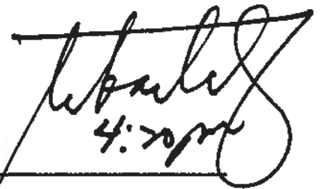
REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,	**CTA EB NO. 2803** (CTA Case No. 10109)
Petitioner,	Present:
- versus -	**DEL ROSARIO,** *PJ,* **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES** *JJ.*
OCEANAGOLD (PHILIPPINES), INC., Respondent.	Promulgated: FEB 24 2025



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DECISION

FERRER-FLORES, J.:

At bar is a *Petition for Review*[1] seeking the reversal of the Decision dated April 25, 2023[2] (assailed Decision) and the Resolution dated September 22, 2023[3] (assailed Resolution) of the Court of Tax Appeals (CTA) First Division[4] in CTA Case No. 10109, the dispositive portions of which read:

Assailed Decision:

> **WHEREFORE**, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **DIRECTED TO REFUND** in

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[1] Filed on October 27, 2023. *Rollo*, pp. 7-27.
[2] *Rollo*, pp. 35-71.
[3] *Id.*, at 73-76.
[4] Penned by Associate Justice Marian Ivy F. Reyes-Fajardo and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justice Catherine T. Manahan.

favor of petitioner in the amount of Ninety-Two Million Fifty-Eight Thousand Nine Hundred Forty-Seven and 6/100 (₱92,058947.06) representing its unutilized input VAT attributable to its zero-rated sales for the 1st to 4th quarters of TY 2017.

SO ORDERED.

Assailed Resolution:

WHEREFORE, petitioner's (sic) *Motion for Partial Reconsideration (Re: Decision dated April 25, 2023)*, filed on May 17, 2023 is **DENIED,** for lack of merit.

SO ORDERED.

THE PARTIES

Petitioner is the **Commissioner of Internal Revenue (CIR)** duly appointed to exercise the powers and perform the duties of his office including, inter alia, the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, and penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) of 1997, as amended.

Respondent **Oceanagold (Philippines), Inc.** is a corporation organized and existing under the laws of the Philippines, with office address at 2nd Floor Carlos J. Valdes Building, 108 Aguirre Street, Legaspi Village, 1229 Makati City Philippines.

FACTUAL ANTECEDENTS

The factual antecedents as narrated in the assailed Decision are as follows:[5]

[Respondent] Oceanagold (Philippines), Inc. is a corporation organized and existing under the laws of the Philippines, with office address at 2nd Floor Carlos J. Valdes Building, 108 Aguirre Street, Legaspi Village, 1229 Makati City, Philippines. It is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer. It is also registered with the Board of Investments (BOI) as a New Export Producer of Doré Bars and Copper Concentrates.

[Petitioner] is the duly appointed Commissioner of Internal Revenue (CIR) who holds office at BIR National Office Building located at Agham Road, Diliman, Quezon City.

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[5] *Rollo*, pp. 33-38.

On March 29, 2019, [respondent] filed with the BIR VAT Credit Audit Division (VCAD) an Application for Tax Credits/Refunds (BIR Form No. 1914), and a letter, requesting for a refund of the unutilized input VAT attributable to zero-rated sales for the 1st to 4th quarters of TY 2017, in the amount of P98,075,861.64.

On June 13, 2019, [respondent] received the letter dated June 13, 2019 from the BIR VCAD, denying its administrative claim on the basis that the total deductions exceeded the claim for VAT refund, and that the Schedule of Zero-rated Sales, Provisional and Sales Invoices and Proof of Inward Remittances in support of its export sales cannot be traced/identified to the attached bill of lading/airway to prove the actual export of goods.

On July 11, 2019, [respondent] filed the Petition for Review, docketed as CTA Case No. 10109, to which petitioner filed an Answer.

On December 5, 2019, the Pre-Trial Conference was held, whereby the Court: gave the parties fifteen (15) days to file their Joint Stipulation of Facts and Issues (JSFI); gave the parties' counsels Commissioner's Hearings as to documentary exhibits to be marked; gave the parties' counsels hearing dates as to the testimonial evidence; and granted [respondent] fifteen (15) days to file its Motion to Commission an Independent Certified Public Accountant (ICPA) and the judicial affidavits of its witnesses.

On December 13, 2019, the parties submitted their JSFI, which was approved by the Court through Resolution dated December 20, 2019.

On February 5, 2020, the Court issued the Pre-Trial Order.

On February 18, 2020, [respondent] filed an Omnibus Motion: I. To Admit Attached Supplemental Stipulation of Facts and Issue; and II. To Revise the Pre-Trial Order Promulgated on February 5, 2020, attaching therewith its Supplemental Stipulation of Facts and Issues. On March 9, 2020, respondent filed a Comment on said Omnibus Motion.

In the Resolution dated June 26, 2020, the Court admitted the Supplemental Stipulation of Facts and Issue and directed the Clerk of Court to revise the Pre-Trial Order dated February 5, 2020, to include the documents enumerated in the Supplemental Stipulation of Facts and Issues.

On July 30, 2020, the Court issued the Amended Pre-Trial Order. Trial proceeded.

In support of its cause, [respondent] presented: (1) Mrs. Dorelyn Casono-Rosbero, a Customs Broker and Customer Service Manager at Antrak Philippines Transport Solutions Corporation; (2) Ms. Hesther T. Bahiwag, [respondent's] Financial Accounting Superintendent; (3) Atty. Joan D. Adaci-Cattiling, [respondent's] Senior Legal Counsel and Corporate Secretary; and (4) Ms. Annalyn B. Artuz, the Court-commissioned ICPA (ICPA Artuz), as its witnesses.

On November 26, 2020, petitioner filed its Formal Offer of Evidence with Motion for Marking of Exhibit.

> In the Resolution dated December 9, 2020, the Court granted [respondent's] Motion for Marking of Exhibit. Accordingly, Exhibit "P-40" was allowed to be marked in the duly scheduled commissioner's hearing.
>
> Through Resolution dated May 20, 2021, the Court admitted [respondent's] offered Exhibits, *except* for Exhibits "P-34.1572-1" and "P-34.1641-1 (2 of 3)," for not being found in the records. [Respondent] rested its case.
>
> In the hearing held on October 14, 2021, [respondent] moved, and the Court granted its prayer to waive the presentation of [petitioner's] witness Revenue Officer Denise R. Dayanan.
>
> On October 21, 2021, respondent filed his Formal Offer of Evidence.
>
> In the Resolution dated February 22, 2022, the Court admitted Exhibits "R-4" and "R-7," but denied Exhibits "R-1," "R-2," "R-3," "R-5," "R-6," and "R-8," for failure of said documents to be identified by a competent witness.
>
> In the Resolution dated April 27, 2022, this case was submitted for decision, taking into account the Memorandum for [Respondent], filed on April 7, 2022, and [petitioner's] non-filing thereof, as per Records Verification dated April 19, 2022.

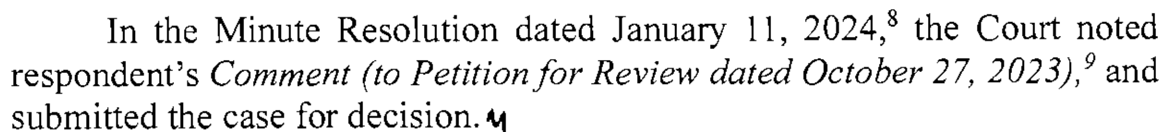
As earlier mentioned, the CTA First Division partially granted the *Petition for Review*. The CIR's *Motion for Partial Reconsideration (Re: Decision dated April 25, 2023)* was denied.

PROCEEDINGS BEFORE THE COURT *EN BANC*

Undeterred by the adverse decision, petitioner filed the present *Petition for Review* on October 27, 2023.

Upon the directive of the Court,[6] respondent filed its *Comment (to Petition for Review dated October 27, 2023)* on December 27, 2023.[7]

In the Minute Resolution dated January 11, 2024,[8] the Court noted respondent's *Comment (to Petition for Review dated October 27, 2023)*,[9] and submitted the case for decision.



[6] Minute Resolution dated December 5, 2023, *Rollo*, p. 77.
[7] *Rollo*, pp. 78-95.
[8] *Id.*, at 98.
[9] *Id.*, at 78-95.

ISSUES

In assailing the Decision and Resolution of the CTA First Division, petitioner assigns the following errors:

A. With all due respect, the Honorable Court in Division erred when it partially granted respondent's Petition for Review and directed petitioner to refund to respondent the amount of Ninety-Two Million Fifty-Eight Thousand Nine Hundred Forty-Seven Pesos and 6/100 (₱92,058,947.06) representing its unutilized input value-added tax (VAT) attributable to its zero-rated sales for the first and fourth Quarters of taxable year (TY) 2017; and,

B. With all due respect, the Honorable Court in Division erred when it accepted documents presented before it which were not presented during respondent's administrative claim for refund, contrary to the principle laid down in *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue (Total Gas)* case.[10]

Petitioner's arguments

In support of the above assigned errors, petitioner forwards the following arguments:

First, the jurisdiction of the Court is that of an appellate tribunal. Since an unfavorable decision was rendered at the administrative level due to the failure of the respondent to substantiate its claim, it cannot present before the Court in Division documents that it did not submit before the administrative level.

Second, respondent is not entitled to the claim for refund. Petitioner alleges that respondent's schedule of Zero-rated Sales, Provisional and Sales invoices, and Proof of Inward Remittances in support of its export sales cannot be identified to the attached bill of lading/airway administrative claim for refund. Instead, it should be able to show its connection to the bill of lading/airway bill attached to it to show that the requirements under Section

[10] G.R. No. 207112, December 8, 2015.

106(A)(2)(a)(1)[11] and 112(A)[12] of the NIRC of 1997, as amended, had been complied with. Likewise, according to petitioner, respondent did not comply with invoicing requirements under Section 113[13] of the NIRC of 1997, as amended.

Lastly, tax refunds are strictly construed against the taxpayer and in favor of the government. The validity of respondent's claims must be meticulously verified.

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[11] **SEC. 106.** ***Value-Added Tax on Sale of Goods or Properties.*** **-**
(A) Rate and Base of Tax. - There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, value-added tax equivalent to twelve percent (12%) of the gross sales of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.
(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); xxx

[12] ***SEC. 112. Refunds of Input Tax. -***
(A) Zero-rated or Effectively Zero-rated Sales. - Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales. Provided, finally, That for a person making sales that are zero-rated under Section 108(B) (6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

[13] **SEC. 113.** ***Invoicing and Accounting Requirements for VAT-Registered Persons. -***
(A) Invoicing Requirements. - A VAT-registered person shall issue a VAT invoice for every sale, barter, exchange, or lease of goods or properties and for every sale, barter or exchange of services.
(B) Information Contained in the VAT Invoice. - The following information shall be indicated in the VAT invoice:
(1) A statement that the seller is a VAT-registered person, followed by the seller's Taxpayer's Identification Number;
(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: Provided, That:
(a) The amount of the tax shall be shown as a separate item in the invoice;
(b) If the sale is exempt from value-added tax, the term VAT-exempt sale shall be written or printed on the invoice;
(c) If the sale is subject to zero percent (0%) value-added tax, the term '*zero-rated sale*' shall be written or printed on the invoice.
(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT exempt, the invoice shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice: Provided, That the seller may issue separate invoices for the taxable, exempt, and zero-rated components of the sale.
(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and
(4) In the case of sales in the amount of One thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the name, address and Taxpayer Identification Number of the purchaser, customer or client.

Respondents' arguments

Respondent, on the other hand, avers that petitioner's arguments are a mere rehash of his arguments in his *Answer* and *Motion for Partial Reconsideration* before the Court in Division; thus, these arguments were already passed upon and considered by the Court First Division in the assailed Decision and Resolution.

Further, respondent submits that the Court in Division did not err in considering all the evidence presented by it in its Decision. As cases filed before the CTA are litigated *de novo,* the taxpayer-claimant has the obligation to prove every minute aspect of its case by presenting, formally offering, and submitting to the CTA all evidence required for the successful prosecution of its administrative claim.

Respondent staunchly claims that it presented sufficient evidence to prove that it substantially complied with the requirements for a refund of input VAT attributable to its zero-rated sales under Section 112(A)[14] of the NIRC of 1997, as amended. The burden to prove otherwise now shifts to petitioner as the party alleging that respondent is not entitled to the refund for failing to comply with the requisites provided under Section 112(A) of the NIRC of 1997, as amended.

RULING OF THE COURT *EN BANC*

The *Petition for Review* is bereft of merit.

After an assiduous review of the records and the parties' arguments, the Court finds no cogent reason to reverse or modify the assailed Decision and Resolution. Petitioner essentially reiterated its contentions, which the CTA First Division painstakingly discussed and passed upon.

Timeliness of the Petition for Review

Before delving into the merits of the instant case, the Court shall first determine its jurisdiction.

Section 3(b) of Rule 8 of the Revised Rules of the CTA (RRCTA) provides:

Sec. 3. *Who may appeal; period to file petition.* —

[14] *Supra* at note 12.

(b) **A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution.** Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of he reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Emphasis supplied)

Petitioner received the Resolution denying its *Motion for Reconsideration* on September 28, 2023. Counting 15 days therefrom, petitioner had until October 13, 2023 within which to elevate the appeal before this Court.

On October 11, 2023, petitioner filed a *Motion for Extension of Time To File Petition for Review.* In the Minute Resolution dated October 13, 2023, petitioner was granted 15 days or until October 28, 2023 within which to file its Petition for Review.

Petitioner, thus, timely filed the instant *Petition for Review* on October 27, 2023.

There is no cogent reason to reverse or modify the assailed Decision and Resolution.

Petitioner's reliance on the Supreme Court pronouncement in *Total Gas* case is misplaced. We quote with affirmance the discussion of the CTA First Division:

Finally, the Court is cognizant of [petitioner's] argument that the petition for review must fail for [respondent's] failure to substantiate its claim at the administrative level. Additionally, [respondent] may not adduce evidence at judicial level, *sans* proof that it was presented at administrative level. Petitioner (sic) heavily relies on *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue (Pilipinas Total Gas)*, in support of its position.

Petitioner's (sic) argument is specious. In relation to an administrative claim for input VAT refund, *Pilipinas Total Gas* 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* scenario, 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 petitioner. In the *second* scenario, a taxpayer-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 petitioner at the administrative level. Petitioner's (sic) denial of respondent's (sic) administrative claim for input VAT refund falls under the *second* scenario.
>
> To be precise, [respondent's] input VAT refund claim was denied by [petitioner] because: *first*, the total deductions exceeded the claims for VAT refund, and *second*, the schedule of zero-rated sales, provisional and sales invoices and proof of inward remittances in support of export sales cannot be traced/identified to the attached bill of lading/airway bills to prove the actual export of goods. Following *Pilipinas Total Gas*, the Court may give credence to all evidence presented by respondent (sic) to support its prayer for refund, irrespective of whether such evidence was presented at administrative level, as the case is being essentially decided in the first instance.

To further underscore the above, the Supreme Court in *Total Gas* case elucidated in this wise:

> ...First, a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an *appeal* by way of petition for review of a previous, unsuccessful administrative claim. Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency *a quo* did not have any reason to deny its claims. In this case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit. Second, cases filed in the CTA are litigated *de novo*. Thus, a petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA. Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim. (Underscoring in the original)
>
> A distinction must, thus, be made between administrative cases appealed due to inaction and those dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents. If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but for the taxpayer's failure to substantiate the claim at the administrative level. **When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim. It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirements for an administrative claim. It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim**

> **should have been granted in the first place.** Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA. (Emphasis supplied)

It must be emphasized that cases are litigated *de novo* before this Court and parties are obliged to prove every aspect of their case. To reiterate, the We echo the CTA First Division's ruling:

> Further, *Philippine Airlines, Inc. v. Commissioner of Internal Revenue (PAL)* ruled that in the exercise of the Court's appellate jurisdiction, it is *not* precluded from considering evidence that was not presented in the administrative claim before the BIR:
>
>> Section 8. Court of record; seal; proceedings. — The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the forms of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence.
>
> As such, parties are expected to litigate and prove every aspect of their case anew and formally offer all their evidence. No value is given to documentary evidence submitted in the Bureau of Internal Revenue unless it is formally offered in the Court of Tax Appeals. Thus, the review of the Court of Tax Appeals is not limited to whether or not the Commissioner committed gross abuse of discretion, fraud, or error of law, as contended by the Commissioner. As evidence is considered and evaluated again, the scope of the Court of Tax Appeals' review covers factual findings.

All told, there is no reason to disturb the findings of the CTA First Division.

WHEREFORE, the instant **Petition for Review** is **DENIED** for lack of merit. The Decision dated April 25, 2023 and the Resolution dated September 22, 2023 in CTA Case No. 10109 are hereby **AFFIRMED**.

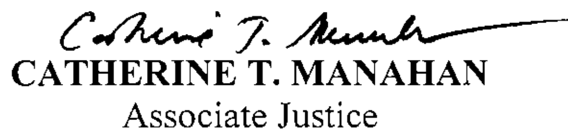
SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

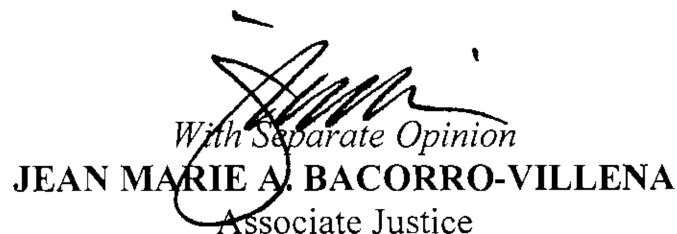
WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

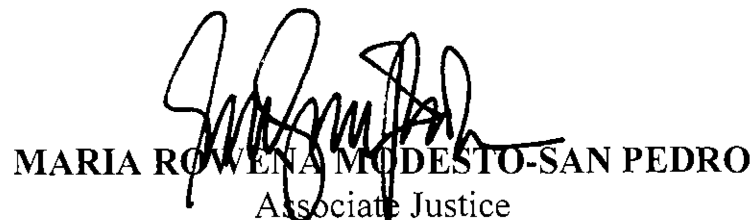
ON LEAVE
MA. BELEN M. RINGPIS-LIBAN
Associate Justice



CATHERINE T. MANAHAN
Associate Justice

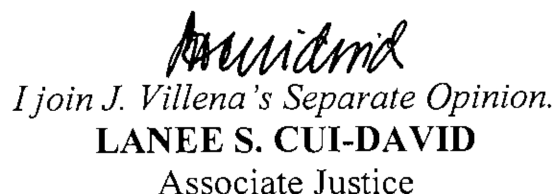


With Separate Opinion
JEAN MARIE A. BACORRO-VILLENA
Associate Justice



MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice



I join J. Villena's Separate Opinion.
LANEE S. CUI-DAVID
Associate Justice

With due respect, please see my SCO.
HENRY S. ANGELES
Associate Justice

CERTIFICATION

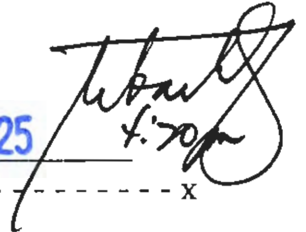
Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 2803** (CTA Case No. 10109)
- versus -	Present: **DEL ROSARIO,** *P.J.*, **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO,** **CUI-DAVID,** **FERRER-FLORES,** *and* **ANGELES,** *JJ.*
OCEANAGOLD (PHILIPPINES), INC., Respondent.	Promulgated: FEB 24 2025



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SEPARATE OPINION

BACORRO-VILLENA, J.:

I concur in the denial of the *Petition for Review* filed by petitioner Commissioner of Internal Revenue (**petitioner/CIR**) 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 for taxable year (**TY**) 2017.

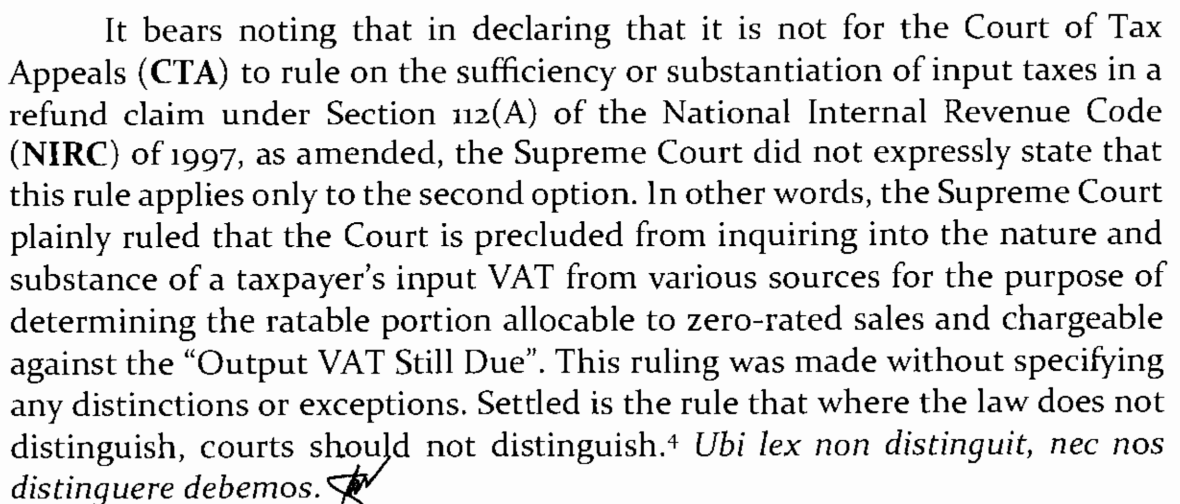
Very recently, on 04 October 2024 and 21 October 2024, respectively, the Court *En Banc* promulgated its decisions in *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*[1] and *Commissioner of Internal Revenue v. Stefanini Philippines, Inc.*[2], adjusting the computation of the refundable amount of excess and unutilized input VAT attributable to

[1] With the Court *En Banc* voting unanimously. See CTA EB Case No. 2764 (CTA Case No. 9154).
[2] With the Court *En Banc* voting unanimously. See CTA EB Case No. 2753 (CTA Case No. 10188).

valid zero-rated sales following the Supreme Court's pronouncements in *Chevron Holdings, Inc. (formerly Caltex Asia Limited) v. Commissioner of Internal Revenue*[3] (**Chevron**).

Priorly, or on 05 July 2022, the Supreme Court issued its decision in *Chevron* where 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, to wit -

> ...
> **[T]he input tax attributable to zero-rated sales may,** <u>at the option of the VAT-registered taxpayer</u>, **be: (1) charged against output tax from regular 12% VAT-able sales, and any unutilized or "excess" input tax may be claimed for refund or the issuance of tax credit certificate; or (2) claimed for refund or tax credit in its entirety.** It must be stressed that **the remedies of charging the input tax against the output tax and applying for a refund or tax credit are alternative and cumulative.** Furthermore, the option is vested with the taxpayer-claimant. It goes without saying that **the CTA, and even the Court, may not, on its own, deduct the input tax attributable to zero-rated sales from the output tax derived from the regular twelve percent (12%) VAT-able sales first and use the resultant amount as the basis in computing the allowable amount for refund.** **<u>The courts cannot condition the refund of input taxes allocable to zero-rated sales on the existence of "excess" creditable input taxes, which includes the input taxes carried over from the previous periods, from the output taxes.</u>** These procedures find no basis in law and jurisprudence.
> ...



It bears noting that in declaring that it is not for the Court of Tax Appeals (**CTA**) to rule on the sufficiency or substantiation of input taxes in a refund claim under Section 112(A) of the National Internal Revenue Code (**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. Settled is the rule that where the law does not distinguish, courts should not distinguish.[4] *Ubi lex non distinguit, nec nos distinguere debemos.*

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[3] G.R. No. 215159, 05 July 2022; Citation omitted, underscoring supplied, emphasis in the original text and supplied.

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

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. Hence, this Court should not also make such a distinction.

Following this pronouncement, I am thus constrained to make a re-computation of the refundable input VAT in this wise –

Table 1. Input VAT Allocation	**Amount (a)**		**Allocation Factor (c) = (a) / (b)**	**Allocated *Input VAT[5] (e) = (c) x (d)**		**Allocated Substantiated Input VAT (g) = (c) x (f)**
Zero-Rated Sales	₱15,915,816,782.74		99.97%	₱98,665,175.10		₱94,225,808.44
VAT-able Sales	5,178,464.61		0.03%	32,102.29		30,657.87
Total Sales	**₱15,920,995,247.35**	(b)	100.00%	**₱98,697,277.39**	(d)	**₱94,256,466.31**

Table 2. Computation of Output VAT Still Due	**VAT-able Sales**
Output VAT	₱621,415.75
Less: Allocated *Input VAT	32,102.29
Output VAT Still Due	**₱589,313.47**

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

*Input VAT allocated to Declared Zero-Rated Sales	₱98,665,175.10
Less: Total Output VAT Still Due	589,313.47
Excess and Unutilized Input VAT attributable to Declared Zero-Rated Sales (a)	**₱98,075,861.64**
Substantiated or Valid Input VAT (after deducting disallowances)[6] (b)	**94,256,466.31**
Substantiated or Valid Input VAT deemed attributable to Zero-Rated Sales [whichever is lower between (a) and (b)]	**₱94,256,466.31**
Divided by Declared Zero-Rated Sales *per* Quarterly VAT Returns for TY 2017	15,915,816,782.74
Multiplied by Valid Zero-Rated Sales *per* Quarterly VAT Returns for TY 2017	15,549,809,110.72
Refundable Excess and Unutilized Input VAT Attribntable to Zero-Rated Sales	**₱92,088,899.90**

[5] The First Division held that there is a difference of ₱22,865,331.40 between the Declared Input VAT per tax returns of ₱121,562,608.79 (before deducting the output tax) and the amount used as basis to compute for the refund of ₱98,697,277.39.

Nonetheless, it ruled that the input VAT claimed for refund by petitioner *per* Petition for Review in the total amount of P98,697,277.39, covering the four (4) quarters of TY 2017, formed part of its reported excess input VAT arising from importation of goods other than capital goods and amortization of input tax on purchases of capital goods exceeding P1 million, in its VAT Returns for the 1st to 4th Quarters of TY 2017, in the total amount of ₱120,941,193.04 (amount after deducting the output tax of ₱621,415.75).

[6] Out of the Input VAT of ₱98,697,277.39 for the four (4) Quarters of TY 2017, the First Division disallowed the amount of ₱4,440,811.08. Thus, the Substantiated Input VAT amounts to ₱94,256,466.31.

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.

Having thus established that there is an additional refundable excess and unutilized input VAT attributable to a valid zero-rated sales in the increased amount of **₱92,088,899.90**, 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"), and since this amount is well within the input VAT claim of ₱98,075,861.64, respondent Oceanagold (Philippines), Inc. has sufficiently proven its entitlement to a refund or issuance of a Tax Credit Certificate (**TCC**) in the said increased amount.

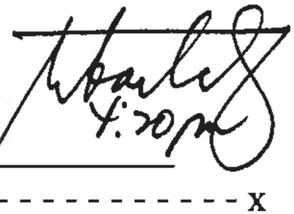
All told, I vote to **DENY** petitioner Commissioner of Internal Revenue's Petition for Review for lack of merit; and thereby **AFFIRM with MODIFICATION** the First Division's Decision dated 25 April 2023 and Resolution dated 22 September 2023.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 2803** (CTA Case No. 10109)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
OCEANAGOLD (PHILIPPINES), INC., *Respondent.*	Promulgated: FEB 24 2025



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SEPARATE CONCURRING OPINION

ANGELES, *J.*:

I agree with the Decision to **deny** the instant Petition for Review for lack of merit.

With respect to the first assignment of error raised by petitioner, I agree with the *ponente* that there is no convincing reason to reverse or modify the assailed Decision and Resolution partially granting respondent a refund in the amount of ₱92,058,947.06, based on its partial compliance with the requisites under the law for the grant of a refund of unutilized input VAT attributable to zero-rated sales.

However, with due respect to the *ponente* and in all humility, I would like to discuss further my position on the issue of whether the CTA may consider evidence not presented at the administrative level. In the Decision, the *ponente* affirmed the discussion of the Court *a quo* which rejected petitioner's argument that respondent may not adduce

evidence at the judicial level without proof that such evidence was presented at the administrative level. The Court *a quo* held, viz.:

> [Petitioner's] argument is specious. In relation to an administrative claim for input VAT refund, *Pilipinas Total Gas* 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* scenario, 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 petitioner. **In the *second* scenario, a taxpayer-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 [petitioner] at the administrative level.** [Petitioner's] denial of [respondent's] administrative claim for input VAT refund falls under the *second* scenario.
>
> To be precise, **[respondent's] input VAT refund claim was denied by [petitioner] because:** *first*, the total deductions exceeded the claims for VAT refund, and *second*, the schedule of zero-rated sales, provisional and sales invoices and proof of inward remittances in support of export sales cannot be traced/ identified to the attached bill of lading/ airway bills to prove the actual export of goods. **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, as the case is being essentially decided in the first instance.**
>
> Further, *Philippine Airlines, Inc. v. Commissioner of Internal Revenue* (PAL) ruled that in the exercise of the Court's appellate jurisdiction, it is *not* precluded from considering evidence that was not presented in the administrative claim before the BIR: xxx xxx xxx *(Emphasis supplied)*

I, however, wish to submit a different interpretation to the ruling of the Supreme Court in *Pilipinas Total Gas, Inc. v. CIR.*[1] In the said case, the Supreme Court, in resolving the issue of whether the submission of incomplete documents at the administrative level rendered the judicial claim for refund premature, discussed the **nature** of a judicial claim before the CTA, to wit:

> ...First, **a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim. Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency *a quo* did not have any**

[1] G.R. No. 207112, December 8, 2015.

> **reason to deny its claim. In this case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit. Second, cases filed in the CTA are litigated *de novo*. Thus, a petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA.** Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim.
>
> A distinction must, thus, be made between administrative cases appealed due to inaction and those dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents. If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but of the taxpayer's failure to substantiate the claim at the administrative level. **When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim. It, thus, becomes imperative for the taxpayer to show the CTA that *not only* is he entitled under substantive law to his claim for refund or tax credit, *but also* that he satisfied all the documentary and evidentiary requirements for an administrative claim.** It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place. Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA.
>
> In the present case, however, **Total Gas filed its judicial claim due to the inaction of the BIR. Considering that the administrative claim was never acted upon; there was no decision for the CTA to review on appeal *per se*. Consequently, the CTA may give credence to all evidence presented by Total Gas, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance. The Total Gas must prove every minute aspect of its case by presenting and formally offering its evidence to the CTA**, which must necessarily include whatever is required for the successful prosecution of an administrative claim. *(Emphasis supplied)*

Based on the foregoing jurisprudential pronouncement, what is clear to me is that the distinction carved out by the Supreme Court is not between the two (2) scenarios laid down by the *ponente*, but between: **(1)** the matters to be proved in an appeal from an

unsuccessful administrative claim; and **(2)** the matters to be proved in an appeal from the inaction of the CIR on such claim.

When a judicial claim for refund or tax credit is in the nature of an appeal from an unsuccessful administrative claim, the taxpayer has to convince the Court that the CIR had no reason to deny its claim.[2] In *Atlas Consolidated Mining and Development Corporation v. CIR*,[3] the Supreme Court noted that under RA No. 1125 (the law creating the CTA), the CTA only had appellate jurisdiction; it had no power to take cognizance of original actions. With the advent of RA No. 9282 (the law expanding the jurisdiction of the CTA), however, the CTA began to exercise original jurisdiction over certain actions. Nonetheless, its jurisdiction over refund claims has remained purely appellate.[4]

Section 7(a)(1) of RA No. 9282 in particular confers upon the CTA exclusive appellate jurisdiction over decisions of the CIR in cases involving refunds of internal revenue taxes. It must be remembered that appellate jurisdiction refers to the authority of a court higher in rank to re-examine the final order or judgment of a lower court which tried the case now elevated for judicial review.[5]

Following this, the Supreme Court in *Pilipinas Total Gas* has required taxpayers appealing from an unsuccessful administrative refund claim, to prove before the CTA that, ***one***, it is entitled to its refund claim under substantive law; and ***two***, it satisfied all the documentary and evidentiary requirements for such refund claim. Surely, the first matter to be proved entails a determination by the Court of petitioner's compliance with the requisites established by law for the refund or credit of input tax.

Relatedly, the second matter to be proved entails a review by the Court of the basis of the CIR's denial of the administrative claim **based on the documents presented at the administrative level.** The phrase "*but also that he satisfied all the documentary and evidentiary requirements* ***for an administrative claim***", could only mean that the sufficiency of petitioner's documents and evidence shall be measured in relation to the administrative claim.

On the other hand, when a judicial claim for refund or tax credit is in the nature of an appeal from the inaction of the CIR on the administrative claim, such as in the case of *Pilipinas Total Gas*, the Court may give credence to all evidence presented by the taxpayer,

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[2] *Supra*, note 1.
[3] G.R. No. 145526, March 16, 2007.
[4] *Id.*
[5] *Garcia, et al. vs. De Jesus, et al.*, G.R. Nos. 88158 and 97108-09, March 4, 1992.

including those that may not have been submitted to the CIR, as the case is essentially being decided in the first instance.[6]

I am aware that in *Philippine Airlines, Inc. v. Commissioner of Internal Revenue,*[7] the Supreme Court squarely ruled on the issue of whether evidence not presented at the BIR level can be presented in the CTA. Indeed, the High Court held that the CTA is not limited by the evidence presented at the administrative level. The claimant may present new and additional evidence to the CTA to support its case for tax refund. It also held that the review of the CTA is not limited to whether the CIR committed gross abuse of discretion, fraud, or error of law. As evidence is considered and evaluated again, the scope of the CTA's review covers factual findings.

However, one must tread carefully when reading the foregoing pronouncements on the admission of evidence not presented at the BIR level. Scrutiny of the *PAL* case reveals that **such pronouncements were said in view of the CIR's failure to act on the taxpayer's administrative claim for refund. Nowhere in the said case was it stated, expressly or impliedly, that such pronouncements apply to all appeals filed before the CTA, including appeals from unsuccessful administrative claims.** Hence, such pronouncements should only be applied to cases involving the inaction of the CIR on the taxpayer's administrative claim for refund, as such was the situation in the *PAL* case. A contrary interpretation would render useless the distinction drawn by the *Pilipinas Total Gas* case between appeals from an unsuccessful administrative claim and appeals from the inaction of the CIR.

For the above-mentioned reasons, the rule in *Pilipinas Total Gas* on the matters to be proved in an appeal from unsuccessful administrative claim, stands.

Consequently, when a taxpayer fails to submit a document in support of its refund claim at the administrative level, and the CIR decides on such claim based on the documents submitted before him, the taxpayer may not later on assail the decision of the CIR on the basis of the document it never submitted before him. As a matter of fairness and case law, a taxpayer cannot be allowed to cure its failure to submit a document before the CIR, by filing the same before the CTA, when it had every opportunity to submit such document at the administrative level.

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[6] *Supra*, note 38.
[7] G.R. Nos. 206079-80 & 206309, January 17, 2018.

As for the rule in *Pilipinas Total Gas* with respect to appeals from the inaction of the CIR on the taxpayer's administrative refund claim, the *PAL* case reinforced the rule that the CTA may consider all pieces of evidence formally offered by the taxpayer, whether or not they were submitted at the administrative level.

To be clear, whether a judicial claim is an appeal from an unsuccessful administrative claim, or an appeal from the inaction of the CIR on the administrative claim, **the principle that cases filed with the CTA are litigated *de novo* (or litigated anew) shall apply.** This means that whether the evidence of petitioner in its appeal to the CTA includes or excludes those documents not presented at the BIR level, as limited by the rules laid down in *Pilipinas Total Gas*, petitioner must prove every minute aspect of its case by presenting and formally offering such evidence to the CTA.[8]

The principle of litigation *de novo* is rooted from Section 8 of RA 1125, as amended, where the CTA is described as a court of record. As cases filed before it are litigated *de novo*, party litigants should prove every minute aspect of their cases. No evidentiary value can be given to documents submitted (or not submitted) to the BIR as the rules on documentary evidence require that these documents must be formally offered before the CTA.[9]

In this case, the Petition filed before the Court *a quo* involved an appeal from an unsuccessful administrative claim, in view of the *VAT Refund Notice* dated June 13, 2019. Thus, respondent should have shown the Court that petitioner had no reason to deny its refund claim.

It is noteworthy that there is no indication in the records that respondent presented before the Court the very same documents it submitted to the BIR in support of its administrative claim. As such, the Court cannot determine with certainty whether petitioner had indeed the factual bases in denying respondent's administrative claim. The Court cannot determine whether the said administrative claim should have been granted in the first place. Consequently, respondent failed to prove that its administrative claim amounting to ₱98,075,861.64 should have been granted in the first place.

Despite the foregoing, I still vote to affirm the assailed Decision and Resolution partially granting respondent's administrative claim, considering the BIR's failure to specify and object to the admission of the documents that were not actually submitted at the administrative

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[8] *Supra*, note 38.
[9] *CIR vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

level, if any. *Sans* any objections, the Court may consider all evidence presented by respondent to support its judicial claim for tax refund.

HENRY S. ANGELES
Associate Justice