export sales under Article 23 of the Omnibus Investments Code (OIC or Executive Order No. 226 [EO 226])**.

When the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.[2]

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[1] G.R. No. 190506, June 13, 2016.
[2] *Commissioner of Internal Revenue vs. Philex Mining Corp.*, G.R. No. 230016, November 23, 2020.

Section 106(A)(2)(a) of the Tax Code, reads:

"Section 106. *Value-Added Tax on Sale of Goods or Properties*. -

(A) Rate and Base of Tax. - xxx

xxx

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) *Export Sales.* -The term 'export sales' means:

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and **paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)**;

(2) Sale of raw materials or packaging materials to a nonresident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods and paid **for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)**;

(3) Sale of raw materials or packaging materials to export-oriented enterprise whose export sales exceed seventy-percent (70%) of total annual production;

(4) Sale of gold to the Bangko Sentral ng Pilipinas (BSP);

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

(6) The sale of goods, supplies, equipment and fuel to persons engaged in international shipping or international air transport operations." (*Boldfacing supplied*)

On the other hand, Section 112 of the Tax Code, which provides the requisites for refund or issuance of tax credit certificate of creditable input tax pertinently states:

"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: ***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)**; xxx." *(Boldfacing and underscoring supplied)*

These Tax Code provisions are clear and unambiguous. Section 106(A)(2)(a) plainly shows that the phrase "**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)**" is an indispensable requirement only for ordinary export sales and constructive export sales under Section 106(A)(2)(a)**(1), and (2). It is not required for export sales by a BOI-registered export enterprise under Section** 106(A)(2)(a)**(5).**

Had the law intended to treat export sales by a BOI-registered export enterprise under Section 106(A)(2)(a)**(5)** in the same way as ordinary export sales under Section 106(A)(2)(a)**(1)**, the *proviso* in Section 112(A) could have simply specifically mentioned "payment" in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the BSP as a requirement in Section 106(A)(2)(a)**(5)**. But, it did not. Thus, the only conclusion is that they should be treated differently.

It must be emphasized that Section 106(A)(2)(a)**(1)** and **(5)** of the Tax Code specify **two (2) different categories** of "export sales". **When an exporter that is not registered with the BOI** sells and actually ships goods from the Philippines to a foreign country, such export sale falls under Section 106(A)(2)(a)**(1)** as this is the provision that applies to any and all kinds of exportations. However, **if the exporter is BOI-registered**, the actual exportation of goods from the Philippines to a foreign country falls under the definition of "export sale" under Article 23 of the OIC, for which Section 106(A)(2)(a)**(5)** of the Tax Code, becomes applicable.

The Tax Code itself provided the distinction between exports by BOI-registered exporter and a non-BOI exporter. Reasonable classification is permitted by the Constitution, as one class may be treated differently from another where the groupings are based on reasonable and real distinctions.[3]

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[3] *Zomer Development Company, Inc. vs. Special Twentieth Division of the Court of Appeals, Cebu City and Union Bank of the Philippines*, G.R. No. 194461, January 7, 2020.

Clearly, there is nothing in Section 106(A)(2)(a)**(5)** that requires the claimant to prove that its export sale was paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the BSP. **To do so would render nugatory the different meanings of export sales.**

Article 23 of the OIC states that:

> "ART. 23. 'Export sales' shall mean the Philippine port F.O.B. value, determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products **exported directly by a registered export producer** or the net selling price of export product sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same: Provided, That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents: Provided, further, That without actual exportation the following shall be considered constructively exported for purposes of this provision: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) sales to export processing zones; (3) sales to registered export traders operating bonded trading warehouses supplying raw materials used in the manufacture of export products under guidelines to be set by the Board in consultation with the Bureau of Internal Revenue and the Bureau of Customs; (4) sales to foreign military bases, diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products whether paid for in foreign currency or not: Provided, further, That export sales of registered export trader may include commission income: and Provided, finally, That exportation of goods on consignment shall not be deemed export sales until the export products consigned are in fact sold by the consignee.
>
> Sales of locally manufactured or assembled goods for household and personal use to Filipinos abroad and other non-residents of the Philippines as well as returning Overseas Filipinos under the Internal Export Program of the government and paid for in convertible foreign currency inwardly remitted through the Philippine banking systems shall also be considered export sales." *(Boldfacing supplied)*

Similarly, there is nothing in Article 23 of the OIC that requires payment of acceptable foreign currency duly accounted for in accordance with BSP rules and regulations for direct export sales to be considered as export sales.

All told, I VOTE to: (i) DENY for lack of merit Commissioner of Internal Revenue's Petition for Review in CTA EB No. 2735; (ii)

PARTIALLY GRANT the Petition for Review filed by Carmen Copper Corporation in CTA EB No. 2743; and, (iii) REMAND the case to the Court in Division for the determination of the additional refundable amount due to CCC, **taking into consideration the above discussion that direct export sales of BOI-registered enterprise, like CCC, need not be substantiated with proof that the sales were paid for in acceptable foreign currency duly accounted for in accordance with the BSP rules and regulations.**

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner, - versus - **CARMEN COPPER CORPORATION,** Respondent.	**CTA EB No. 2735** (CTA Case No. 10201)
CARMEN COPPER CORPORATION, Petitioner, - versus - **COMMISSIONER OF INTERNAL REVENUE,** Respondent.	**CTA EB No. 2743** (CTA Case No. 10201) Present: **DEL ROSARIO,** *P.J.*, **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO,** **CUI-DAVID,** **FERRER-FLORES,** *and* **ANGELES,** *JJ.* Promulgated: NOV 26 2024 4:16

SEPARATE OPINION

BACORRO-VILLENA, J.:

I concur in the denial of the Commissioner of Internal Revenue's (**CIR**'s) *Petition for Review* in CTA EB No. 2735 for lack of merit.

I also concur in the denial of Carmen Copper Corporation's (**CCC**'s) *Petition for Review* in CTA EB No. 2743 for lack of merit. *However*, with due respect, I espouse a different view as regards the computation of the amount of excess and unutilized input value-added tax (**VAT**) attributable to zero-rated sales (or the refundable amount before deducting the amount of ₱34,258,134.20 already granted *per* VAT Refund Notice dated 02 September 2019[1]).

In the Decision dated 15 July 2022[2] (**assailed Decision**), the Special Second Division computed the refundable amount of excess and unutilized input VAT attributable to valid zero-rated sales of **₱6,474,060.17** for the 2nd Quarter of the taxable year (**TY**) 2017, as follows:

Table 1. Substantiated or Valid Input VAT Allocation to VAT-able Sales

Total VAT-able Sales *per* 2nd Quarterly VAT Return for TY 2017	₱5,923,404.96
Divided by Total Sales *per* 2nd Quarterly VAT Return for TY 2017	2,373,800,720.27
Multiplied by Substantiated or Valid Input VAT	49,833,756.11
Substantiated or Valid Input VAT allocated to VAT-able Sales	**₱124,584.39**

Table 2. Substantiated or Valid Input VAT Allocation to Sales to Government

Total VAT-able Sales *per* 2nd Quarterly VAT Return for TY 2017	₱842,523.43
Divided by Total Sales *per* 2nd Quarterly VAT Return for TY 2017	2,373,800,720.27
Multiplied by Substantiated or Valid Input VAT	49,833,756.11
Substantiated or Valid Input VAT allocated to VAT-able Sales	**₱19,933.50**

Table 3. Substantiated or Valid Input VAT Allocation to *Declared* Zero-Rated Sales

Total Zero-Rated Sales *per* 2nd Quarterly VAT Return for TY 2017	₱2,366,032,147.53
Divided by Total Sales *per* 2nd Quarterly VAT Return for TY 2017	2,373,800,720.27
Multiplied by Substantiated or Valid Input VAT	49,833,756.11
Substantiated or Valid Input VAT allocated to *Declared* Zero-Rated Sales	**₱49,669,304.71**

Table 4. Computation of Output VAT Still Due

Output VAT for VAT-able Sales	₱710,808.60
Less: Substantiated or Valid Input VAT allocated to VAT-able Sales	124,584.39
Output VAT Still Due for VAT-able Sales (a)	**₱586,224.21**
Output VAT for Sales to Government	₱101,102.82
Less: Substantiated or Valid Input VAT allocated to Sales to Government	19,933.50
Output VAT Still Due for Sales to Government (b)	**₱81,169.32**
Total Output VAT Still Due (c) = (a) + (b)	**₱667,393.53**

Table 5. Refundable Excess and Unutilized Input VAT Attributable to *Valid* Zero-Rated Sales

Substantiated or Valid Input VAT allocated to *Declared* Zero-Rated Sales	₱49,669,304.71
Less: Total Output VAT Still Due	667,393.53
Excess and Unutilized Substantiated or Valid Input VAT allocated to *Declared* Zero-Rated Sales	**₱49,001,911.19**

1 Exhibit "P-12", Division Docket, Volume II, pp. 468-469.
2 Id., pp. 709-748.

Divided by Declared Zero-Rated Sales	2,366,032,147.53
Multiplied by Valid Zero-Rated Sales	1,966,733,112.62
Excess and Unutilized Substantiated or Valid Input VAT attributable to *Valid* Zero-Rated Sales	**₱40,732,194.37**
Less: Input VAT Refund Partially Granted by the BIR	34,258,134.20
Additional Input VAT to be Refunded	**₱6,474,060.17**

However, prior to the promulgation of the assailed Decision, specifically on 05 July 2022, the Supreme Court issued its decision in *Chevron Holdings, Inc. (formerly Caltex Asia Limited) v. Commissioner of Internal Revenue*[3] (**Chevron**). In this case, the High Court provided pivotal guidelines for computing the refundable excess and unutilized input VAT attributable to zero-rated sales when the taxpayer-claimant is engaged in mixed transactions.

Very recently, on 04 October 2024 and 21 October 2024, respectively, the Court *En Banc* promulgated its decisions in *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*[4] and *Commissioner of Internal Revenue v. Stefanini Philippines, Inc.*[5], adjusting the computation of the refundable amount of excess and unutilized input VAT attributable to valid zero-rated sales following the Supreme Court's pronouncements in *Chevron*, as will be discussed below.

Fundamentally, the Supreme Court definitively held in *Chevron* that a VAT-registered taxpayer has two (2) options with respect to its input VAT attributable to zero-rated sales, it may: (1) charge the same against output VAT from VAT-able sales, and claim for refund or issuance of a Tax Credit Certificate (**TCC**) any unutilized or "excess" input VAT; or, (2) claim the same for refund or issuance of a TCC in its entirety, *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 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**

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3 G.R. No. 215159, 05 July 2022.
4 With the Court *En Banc* voting unanimously. See CTA EB Case No. 2764 (C.T.A. Case No. 9154).
5 With the Court *En Banc* voting unanimously. See CTA EB Case No. 2753 (C.T.A. Case No. 10188).

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.

...

First, Section 112 (A) of the [NIRC of 1997, as amended] merely requires that the input tax claimed for refund or the issuance of tax credit certificate "**has not been applied against [the] output tax[.]**" Section 4.112-1 (a) of RR No. 16-2005 states that "**[t]he input tax that may be subject of the claim shall exclude the portion of input tax that has been applied against the output tax.**" ...

...

The law and rules are clear and need no interpretation. The taxpayer only needs to prove *non-application or non-charging of the input VAT subject of the claim*. **There is nothing in the law and rules that mandate the taxpayer to deduct the input tax attributable to zero-rated sales from the output tax from regular twelve percent (12%) VAT-able sales first** and only the "excess" may be refunded or issued a tax credit certificate. To reiterate, these remedies accorded by law to the taxpayer are alternatives. **Requiring taxpayers to prove that they did not charge the input tax claimed for refund against the output tax is one thing; requiring them to prove that they have "excess" input tax *after* offsetting it from output tax is another.** The former is essential to the entitlement of the refund under Section 112 (A); the latter is not. The reason is that a taxpayer who enjoyed a lower (or zero) output tax payable because it deducted the input tax from zero-rated sales from the output tax cannot benefit twice by applying for the refund or tax credit of the same input tax used to reduce its output tax liability. Proof of non-charging the input tax subject to the refund or credit against the output tax is to avert double recovery.

...

...[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.

Second, Congress referred to "**any input tax**" in the *proviso* of Section 110 (B), which could mean one, some, or all input tax from zero-rated sales. **Had the legislature intended the charging of the input tax attributable to zero-rated sales against the output tax as a preliminary step to the refund or issuance of a tax credit certificate, it would have used the phrase "excess input tax" in the provision.**

To be sure, **the lawmakers had contemplated the input tax attributable to zero-rated sales as an amount that will be refunded or credited and not offset against the output tax.** ...

...

If the Congress intended the crediting of input tax against the output tax as a condition precedent to the refund or issuance of a tax credit certificate, they could have stressed this during the deliberations. They did not. **Instead, it was clarified that when the taxpayer is engaged in *both* regular and zero-rated transactions,** as in Chevron Holdings' case, **the ratable portion allocable to zero-rated sales is "immediately refundable" or creditable.**

Third, **to call the refundable input tax in Section 110 (B), in relation to Section 112 (A), "excess" input tax is a misnomer since what is being applied for a refund or tax credit is the unutilized or unused input VAT from zero-rated sales.** As a matter of fact, **there is no "excess" input tax attributable to zero-rated sales as there is no related output tax from which the input tax may be charged against.** For context, in zero-rated transactions, the tax rate is set at zero percent. Consequently, the seller charges zero output tax. However, the seller may have incurred input taxes from its purchases of goods and/or services related to its sales. The input taxes previously charged by suppliers **remain unutilized or unused until charged against the output tax from the non-zero-rated sale transactions** in the same quarter that the input taxes were incurred or applied for a refund or the issuance of tax credit certificate within two (2) years from the close of the taxable quarter when the related sales were made.

...

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.**[6]

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6 Supra at note 3; Citations omitted, italics in the original text, emphasis in the original text and supplied, and underscoring supplied.

...

Clearly from the foregoing, a VAT-registered taxpayer has the discretion to decide whether to charge its input VAT attributable to zero-rated sales against output VAT. The CTA cannot impose its own methods for calculating the refund, such as compelling the crediting of input VAT against output VAT as a condition precedent to the refund or issuance of a TCC. This is especially true when the taxpayer-claimant opts to claim the input VAT attributable to zero-rated sales for a refund or issuance of a TCC in its entirety.

Furthermore, regardless of which option the taxpayer-claimant chooses, the Supreme Court's ruling in *Chevron* clarifies that since the taxpayer-claimant is requesting a refund of unutilized or unused input VAT from zero-rated sales (as opposed to the "excess" creditable input VAT from the output VAT), this amount is inherently immediately refundable, given that there is no related output VAT to offset it against. Therefore, the CTA's proper preliminary step in determining the refundable excess and unutilized input VAT attributable to valid zero-rated sales should be computing the ratable portion of the taxpayer-claimant's input VAT allocable to zero-rated sales, assuming the input VAT cannot be directly attributed to zero-rated activities.

It is only when the taxpayer-claims chooses the first option, *i.e.*, to charge the input VAT attributable to zero-rated sales against output VAT from VAT-able sales, and claim for refund or issuance of a TCC any unutilized or "excess" input VAT, as what herein taxpayer-claimant opted for in this case, that the CTA may require the offsetting of such ratable portion of the taxpayer-claimant's input VAT attributable to zero-rated sales against "Output VAT Still Due" as a condition precedent to the refund or issuance of a TCC.

Besides clarifying the nature of a taxpayer-claimant's claim for a refund of input VAT attributable to zero-rated sales—that the option to choose either of the two (2) remedies belongs to the taxpayer-claimant and that the method for calculating the refundable amount depends on the chosen option—in *Chevron*, the Supreme Court also introduced a fresh perspective on the substantiation requirement for input VAT that can be credited against output VAT. It established that delving into input tax substantiation pertains to the assessment of potential deficiency output VAT, which is not within the Court's authority in a judicial claim for refund under Section 112(A) of the NIRC of 1997, as amended, *viz*:

...

[T]he 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 [NIRC of 1997, as amended] 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.

It is true, in several cases, the Court has ruled that it will not grant a refund if the taxpayer has pending tax liability to the government because "[t]o award the refund despite the existence of deficiency assessment is an absurdity and a polarity in conceptual effects" and that "to grant the refund without determination of the proper assessment and the tax due would inevitably result in a multiplicity of proceedings or suits." We explained in *Commissioner of Internal Revenue v. Court of Appeals*, to wit:

> ... If the deficiency assessment should subsequently be upheld, the Government will be forced to institute anew a proceeding for the recovery of erroneously refunded taxes which recourse must be filed within the prescriptive period of ten years after [the] discovery of the falsity, fraud[,] or omission in the false or fraudulent return involved. This would necessarily require and entail additional efforts and expenses on the part of the Government, impose a burden on a drain of government funds, and impede or delay the collection of much-needed revenue for governmental operations.
>
> Thus, to avoid multiplicity of suits and unnecessary difficulties or expenses, it is both logically necessary and legally appropriate that the issue of the deficiency tax assessment against Citytrust be resolved jointly with its claim for [the] tax refund, to determine once and for all in a single proceeding the true and correct amount of tax due or refundable.

But in these cases, the taxpayer's liability for deficiency taxes is related to and intertwined with the resolution of the claim for refund. Such a situation is not present here. The records do not show that Chevron Holdings is delinquent for output VAT or that it is being assessed for deficiency output tax in the first, second, third, and fourth quarters of the taxable year 2006.[7]

...

Without qualifying as to the option chosen by the taxpayer-claimant, the Supreme Court held that it is not for the CTA, nor even the High Court, to rule on the sufficiency or substantiation of input taxes in a refund claim under Section 112(A) of the NIRC, as amended. The authority to determine and assess deficiency taxes rests with the BIR; hence, courts cannot substitute their judgment for that of the BIR (in assessing tax deficiencies) in judicial proceedings.

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7 Supra at note 3; Citations omitted, italics in the original text, emphasis and underscoring supplied.

The foregoing declaration aligns with the ruling in *SMI-ED Philippines Technology, Inc. v. Commissioner of Internal Revenue*[8] (**SMI-ED**), where the Supreme Court explained that, as a rule, the CTA has no power to make an assessment, directly or indirectly, as its jurisdiction over matters such as tax collection, tax refund, and others related to the national internal revenue taxes is appellate in nature. This implies that the BIR must have had a prior determination of the taxpayer-claimant's deficiency tax liability before the Court can adjudicate the same in a judicial proceeding for a refund claim. The relevant portions of the ruling in *SMI-ED* are quoted below.

> ...
>
> The term "assessment" refers to the determination of amounts due from a person obligated to make payments. In the context of national internal revenue collection, it refers the determination of the taxes due from a taxpayer under the National Internal Revenue Code of 1997.
>
> **The power and duty to assess national internal revenue taxes are lodged with the BIR.** ...
>
> ...
>
> **The Court of Tax Appeals has no power to make an assessment at the first instance. On matters such as tax collection, tax refund, and others related to the national internal revenue taxes, the Court of Tax Appeals' jurisdiction is appellate in nature.**
>
> ...
>
> **Thus, the BIR first has to make an assessment of the taxpayer's liabilities.** When the BIR makes the assessment, the taxpayer is allowed to dispute that assessment before the BIR. If the BIR issues a decision that is unfavorable to the taxpayer or if the BIR fails to act on a dispute brought by the taxpayer, the BIR's decision or inaction may be brought on appeal to the Court of Tax Appeals. The Court of Tax Appeals then acquires jurisdiction over the case.
>
> When the BIR's unfavorable decision is brought on appeal to the Court of Tax Appeals, the Court of Tax Appeals reviews the correctness of the BIR's assessment and decision. **In reviewing the BIR's assessment and decision, the Court of Tax Appeals had to make its own determination of the taxpayer's tax liabilities. The Court of Tax Appeals may not make such determination before the BIR makes its assessment and before a dispute involving such assessment is brought to the Court of Tax Appeals on appeal.**
>
> ...
>
> **As earlier established, the Court of Tax Appeals has no assessment powers.** In stating that petitioner's transactions are subject to capital gains tax, however, the Court of Tax Appeals was not making an assessment. It was merely determining the proper category of tax that petitioner should have paid, in view of its claim that it erroneously imposed upon itself and paid the 5% final tax imposed upon PEZA-registered enterprises.

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8 G.R. No. 175410, 12 November 2014.

> The determination of the proper category of tax that petitioner should have paid is an incidental matter necessary for the resolution of the principal issue, which is whether petitioner was entitled to a refund.
>
> The issue of petitioner's claim for tax refund is intertwined with the issue of the proper taxes that are due from petitioner. A claim for tax refund carries the assumption that the tax returns filed were correct. If the tax return filed was not proper, the correctness of the amount paid and, therefore, the claim for refund become questionable. In that case, the court must determine if a taxpayer claiming refund of erroneously paid taxes is more properly liable for taxes other than that paid.
>
> ...
>
> Any liability in excess of the refundable amount, however, may not be collected in a case involving solely the issue of the taxpayer's entitlement to refund. **The question of tax deficiency is distinct and unrelated to the question of petitioner's entitlement to refund.** Tax deficiencies should be subject to assessment procedures and the rules of prescription. **The court cannot be expected to perform the BIR's duties whenever it fails to do so either through neglect or oversight. Neither can court processes be used as a tool to circumvent laws protecting the rights of taxpayers.**[9]
>
> ...

In the subsequent case of *Commissioner of Internal Revenue v. Toledo Power Company*[10] (**Toledo**), where *SMI-ED* was cited, the Supreme Court reiterated that courts do not possess assessment powers. Therefore, when the accuracy of VAT returns is not in question—such as in a claim for tax refund or credit under Section 112 of the NIRC of 1997, as amended, where the issue to be resolved is whether the taxpayer is entitled to a refund or credit of its unutilized input VAT—courts cannot issue assessments against taxpayers; they can only review the CIR's assessments. The relevant portion of the ruling states:

> ...
>
> But while TPC's sales of electricity to CEBECO, ACMDC, and AFC are not zero-rated, we cannot hold it liable for deficiency VAT by imposing 10% VAT on said sales of electricity as what the CIR wants us to do.
>
> As a rule, taxes cannot be subject to compensation because the government and the taxpayer are not creditors and debtors of each other. However, we are aware that in several cases, we have allowed the determination of a taxpayer's liability in a refund case, thereby allowing the offsetting of taxes.
>
> In *Commissioner of Internal Revenue v. Court of Tax Appeals,* we allowed offsetting of taxes in a tax refund case because there was an existing deficiency income and business tax assessment against the taxpayer. We said

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9 Supra at note 8; Citations omitted, emphasis and underscoring supplied.

10 G.R. Nos. 196415 & 196451, 02 December 2015; Citations omitted, italics in the original text and emphasis and underscoring supplied.

that "[t]o award such refund despite the existence of that deficiency assessment is an absurdity and a polarity in conceptual effects" and that "to grant the refund without determination of the proper assessment and the tax due would inevitably result in multiplicity of proceedings or suits."

Similarly, in *South African Airways v. Commissioner of Internal Revenue*, we permitted offsetting of taxes because the correctness of the return filed by the taxpayer was put in issue.

In the recent case of *SMI-ED Philippines Technology, Inc. v. Commissioner of Internal Revenue*, we also allowed offsetting because there was a need for the court to determine if a taxpayer claiming refund of erroneously paid taxes is more properly liable for taxes other than that paid. We explained that the determination of the proper category of tax that should have been paid is not an assessment but is an incidental issue that must be resolved in order to determine whether there should be a refund. However, we clarified that while offsetting may be allowed, the BIR can no longer assess the taxpayer for deficiency taxes in excess of the amount claimed for refund if prescription has already set in.

But in all these cases, we allowed offsetting of taxes only because the determination of the taxpayer's liability is intertwined with the resolution of the claim for tax refund of erroneously or illegally collected taxes under Section 229 of the NIRC. A situation that is not present in the instant case.

In this case, **TPC filed a claim for tax refund or credit under Section 112 of the NIRC, where the issue to be resolved is whether TPC is entitled to a refund or credit of its unutilized input VAT** for the taxable year 2002. And **since it is not a claim for refund under Section 229 of the NIRC, the correctness of TPC's VAT returns is not an issue. Thus, there is no need for the court to determine whether TPC is liable for deficiency VAT**.

Besides, **it would be unfair to allow the CIR to use a claim for refund under Section 112 of the NIRC as a means to assess a taxpayer for any deficiency VAT, especially if the period to assess had already prescribed. As we have said, the courts have no assessment powers, and therefore, cannot issue assessments against taxpayers. The courts can only review the assessments issued by the CIR, who under the law is vested with the powers to assess and collect taxes and the duty to issue tax assessments within the prescribed period.**

...

Indeed, since the CTA is precluded from making a judicial assessment for deficiency tax, it cannot determine and rule in a judicial claim for a refund under Section 112(A) of the NIRC of 1997, as amended, that the taxpayer-claimant had insufficient or unsubstantiated input VAT to cover its output VAT liability. This pronouncement inevitably impacts the Court's formula for calculating: (1) the "**Output VAT Still Due**," which is the net amount of output VAT payable after deducting the ratable portion of input VAT

allocable to VAT-able sales; and, (2) ultimately, the **"Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales."**

The impact can be summarized as follows: what should be the proper basis for allocating input VAT—is it the "Declared Input VAT" (or the "Total Available Input VAT" for the period of claim) or the "Substantiated or Valid Input VAT" (after deducting disallowances)?

i. ***The apportionment of input VAT for purposes of computing the "Output VAT Still Due" should be based on the "Declared Input VAT."***

As regards the computation of "Output VAT Still Due," the 'no judicial assessment rule' necessarily prevents the Court from reducing the ratable portion of input VAT allocable to VAT-able sales for failure of substantiation. Thus, instead of the "Substantiated or Valid Input VAT," which is what the Court typically uses in apportioning input VAT based on sales volume, it should be the **"Declared Input VAT"** for the period of claim.

To reiterate, as held in *Chevron*, **"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."** Given that the ratable portion of input VAT allocable to VAT-able sales is credited against output VAT to arrive at "Output VAT Still Due," the Court is bound to apportion the taxpayer-claimant's declaration of "Total Available Input VAT" in the relevant VAT Return for the period of claim. Reducing this amount to only the substantiated portion would be tantamount to an indirect judicial assessment for deficiency VAT.

On this note, since the Special Second Division used the "Substantiated or Valid Input VAT" (which is lower than the "Total Declared Input VAT" for the 2nd Quarter of TY 2017, after removing the unsubstantiated portion) in determining the ratable portions of input VAT allocable to VAT-able sales and sales to government, there is an indirect judicial assessment for deficiency VAT to the extent of the difference of ₱2,385.89 as against the "should be" ratable portions of input VAT allocable to VAT-able sales and sales to government using the "Declared Input VAT," as shown below:

Table 1. Input VAT Allocation	Amount (a)		Allocation Factor (c) = (a) / (b)	Allocated Declared Input VAT (e) = (c) x (d)		Allocated Substantiated Input VAT (g) = (c) x (f)		Difference (h) = (e) – (g)
Zero-Rated Sales	₱2,366,032,147.53		99.67%	₱50,489,308.57		₱49,669,304.71		₱820,003.86

Table 1. Input VAT Allocation	**Amount (a)**		**Allocation Factor (c) = (a) / (b)**	**Allocated Declared Input VAT (e) = (c) x (d)**		**Allocated Substantiated Input VAT (g) = (c) x (f)**		**Difference (h) = (e) - (g)**
VAT-able Sales	5,923,404.96		0.25%	126,641.19		124,584.39		2,056.80
Exempt Sales	1,002,644.35		0.04%	20,262.59		19,933.50		329.09
Sales to Government	842,523.43		0.04%	20,262.59		19,933.50		329.09
Total Sales	**₱2,373,800,720.27**	(b)	100.00%	**₱50,656,474.94**	(d)	**₱49,833,756.10**	(f)	**₱822,718.84**

Table 2. Computation of Output VAT Still Due

	VAT-able Sales	Sales to Gov't	Total
Output VAT	₱710,808.60	₱101,102.82	₱811,911.42
Less: Allocated Declared Input VAT	126,641.19	20,262.59	146,903.78
Output VAT Still Due	**₱584,167.41**	**₱80,840.23**	**₱665,007.64**

Accordingly, the "Output VAT Still Due" (against which the ratable portion of input VAT allocable to zero-rated sales will be offset to arrive at the unutilized input VAT attributable to zero-rated sales) in this case should only be **₱665,007.64**, compared to ₱667,393.53 as computed by the Special Second Division.

In this case, the difference of ₱2,385.89, representing the amount of indirect judicial assessment for deficiency VAT, is negligible since CCC's VAT-able sales and sales to government comprise merely 0.29%[11] of the total sales, and the total disallowed input VAT is only about 1.62%[12] of the "Declared Input VAT." However, it is important to note that this difference could potentially be significant if CCC had more VAT-able and sales to government transactions and the Court had disallowed a larger portion of the "Declared Input VAT."

Recognizing the fact that the Court's longstanding practice of using the "Substantiated or Valid Input VAT," which is typically lower than the "Declared Input VAT," in apportioning input VAT for purposes of calculating the portion allocable to VAT-able sales and sales to government inevitably leads to an indirect assessment for deficiency VAT without prior determination from the BIR (through an assessment or any other tax collection effort), the Court must conscientiously change its approach. This is particularly relevant in refund cases where the ratable portions of input VAT allocable to VAT-able sales and sales to government are insufficient to cover the output VAT on VAT-able sales and sales to government for the period of claim or where there is an "Output VAT Still Due."

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11 VATable Sales at 0.25% plus Sales to Government at 0.04% = 0.29% of Total Sales.

12 (Declared Input VAT of ₱50,656,474.94 less Substantiated or Valid Input VAT of ₱49,833,756.11) divided by ₱50,656,474.94.

This impact is exacerbated when the amounts involved corresponding to VAT-able sales and sales to government are significant and the disallowed input VAT, ascertained during judicial proceedings, is substantial. To avoid the risk of reducing the amount of creditable input VAT, which unwittingly sanctions a judicial assessment for deficiency VAT—an outcome the Supreme Court sought to correct through its pronouncement in *Chevron*—I respectfully submit that the Court *En Banc* should change the formula for computing the "Output VAT Still Due."

This new formula or method of computing "Output VAT Still Due" ensures that the risk of judicially sanctioning an indirect deficiency VAT assessment is completely avoided, aligning the Court's practice with the *ratio decidendi* of the Supreme Court's ruling in *Chevron*.

ii. The apportionment of input VAT for purposes of computing the "Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales" should also be based on the "Declared Input VAT."

Regarding the computation of the "Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales," the next logical step would be to determine how much of the ratable portion of input VAT allocable to zero-rated sales will be offset against the "Output VAT Still Due."

This aspect of the computation raises a similar question about the proper basis for allocating input VAT. Should it be the "Declared Input VAT" (or the "Total Available Input VAT" for the period of claim), consistent with the computation of the "Output VAT Still Due," or the "Substantiated or Valid Input VAT" (after deducting disallowances)?

The Court's primary consideration for its longstanding practice of using the "Substantiated or Valid Input VAT" is that the evaluation of the merits of a refund claim should be limited to the substantiated portion of input VAT attributable to zero-rated sales. Since the "Substantiated or Valid Input VAT," like the "Declared Input VAT," is an undivided amount, the apportionment of input VAT based on sales volume should begin with this amount.

The Court must therefore examine the rationale of both approaches to determine whether the allocation of input VAT should be based on the declared amount or the substantiated amount after adjustments.

There are two (2) contrasting interpretations of the 'no judicial assessment rule' enunciated in *Chevron* insofar as the ratable portion of input VAT allocable to zero-rated sales is concerned.

The ***first interpretation*** treats the 'no judicial assessment rule' as **applicable to both options** of the taxpayer-claimant. Regardless of whether the input VAT attributable to zero-rated sales is charged against the "Output VAT Still Due," the Court should not reduce this ratable portion for any disallowances, as this would also be tantamount to an indirect judicial assessment for deficiency VAT.

In other words, when determining the ratable portion of input VAT allocable to zero-rated sales that will be offset against the "Output VAT Still Due," as sanctioned under Section 112(A)[13] of the NIRC of 1997, as amended, the Court should not examine the substantiation of the "Declared Input VAT" (or the "Total Available Input VAT" for the period of claim). Instead, the apportionment of input VAT based on sales volume between that allocable to VAT-able sales and zero-rated sales (and/or any other type of sales, as applicable) should consistently be based on the "Declared Input VAT."

The resulting amount of "Excess and Unutilized Input VAT attributable to Declared Zero-Rated Sales," in turn, may be reduced to equal the "Substantiated or Valid Input VAT" (after deducting disallowances), as only such portion corresponding to transactions "incurred or paid" may be refunded to the taxpayer-claimant pursuant to Section 112(A)[14] of the NIRC of 1997, as amended.

Correspondingly, the basis for computing the refundable amount in relation to what the taxpayer-claimant is able to establish as valid zero-rated sales would be the lower amount between the resulting "Excess and Unutilized Input VAT attributable to Declared Zero-Rated Sales" and the "Substantiated or Valid Input VAT." Notably, in the event that the lower amount is the "Substantiated or Valid Input VAT," the whole amount is deemed attributable to zero-rated sales, *i.e.*, it will no longer be re-apportioned based on sales volume.

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[13] 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**[.] (Emphasis and underscoring supplied)

[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[.] (Emphasis and underscoring supplied)

The final step would be to compute for the "Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales," which is the amount corresponding only to valid zero-rated sales. The amount corresponding to the invalid zero-rated sales, although duly substantiated, is no longer refundable since under Section 112(A)[15] of the NIRC of 1997, as amended, the right to apply for refund or issuance of a TCC only covers valid zero-rated sales.

Following the ***first interpretation***, the recomputed "Output VAT Still Due" of ₱665,007.64 shall be offset against the ratable portion of input VAT allocable to zero-rated sales using the "Declared Input VAT" amounting to ₱50,489,308.57, resulting in the "Excess and Unutilized Input VAT attributable to Declared Zero-Rated Sales" of ₱49,824,300.93. Since the "Substantiated or Valid Input VAT" (after deducting disallowances) is ₱49,833,756.11, only ₱49,824,300.93 (the lower amount) is deemed attributable to zero-rated sales. Given that CCC was only able to establish valid zero-rated sales of ₱1,966,733,112.62 (or 83.12%) of the declared zero-rated sales of ₱2,366,032,147.53, the "Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales" would be ₱41,415,795.03. As such, the "Additional Input VAT to be Refunded" after deducting the amount of ₱34,258,134.20 already granted *per* VAT Refund Notice dated 02 September 2019[16] should be **₱7,157,660.83**.

Below is table summary of the computation of "Additional Input VAT to be Refunded" under the ***first interpretation***:

Table 3. Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales

Declared Input VAT allocated to Declared Zero-Rated Sales	₱50,489,308.57
Less: Total Output VAT Still Due	665,007.64
Excess and Unutilized Input VAT attributable to Declared Zero-Rated Sales (a)	**₱49,824,300.93**
Substantiated or Valid Input VAT (after deducting disallowances)[17] (b)	49,833,756.11

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15 **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[.] (Emphasis and underscoring supplied)

16 Supra at note 1.

17 Out of the "Declared Input VAT" of ₱50,656,474.94 for the 2nd Quarter of CY 2017, only the amount of ₱49,833,756.11 pertains to validly substantiated input VAT, computed as follows:

Total Declared Input VAT	₱52,294,997.38
Less: Disallowances	
Found by the ICPA	1,638,522.45
Found by the Court	822,718.82
Total Disallowances	*2,461,241.27*
Total Substantiated or Valid Input VAT	**₱49,833,756.11**

Substantiated or Valid Input VAT deemed attributable to Zero-Rated Sales [whichever is lower between (a) and (b)]	**₱49,824,300.93**
Divided by Declared Zero-Rated Sales *per* 2nd Quarterly VAT Return for TY 2017	2,366,032,147.53
Multiplied by Valid Zero-Rated Sales *per* 2nd Quarterly VAT Return for TY 2017	1,966,733,112.62
Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales	**₱41,415,795.03**
Less: Input VAT Refund Partially Granted by the BIR	34,258,134.20
Additional Input VAT to be Refunded	**₱7,157,660.83**

On the other hand, the ***second interpretation*** considers the 'no judicial assessment rule' as **applicable only to the second option**, where the taxpayer claims the input VAT attributable to zero-rated sales for a refund or issuance of a TCC in its entirety. The rationale for this interpretation is that the factual milieu in *Chevron*, where therein taxpayer-claimant chose the second option, is not on all fours with refund cases where the taxpayer-claimant chose the first option.

Additionally, it can be argued that the CTA may examine the substantiation of the "Declared Input VAT" (or the "Total Available Input VAT" for the period of claim) in determining the ratable portion of input VAT allocable to zero-rated sales, as an exception to the 'no judicial assessment rule,' since this function is inherent in the Court's authority to determine the merits of a refund claim anchored in Section 112(A) of the NIRC of 1997, as amended.

Since it is well-settled that "a claim for tax refund or credit is similar to a tax exemption and should be strictly construed against the taxpayer. The burden of proof to show that he [or she] is ultimately entitled to the grant of such tax refund or credit rests on the taxpayer".[18] It thus stands to reason that the taxpayer-claimant must overcome the burden of substantiating the "Declared Input VAT" for the period of claim as a whole, rather than only the amount claimed for refund or the net input VAT (after deducting the output VAT from the "Declared Input VAT" for the period of claim).

Failure of substantiation merits the outright denial of the unsubstantiated portion of the "Declared Input VAT" for the period of claim such that only the substantiated portion thereof or the "Substantiated or Valid Input VAT" is apportioned based on sales volume in determining the ratable portion of input VAT allocable to the taxpayer-claimant's zero-rated sales.

The "Substantiated or Valid Input VAT" pertains to the amount worth of invoices or receipts submitted by the taxpayer to the Court for examination and confirmed to be compliant with the substantiation requirement under Sections 113 and 237 of the NIRC of 1997, as amended.

18 *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue*, G.R. No. 190506, 13 June 2016, citing *BPI Leasing Corporation v. The Honorable Court of Appeals, et al.*, G.R. No. 127624, 18 November 2003.

Following the ***second interpretation***, the recomputed "Output VAT Still Due" of ₱665,007.64 shall be offset against the ratable portion of input VAT allocable to *valid* zero-rated sales (using the "Substantiated or Valid Input VAT" of ₱49,833,756.11). Since zero-rated sales account for 99.67% of CCC's total sales, the said ratable portion amounts to ₱49,669,304.71. Then, as CCC was only able to establish valid zero-rated sales of ₱1,966,733,112.62 (or 83.12%) of the declared zero-rated sales of ₱2,366,032,147.53, the resulting "Excess and Unutilized Input VAT attributable to Valid Zero-Rated Sales" is ₱41,286,956.46. Ultimately, after offsetting thereto the "Output VAT Still Due" of ₱665,007.64, the "Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales" would be ₱40,621,948.82. As such, the "Additional Input VAT to be Refunded" after deducting the amount of ₱34,258,134.20 already granted *per* VAT Refund Notice dated 02 September 2019[19] should be **₱6,363,814.62**.[20]

Below is table summary of the computation of "Additional Input VAT to be Refunded" under the ***second interpretation***:

Table 3. Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales

Substantiated or Valid Input VAT allocated to Declared Zero-Rated Sales	₱49,669,304.71
Divided by Declared Zero-Rated Sales *per* 2nd Quarterly VAT Return for TY 2017	2,366,032,147.53
Multiplied by Valid Zero-Rated Sales *per* 2nd Quarterly VAT Return for TY 2017	1,966,733,112.62
Substantiated or Valid Input VAT allocated to Valid Zero-Rated Sales	**₱41,286,956.46**
Less: Total Output VAT Still Due	665,007.64
Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales	**₱40,621,948.82**
Less: Input VAT Refund Partially Granted by the BIR	34,258,134.20
Additional Input VAT to be Refunded	**₱6,363,814.62**

In contrast to the Special Second Division's approach, where the "Output VAT Still Due"[21] was first offset against the ratable portion of input VAT allocable to *declared* zero-rated sales before computing the refundable amount based on what CCC was able to establish as valid zero-rated sales, resulting in "Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales" amounting to ₱40,732,194.37[22] and "Additional Input VAT to be Refunded" amounting to ₱6,474,060.17[23], the foregoing computation under the ***second interpretation*** is more consistent with the Supreme Court's method of computing "Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales" in *Chevron*, citing Section

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19 Supra at note 1.

20 This amount is lower by ₱793,846.21 compared to the ₱7,157,660.83 refundable amount computed under the ***first interpretation***.

21 Computed at ₱667.393.53 since the apportionment of input VAT for purposes of computing the "Output VAT Still Due" was based on the "Substantiated or Valid Input VAT."

22 "Excess and Unutilized Substantiated or Valid Input VAT attributable to Valid Zero-Rated Sales" of ₱49,669,304.71 less "Output VAT Still Due" of ₱667.393.53.

23 This amount is higher by ₱110,245.55 compared to the ₱6,363,814.62 refundable amount computed under the ***second interpretation***.

4.110-4[24] of Revenue Regulations (**RR**) No. 16-2005[25], as amended by RR No. 4-2007[26]:

> ...
> ***Computation of refundable input tax attributable to zero-rated sales when the taxpayer-claimant is engaged in mixed transactions.***
>
> The manner of apportionment of the input tax is provided in Section 4.110-4 of RR No. 16-2005, as amended by RR No. 4-2007[.]
> ...
>
> 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.
> ...

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24 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

25 Consolidated Value-Added Tax Regulations of 2005.
26 Amending Certain Provisions of Revenue Regulations No. 16-2005, As Amended, Otherwise Known as the Consolidated Value-Added Tax Regulations of 2005.

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:

	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**

Claims for the tax refund, like tax exemptions, are construed *strictissimi juris* against the taxpayer. However, when the claim for refund has a clear legal basis and is sufficiently supported by evidence, as in the present case, then the Court shall not hesitate to grant the refund.[27]

...

As expressly stated in *Chevron*, "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." This means that only the valid portion of the "Substantiated or Valid Input VAT allocated to Declared Zero-Rated Sales" may be applied for refund or issuance of a TCC and creditable against the "Output VAT Still Due."

It must be stressed that the taxpayer-claimant should no longer benefit from the invalid portion in terms of applying or crediting it against "Output VAT Still Due," as it should only be claimed as expense or recorded as part of an asset account subject to depreciation, whichever is applicable, as provided under Q-13 and A-13 of Revenue Memorandum Circular (**RMC**) No. 42-03[28], to wit:

...

Q-13: Should penalty be imposed on TCC application for failure of claimant to comply with certain invoicing requirements, (e.g., sales invoices must bear the TIN of the seller)?

A-13: Failure by the supplier to comply with the invoicing requirements on the documents supporting the sale of goods and services will result to the **disallowance of the claim for input tax** by the purchaser-claimant.

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27 Citations omitted, italics in the original text, and emphasis in the original text and supplied.

28 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.

> **If the claim for refund/TCC is based on the existence of zero-rated sales by the taxpayer but it fails to comply with the invoicing requirements in the issuance of sales invoices (*e.g.* failure to indicate the TIN), its claim for tax credit/refund of VAT on its purchases shall be denied considering that the invoice it is issuing to its customers does not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales. Nonetheless, this treatment is without prejudice to the right of the taxpayer to charge the input taxes to the appropriate expense account or asset account subject to depreciation, whichever is applicable.** Moreover, the case shall be referred by the processing office to the concerned BIR office for verification of other tax liabilities of the taxpayer.[29]
>
> ...

It goes without saying that deducting the "Output VAT Still Due" from the "Substantiated or Valid Input VAT allocated to **Declared Zero-Rated Sales**," rather than only from the "Substantiated or Valid Input VAT allocated to ***Valid* Zero-Rated Sales**" would result in a double tax benefit to the taxpayer-claimant insofar as "Substantiated or Valid Input VAT allocated to ***Invalid* Zero-Rated Sales**" is concerned, as a portion thereof may be charged against the "Output VAT Still Due" and only the remainder is claimed as expense (when the whole amount corresponding to invalid zero-rated sales should just be claimed as expense), as illustrated below:

Allocated to	Substantiated Input VAT Allocated to Zero-Rated Sales	Amount Offset Against Output VAT Still Due	Refundable Amount/ Amount Claimed as Expense	Tax Benefit (b) & (c)
	(a)	(b)	(c) = (a) – (b)	
Valid Zero-Rated Sales	₱41,286,956.46	₱554,762.10	₱40,732,194.37	1. Credited against the "Output VAT Still Due;" and, 2. Applied for refund or tax credit
Invalid Zero-Rated Sales	8,382,348.25	112,631.43	₱8,269,716.82	1. **Credited against the "Output VAT Still Due;"** and, 2. Claimed as Expense
Declared Zero-Rated Sales	**₱49,669,304.71**	**₱667,393.53**	**₱49,001,911.19**	

Whereas, under the ***second interpretation***, there is no such double tax benefit with respect to the "Substantiated or Valid Input VAT allocated to ***Invalid* Zero-Rated Sales**" since no amount thereof is offset against "Output VAT Still Due" or only the "Substantiated or Valid Input VAT allocated to ***Valid* Zero-Rated Sales**" is charged against the "Output VAT Still Due," as follows:

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[29] Emphasis and underscoring supplied.

Allocated to	Substantiated Input VAT Allocated to Zero-Rated Sales	Amount Offset Against Output VAT Still Due	Refundable Amount/ Amount Claimed as Expense	Tax Benefit
	(a)	(b)	(c) = (a) – (b)	
Valid Zero-Rated Sales	₱41,286,956.46	₱665,007.64	₱40,621,948.82	1. Credited against the "Output VAT Still Due;" and, 2. Applied for refund or tax credit
Invalid Zero-Rated Sales	8,382,348.25	-	8,382,348.25	1. Claimed as Expense
Declared Zero-Rated Sales	**₱49,669,304.71**	**₱665,007.64**	**₱49,004,297.07**	

Notably, the computation of "Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales" under the ***second interpretation*** aims to rectify the above-illustrated double tax benefit by *only* granting a refund *if and only if* there is an excess of "Substantiated or Valid Input VAT allocated to ***Valid* Zero-Rated Sales**" after applying the "Output VAT Still Due."

Having discussed the merits and logic behind the ***first*** and ***second interpretations*** of the 'no judicial assessment rule' enunciated in *Chevron*, as it pertains to the ratable portion of input VAT allocable to zero-rated sales, it is now appropriate to determine which interpretation should be applied.

I submit that it is more prudent to apply the ***first interpretation***: the 'no judicial assessment rule' is **applicable to both options** of the taxpayer-claimant regarding input VAT attributable to zero-rated sales.

It bears noting that in declaring that it is not for the CTA to rule on the sufficiency or substantiation of input taxes in a refund claim under Section 112(A) of the NIRC of 1997, as amended, the Supreme Court did not expressly state that this rule applies only to the second option. In other words, the Supreme Court plainly ruled that the Court is precluded from inquiring into the nature and substance of a taxpayer's input VAT from various sources for the purpose of determining the ratable portion allocable to zero-rated sales and chargeable against the "Output VAT Still Due." This ruling was made without specifying any distinctions or exceptions (such as not applying the rule with respect to the first option as suggested by the *second interpretation*).

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[30] of the Civil Code, enjoins adherence by this Court to doctrinal rules established by the Supreme Court in its final decisions[31], such as the recent pronouncement in *Chevron* regarding the proper formula for computing the "Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales." 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.[32] 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.[33]

Settled is the rule that where the law does not distinguish, courts should not distinguish.[34] *Ubi lex non distinguit, nec nos distinguere debemos.*

Accordingly, since the Supreme Court's 'no judicial assessment rule' enunciated in *Chevron* already forms part of the law on the matter (*i.e.*, Section 112[A] of the NIRC of 1997, as amended, which governs claims for refund or tax credit of excess and unutilized input VAT attributable to zero-rated or effectively zero-rated sales) as of its effective date, and, as aforesaid, this pronouncement does not distinguish between a taxpayer-claimant's two (2) options with respect to input VAT attributable to zero-rated sales, this Court should not make such a distinction and is thus constrained to apply the ***first interpretation***.

Having thus established that there is an additional refundable excess and unutilized input VAT attributable to valid zero-rated sales in the increased amount of **₱7,157,660.83**[35], following the pronouncements in *Chevron* (*i.e.*, the 'no judicial assessment rule' regarding both the computation of "Output VAT Still Due" and the "Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales" under the ***first interpretation***), and since this amount is well within the input VAT claim of ₱17,224,951.76 (remainder after deducting the ₱34,258,134.20 partially granted by the BIR) that remained unutilized until the same was deducted as part of the "VAT Refund/TCC Claimed" of ₱51,483,085.96 in CCC's Quarterly VAT Return for

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

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

32 Id.

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

34 *Pension and Gratuity Management Center (PGMC) v. AAA*, G.R. No. 201292, 01 August 2018.

35 Supra at pp. 15-16.

the 2nd Quarter of TY 2017[36], CCC has sufficiently proven its entitlement to a refund or issuance of a TCC in the said increased amount.

It is a well-settled doctrine that a tax refund, which is in the nature of a tax exemption, should be construed *strictissimi juris* against the taxpayer. However, when the claim for refund has a clear legal basis and is sufficiently supported by evidence, as in the present case, then the Court shall not hesitate to grant the refund.[37]

All told, I vote to: (1) **DENY** both Petitions for Review for lack of merit; and thereby, (2) **AFFIRM with MODIFICATION** the Special Second Division's Decision dated 15 July 2022 and Resolution dated 31 January 2023.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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36 Exhibit "P-20" (Line 23D), Division Docket, Volume II, p. 1249.

37 *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, 25 November 2009; *Commissioner of Internal Revenue v. Philippine AirLines, Inc.*, G.R. No. 180043, 14 July 2009.