Republic of the Philippines
Supreme Court
Manila

EN BANC

CHEVRON HOLDINGS, INC. (FORMERLY CALTEX ASIA LIMITED), Petitioner,	**G.R. No. 215159** Present: GESMUNDO, *C.J.*, LEONEN, CAGUIOA, HERNANDO, LAZARO-JAVIER, INTING, ZALAMEDA, M. LOPEZ, GAERLAN, ROSARIO, J. LOPEZ, DIMAAMPAO, MARQUEZ, KHO, JR., and SINGH, *JJ.*
-versus-	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: July 5, 2022

x----------x

D E C I S I O N

M. LOPEZ, *J.*:

The Court will not deny the request for a refund of unutilized input Value-Added Tax (VAT) from zero-rated sales on the basis that the taxpayer does not have "excess" input VAT from the output VAT when the law does not require its compliance with the taxpayer to be entitled to a refund. The Court

may not construe a statute that is free from doubt; neither can we impose conditions nor limitations when none is provided for.[1]

This resolves the Petition for Review on *Certiorari*[2] under Rule 45 of the Rules of Court assailing the Court of Tax Appeals (CTA) *En Banc*'s Decision[3] dated May 6, 2014, and Amended Decision[4] dated October 28, 2014, in CTA EB No. 940, which ordered the refund or issuance of tax credit certificate in favor of Chevron Holdings, Inc. in the amount of ₱47,409.24, representing unutilized input tax attributable to zero-rated sales for the period from January 1 to December 31, 2006.

ANTECEDENTS

Chevron Holdings is a corporation organized under the laws of the State of Delaware, United States of America. It is licensed by the Securities and Exchange Commission (SEC) to transact business in the Philippines as a Regional Operating Headquarter (ROHQ) that will provide the following services to its affiliates, subsidiaries, or branches in the Asia-Pacific, North American, and African Regions: general administration and planning, business planning and coordination, sourcing and procurement of raw materials and components, corporate finance advisory services, marketing control, and sales promotion, training and personnel management, logistics services, research and development services, and product development, technical support and maintenance, data processing and communications, and business development.[5] It is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer.

For the taxable year 2006, Chevron Holdings rendered services to its affiliates in the Philippines and abroad. The services rendered to foreign affiliates were subjected to the zero percent (0%) rate, while those rendered to its Philippine affiliates to the regular twelve percent (12%) rate. It also incurred input taxes on purchases of goods and services concerning these services, as follows:[6]

Quarter	Zero-rated Sales	Sales subject to 12% VAT	Output tax	Purchases	Input tax
1st	308,477,292.31	4,687,290.75	469,047.07	138,964,203.52	5,473,352.33
2nd	237,013,773.09	35,386,665.52	3,852,895.48	71,796,630.97	6,843,948.53

---

1 *Commissioner of Internal Revenue v. Philex Mining Corp.*, G.R. No. 230016, November 25, 2020.

2 *Rollo*, pp. 3-55.

3 Id. at 70-110. Penned by Associate Justice Lovell R. Bautista, with the concurrence of Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas and Ma. Belen M. Ringpis-Liban.

4 Id. at 111-125. Presiding Justice Roman G. Del Rosario and Associate Justice Amelia R. Cotangco-Manalastas on leave.

5 Id. at 82.

6 Id. at 276.

3rd	271,095,515.06	28,405,325.59	3,408,639.07	102,044,300.16	7,144,030.57
4th	459,971,366.03	41,180,817.13	4,941,698.06	247,874,770.08	20,690,791.66

The input taxes were allocated proportionately, as follows:

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
VAT-able sales	4,687,290.75	35,386,665.52	28,405,325.59	41,180,817.13
Zero-rated sales	308,477,292.31	237,013,773.09	271,095,515.06	459,971,366.03
Total	313,164,583.06	272,400,438.61	299,500,840.65	501,152,183.16
Zero-rated sales / Total sales	98.50%	87.01%	90.52%	91.78%
Multiply by input tax	5,473,352.33	6,843,948.53	7,144,030.57	20,690,791.66
Input tax from zero-rated sales	5,391,252.04	5,954,919.62	6,466,776.47	18,990,008.50

The input taxes attributable to zero-rated sales were not credited against output taxes because of the substantial amounts of input taxes carried forward from the previous quarters. Chevron Holdings declared in its Amended Quarterly VAT Return for the fourth quarter of 2005 the amount of ₱55,784,357.71 as excess input tax.[7]

On March 28, 2008, Chevron Holdings filed an administrative claim for refund or issuance of a tax credit certificate on the unutilized input VAT attributable to the sale of services to its foreign affiliates. The Commissioner of Internal Revenue (CIR) failed to act on the claim; hence, on April 24, 2008, Chevron Holdings filed a Petition for Review before the CTA Division[8] (docketed as CTA Case No. 7776) for the refund or credit of excess input VAT for the first quarter of 2006 in the amount of ₱5,391,252.04. On July 23, 2008, Chevron Holdings again filed a Petition for Review[9] (docketed as CTA Case No. 7813) for the refund or credit of ₱31,411,704.68 excess input VAT for the second to fourth quarters.

The two cases were consolidated, and thereafter, a trial ensued.

Chevron Holdings formally offered the following evidence to prove that it rendered services to non-resident entities engaged in business outside the Philippines: (a) SEC Certificates of Non-Registration of Corporation;[10] (b) Service Agreements;[11] (c) Memorandum and/or Articles of Association, or Articles/Certificates of Incorporation, or Certificate of Change of Name, Company Profile, Certificate Confirming Incorporation, and printed screenshots of United States (US) SEC website for company filings;[12] (c)

---

7 Id. at 119, 489.
8 See id. at 277. Raffled to the CTA Second Division.
9 Id. Raffled to the CTA First Division.
10 See id. at 252-260.
11 See id. at 260-261.
12 See id. at 266-268.

summary and photocopies of zero-rated official receipts;[13] and (d) Monthly and Quarterly VAT Returns for 2006.[14] Likewise, it offered the Certificate of Inward Remittance[15] dated June 30, 2009 from J.P. Morgan Chase N.A. (JP Morgan), to prove that the services rendered to foreign affiliates were paid for in acceptable foreign currency duly accounted for in accordance with Bangko Sentral ng Pilipinas (BSP) rules and regulations and were inwardly remitted into Chevron Holdings' bank account in the Philippines.

In its Decision[16] dated June 6, 2012, the CTA Division denied the two petitions for being prematurely filed. Since the administrative claim for refund was filed on March 28, 2008, the CIR had one hundred twenty (120) days, or until July 26, 2008, to act on the request. Chevron Holdings filed its judicial claim on April 24, 2008, for the first quarter and on July 23, 2008, for the second to fourth quarters. Clearly, both petitions are premature.

Chevron Holdings' Motion for Reconsideration was denied;[17] hence, it elevated the matter to the CTA *En Banc* and docketed as CTA EB No. 940.

On May 6, 2014, the CTA *En Banc* rendered its Decision[18] reversing the CTA Division and partly granting Chevron Holdings' petitions. The CTA *En Banc* held that the judicial claims were timely filed. Chevron Holdings benefited from the Court's ruling in *Commissioner of Internal Revenue v. San Roque Power Corporation*[19] since the administrative and judicial claims were all filed during the period of validity of BIR Ruling No. DA-489-03.[20]

As regards input VAT attributable to zero-rated sales, the CTA *En Banc*

---

[13] See id. at 263.

[14] See id. at 263-264.

[15] See id. at 268.

[16] Id. at 274-290. Penned by Associate Justice Ernesto D. Acosta, with the concurrence of Associate Justice Esperanza R. Fabon-Victorino. Associate Justice Erlinda P. Uy wrote her Separate Opinion, see id. at 291-295. The dispositive portion of the Decision reads:

WHEREFORE, the instant Petition for Review docketed as CTA Case No. 7776 and Petition for Review docketed as CTA Case No. 7813 are hereby **DENIED** for having been prematurely filed and are **DISMISSED** for lack of cause of action. The other issues raised become moot and academic.

SO ORDERED. Id. at 290. (Emphases in the original.)

[17] Id. at 337-342; Associate Justice Erlinda P. Uy was on Official Business. The dispositive portion of the Resolution dated September 7, 2012 reads:

WHEREFORE, premises considered, [Chevron Holdings'] "**Motion for Reconsideration**" is hereby **DENIED** for lack of merit.

SO ORDERED. Id. at 342. (Emphasis in the original.)

[18] Id. at 70-110.

[19] 703 Phil. 310, 377-378 (2013). In that case, the Court, while upholding *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc. (Aichi)* [646 Phil. 710, 719 (2010)], recognized an exception to the mandatory and jurisdictional character of the 120-day period: taxpayers who relied on BIR Ruling DA-489-03, issued on December 10, 2003, until its reversal in *Aichi* on October 6, 2010, are shielded from the vice of prematurity.

[20] The ruling expressly stated that "a taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of a Petition for Review." *N.B.* This rule was nullified in *Aichi*, promulgated on October 6, 2010. *Aichi* emphasized that the failure to await the decision of the CIR or the lapse of 120-day period prescribed in Section 112 (C) of the Tax Code amounted to a premature filing.

As regards input VAT attributable to zero-rated sales, the CTA *En Banc* ruled that only ₱155,654,748.22[21] qualified for VAT zero-rating of sales of services to non-resident foreign affiliate clients under Section 108 (B)(2)[22] of the 1997 National Internal Revenue Code, as amended (Tax Code).[23] The CTA *En Banc* held that to be considered as a non-resident foreign corporation doing business outside the Philippines, each entity must be supported by both SEC Certificate of Non-Registration and Certificate or Article of foreign incorporation/association or printed screenshots of the United States (US) SEC website showing the state/province/country where the entity was organized. The CTA *En Banc* observed that some of the foreign affiliate clients were not adequately supported by these two documents. The CTA *En Banc* added that VAT official receipts issued to foreign affiliates must have the corresponding foreign currency inward remittances. Sales in the amount of ₱10,025,869.35 did not have the required inward remittances.

The CTA *En Banc* ruled that only ₱9,081,815.00[24] was valid input VAT. It disallowed the ₱774,415.38 for having no supporting VAT invoices or official receipts and the ₱25,883,884.54 for failure to comply with the invoicing requirements under the Tax Code.

After comparing the reported output taxes from the substantiated input taxes, the CTA *En Banc* observed that there was no excess input VAT that may be the subject of a claim for refund or tax credit for the second, third, and fourth quarters of 2006, while the excess input tax of ₱807,609.07 for the first

---

[21] *Rollo*, pp. 89-90, out of the ₱1,276,557,946.49 sales reported. The ₱155,654,748.22 valid zero-rated sales is broken down as follows:

First Quarter	₱5,762,011.70
Second Quarter	₱4,669,743.23
Third Quarter	₱66,091,331.71
Fourth Quarter	₱79,131,661.58
Total	₱ 155,654,748.22

[22] SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. — x x x
B) Transactions Subject to Zero Percent (0%) Rate. — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
(2) Services other than those mentioned in the preceding paragraph, rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP) x x x

[23] Republic Act No. 8424, December 11, 1997, as amended by the Value Added Tax (VAT) Reform Act, Republic Act No. 9337, May 24, 2005.

[24] Id. at 12, out of the ₱40,152,123.09 input tax reported. The ₱9,081,815.00 is broken down as follows:

First Quarter	₱ 1,276,656.14
Second Quarter	1,650,503.65
Third Quarter	1,860,385.53
Fourth Quarter	4,294,269.68
Total	₱ 9,081,815.00

quarter shall be allocated to Chevron Holding's valid zero-rated sales; thus, only ₱15,085.24 shall be refundable, *viz.*:[25]

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Output tax	469,047.07	3,852,895.48	3,408,639.07	4,941,698.06	12,672,279.68
Valid input tax	1,276,656.14	1,650,503.65	1,860,385.53	4,294,269.68	9,081,815.00
Output tax still due	(807,609.07)	2,202,391.83	1,548,253.54	647,428.38	3,590,464.68

Valid zero-rated sales	5,762,011.70
Divided by: Declared zero-rated sales	308,477,292.31
Multiplied by excess input VAT	807,609.07
Refundable excess input VAT attributable to valid zero-rated sales	15,085.24

The CTA *En Banc* ruled that the input tax carry-over of ₱56,564,096.77[26] reported in the Quarterly VAT Return for the first quarter cannot be validly applied against the output tax for the year 2006 because Chevron Holdings failed to present VAT invoices or receipts to prove its existence.

The CTA *En Banc* disposed:

> **WHEREFORE**, in view of the foregoing, the instant Petition for Review is hereby **PARTIALLY GRANTED**. The Decision dated June 6, 2012 and Resolution dated September 7, 2012[,] are hereby **REVERSED** and **SET ASIDE**.
>
> Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner Chevron Holdings, Inc. in the amount of Fifteen Thousand Eighty[-]Five Pesos and Twenty Four Centavos ([₱]15,085.24) representing unutilized excess input VAT for the first quarter of 2006 which is attributable to its zero-rated sales for the same period.
>
> **SO ORDERED.**[27] (Emphases in the original.)

Chevron Holdings sought reconsideration.[28] On October 28, 2014, the CTA *En Banc* issued an Amended Decision[29] reiterating that, on its own, the Certification of Non-Registration of Corporation/Partnership is insufficient to prove that the foreign affiliate was outside the Philippines when the services were rendered. The CTA *En Banc* observed that Chevron Holdings admitted that the Certificate of Inward Remittance issued by JP Morgan did not reflect the payment of ₱10,025,869.35; hence, it should be disallowed as a zero-rated sale. The CTA *En Banc* reconsidered some input taxes that were previously disallowed and disposed of:

---

[25] Id. at 93.

[26] The sum of ₱3,645,615.75 (Input Tax Carried Over from Previous Quarter), ₱52,138,741.96 (Transitional Input Tax) and ₱779,739.06 (Others), see id. at 93.

[27] Id. at 94-95.

[28] Id. at 126-160.

[29] Id. at 111-125.

> **WHEREFORE**, petitioner's Motion for Partial Reconsideration is hereby **PARTIALLY GRANTED**. The Decision dated May 6, 2014[,] is hereby **AMENDED** to reflect the additional amount allowed for refund or issuance of a tax credit certificate in the amount of Forty[-]Seven Thousand Four Hundred Nine and Twenty Four Centavos ([₱]47,409.24), representing the unutilized excess input VAT for the first quarter of 2006 which is attributable to its zero-rated sales for the same period.
>
> **SO ORDERED**.[30] (Emphases in the original.)

Unsatisfied, Chevron Holdings filed the instant petition before the Court, raising the following as issues:

> I.
>
> WHETHER OR NOT CHEVRON HOLDINGS' SALE OF SERVICES TO ITS FOREIGN AFFILIATES QUALIFY [*sic*] AS ZERO-RATED.
>
> II.
>
> WHETHER OR NOT THE AMOUNT OF [₱]10,025,869.35 WAS INWARDLY REMITTED IN ACCEPTABLE FOREIGN CURRENCY.
>
> III.
>
> WHETHER OR NOT THE COURT *EN BANC* ERRED IN NOT RECOGNIZING THE EXCESS INPUT VAT CARRIED OVER FROM PREVIOUS QUARTERS TO COVER CHEVRON HOLDINGS' OUTPUT VAT LIABILITY FOR THE YEAR 2006.
>
> IV.
>
> WHETHER OR NOT THE COURT *EN BANC* ERRED IN DISALLOWING THE REFUND OF CHEVRON HOLDINGS' EXCESS AND UNUTILIZED INPUT VAT IN THE AMOUNT OF [₱]24,598,395.58.[31]

Chevron Holdings insists that sales made to its non-resident foreign affiliates qualify for VAT zero-rating. It proffers that Section 108 (B)(2) of the Tax Code enumerates two (2) kinds of zero-rated customers: those engaged in business; and those not engaged in business in the Philippines. In both cases, the customers must be outside the Philippines when the services were performed. Thus, as long as the taxpayer-claimant proved that its customers were located outside the Philippines when the services were performed, the transaction shall be deemed zero-rated. The fact of doing business abroad is inconsequential. Chevron Holdings avers that for the year 2006, it rendered services to foreign affiliates located outside the Philippines when the services were performed.[32]

---

[30] Id. at 123-124.
[31] Id. at 15-16.
[32] Id. at 18-21.

Further, Chevron Holdings repeats that while the Certificate of Inward Remittance does not reflect the payment of ₱10,025,869.35, the JP Morgan Insight Information Manager Summary/Long Description Reports prove that Chevron Holdings received the inward remittances in acceptable foreign currency. Thus, the ₱10,025,869.35 amount should be admitted as part of its zero-rated sales.

Anent the disallowance of ₱55,784,357.71 on excess input taxes carried over from previous quarters, Chevron Holdings argues that the parties already stipulated that Chevron Holdings declared the amount in its Amended Quarterly VAT Return for the fourth quarter of 2005. It was, thus, erroneous for the CTA *En Banc* to require it to substantiate the amount. Besides, Section 112 (A) of the Tax Code does not require substantiation of carried-over input taxes as a condition for the refund of excess input taxes incurred within the period of the claim.

Chevron Holdings also faults the CTA in charging against the output taxes the validated input taxes and ruling that only if there exist excess input taxes from the output taxes that it may be entitled to a refund. Chevron Holdings avers that the Tax Code allows the taxpayer to refund the unutilized input taxes attributable to zero-rated rates and not apply them against its output tax liabilities.

Finally, Chevron Holdings posits that the CTA *En Banc* should have allowed the amount of ₱24,598,395.58 as input VAT because there was no intrinsic evil in not indicating the VAT as a separate item. The CIR previously mandated in Revenue Regulations (RR) No. 8-99[33] that the amount appearing on the sales invoice or receipt shall be deemed inclusive of VAT.

Through the Office of the Solicitor General (OSG), the CIR merely reiterated the ruling and discussion of the CTA *En Banc* in its Comment[34] dated May 21, 2015. Chevron Holdings filed a Reply on October 28, 2016.[35]

ISSUES

Essentially, the issues may be summarized as follows: (1) whether the sales rendered to Chevron Holdings' non-resident foreign affiliates qualify for VAT zero-rating under Section 108 (B)(2) of the Tax Code; (2) whether Chevron Holdings is required to substantiate its excess input tax carried-over

---

[33] RR No. 8-99 was issued on May 11, 1999. It provides penalties for violation of the requirement that output tax on sale of goods and services should not be separately indicated in the sales invoice or official receipt. The amount appearing in the sales invoices/receipts is thus deemed inclusive of the Value-Added Tax due thereon. The penalty for violation of the said requirement is a fine of not less than One Thousand Pesos (₱1,000) but not more than Fifty Thousand Pesos (₱50,000), and imprisonment of not less than two (2) years but not more than four (4) years.

[34] *Rollo*, pp. 542-567.

[35] Id. at 586-631.

from the previous quarters in the amount of ₱55,784,357.71 to be entitled to refund or credit of unutilized input taxes arising from zero-rated sales from January 1 to December 31, 2006; and (3) whether the CTA *En Banc* properly charged against Chevron Holdings' output tax liabilities the validated input taxes and only when there existed excess input taxes that it allows the refund.

RULING

The petition is partly meritorious.

Under Section 112 (A)[36] of the Tax Code, the taxpayer may claim for refund or issuance of tax credit certificate of unutilized input VAT attributable to zero-rated sales subject to the following conditions: (1) the taxpayer is VAT-registered; (2) the taxpayer is engaged in zero-rated or effectively zero-rated sales; (3) the claim must be filed within two (2) years after the close of the taxable quarter when such sales were made; and (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax.[37]

It is settled that Chevron Holdings is a VAT-registered taxpayer and that it timely filed the administrative and judicial claims for refund of input tax for the first quarter and second to fourth quarters of 2006. The dispute hinges on the second and fourth requisites.

Chevron Holdings failed to prove that certain services to non-resident foreign affiliate clients qualify for VAT zero-rating under Section 108 (B)(2) of the Tax Code.

Chevron Holdings claims that services rendered to foreign affiliates during 2006 are subject to the zero percent rate under Section 108 (B)(2) of the Tax Code, which states:

---

[36] SEC. 112. Refunds or Tax Credits of Input Tax. —

(A) Zero-Rated or Effectively Zero-Rated Sales. — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under ... Section 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 or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

[37] *Silicon Phil., Inc. v. Commissioner of Internal Revenue*, 654 Phil. 492, 504 (2011).

> Section 108. Value-added Tax on Sale of Services ... — x x x
>
> (B) Transactions Subject to Zero Percent (0%) Rate. — The following **services performed in the Philippines** by VAT-registered persons shall be subject to [a] zero percent (0%) rate:
>
> x x x x
>
> (2) Services **other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed**, the consideration for which is **paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP)**; xxx. (Emphases supplied.)

To qualify for VAT zero-rating, Section 108 (B)(2) requires the concurrence of four conditions: *first*, the services rendered should be other than "processing, manufacturing or repacking of goods;"[38] *second,* the services are performed in the Philippines;[39] *third*, the service-recipient is (a) a person engaged in business conducted outside the Philippines; or (b) a non-resident person not engaged in a business which is outside the Philippines when the services are performed; and, *fourth*, the services are paid for in acceptable foreign currency inwardly remitted and accounted for in conformity with BSP rules and regulations.[40]

The first and second requisites are undisputed. As an ROHQ, Chevron Holdings performs services to its affiliates in the Asia-Pacific, North American, and African Regions, such as general administration and planning, business planning and coordination, sourcing and procurement of raw materials and components, corporate finance advisory services, marketing control, and sales promotion, training and personnel management, logistics services, research and development services, and product development, technical support and maintenance, data processing and communications, and business development.[41] Certainly, the services it renders in the Philippines

---

[38] SEC. 108 (B)(1) reads:

(B) Transactions Subject to Zero Percent (0%) Rate. — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

(1) **Processing, manufacturing or repacking goods** for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP); x x x. (Emphasis supplied.)

[39] See *Commissioner of Internal Revenue v. American Express International, Inc.*, 500 Phil. 586, 597 (2005) and *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, 541 Phil. 119, 135-136 (2007).

[40] *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*, G.R. No. 234445, July 15, 2020.

[41] *Rollo*, p. 82.

are not in the same category as "processing, manufacturing or repacking of goods."

Anent the third requisite, the Court emphasized in *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*[42] that for sales to a non-resident foreign corporation to qualify for zero-rating, the following must be proved: "(1) that their client was established under the laws of a country, not the Philippines or, simply, is not a domestic corporation; and (2) that it is not engaged in trade or business in the Philippines. To be sure, there must be sufficient proof of both of these components: showing not only that the clients are foreign corporations, but also are not doing business in the Philippines."

Therefore, the taxpayer-claimant must present, at the very least, **both** the SEC Certificates of Non-Registration – to prove that the affiliate is foreign; **and** the Articles or Certificates of Foreign Incorporation, printed screenshots of US SEC website showing the state/province/country where the entity was organized, or any similar document – to prove the fact of not engaging in trade or business in the Philippines at the time the sales are rendered.[43]

Here, the CTA *En Banc* observed that only the following foreign clients were supported by **both** the SEC Certificates of Non-Registration **and** the Certificates or Articles of Association or Incorporation or similar document:[44]

1. Caltex Oil Mauritius, Ltd.
2. Caltex Oil Products Company
3. Caltex Trading Pte, Ltd.
4. Chevron Asia Pacific Pte, Ltd.
5. Chevron Australia Pty., Ltd.
6. Chevron Canada, Ltd.
7. Chevron Global Technology Services
8. Chevron International Exploration Production
9. Chevon Nigeria Limited
10. Chevron Oronite Co.
11. Chevron Products Company
12. Chevron South Africa Pty., Ltd.
13. Chevron Tankers, Ltd.
14. Chevron USA, Inc.
15. Project Resources Company
16. Texaco Netherland BV

---

[42] *Supra* note 39.
[43] See id.
[44] *Rollo*, p. 87.

Thus, the Court agrees with the observation of the CTA *En Banc* that some foreign affiliate clients were not adequately supported by these two documents. The Court accords the CTA's factual findings with the utmost respect, if not finality,[45] absent any showing of grave abuse of discretion considering that the CTA is in the best position to analyze the documents presented by the parties. We do not find any abuse of discretion here.

As regards the fourth condition, in *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*,[46] the Court stressed that the certification of inward remittances proves the fact of payment in acceptable foreign currency and accounted for under the rules and regulations of the BSP. In this case, however, apart from the JP Morgan Reports, which Chevron Holdings readily admitted to being a mere "online application,"[47] and VAT zero-rated receipts,[48] Chevron Holdings failed to substantiate the inward remittance of the proceeds of ₱10,025,869.35 sales duly accounted for in conformity with BSP rules. Accordingly, we uphold the disallowance of the amount of ₱10,025,869.35 as a zero-rated sale.

Chevron Holdings failed to strictly comply with the invoicing requirements under the Tax Code.

The CTA *En Banc* correctly disallowed ₱24,598,395.58 as input tax. Section 4.113-1 of RR No. 16-2005,[49] in relation to Section 113 (B)(2)[50] of the Tax Code, requires the VAT to be separately indicated in the invoice or official receipt, *viz.*:

> Section 4.113-1. Invoicing Requirements. — x x x
>
> (B) Information contained in VAT invoice or VAT official receipt. — The following information shall be indicated in VAT invoice or VAT official receipt: x x x
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; Provided, That:

---

[45] *Commissioner of Internal Revenue v. Traders Royal Bank*, 756 Phil. 175, 191-192 (2015); *Hitachi Global Storage Technologies Phil. Corp. v. Commissioner of Internal Revenue*, 648 Phil. 425, 432 (2010).

[46] 550 Phil. 751, 780 (2007).

[47] *Rollo*, p. 29.

[48] See id. at 88.

[49] CONSOLIDATED VALUE-ADDED TAX REGULATIONS OF 2005, September 1, 2005.

[50] SEC. 113. Invoicing and Accounting Requirements for VAT-registered Persons. — x x x

(B) Information Contained in the VAT Invoice or VAT Official Receipt. — The following information shall be indicated in the VAT invoice or VAT official receipt: x x x

(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 or receipt**; xxx. (Emphasis supplied.)

> (a) **The amount of tax shall be shown as a separate item in the invoice or receipt**; x x x. (Emphasis supplied.)

Failure to comply with the invoicing requirements is sufficient ground to deny the claim for refund or tax credit.[51] The reason for this is simple – only a VAT invoice or official receipt can give rise to input tax; without input tax, there is nothing to refund.[52] Therefore, considering that input taxes in the amount of ₱24,598,395.58 were not shown as a separate item in the invoice or official receipts, these cannot be considered valid input taxes that may be refunded or credited in favor of Chevron Holdings.

Requirements for entitlement to a refund or the issuance of tax credit certificate of unutilized input VAT from zero-rated sales.

The requirements for entitlement to a refund or the issuance of tax credit certificate of unutilized input VAT attributable to zero-rated sales are provided in Section 112 (A) of the Tax Code, which reads:

> 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): Provided, further, That **where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.** x x x(Emphases supplied.)

Thus, to be refunded or issued a tax credit certificate, the following must be complied with: (1) the input tax is a creditable input tax due or paid; (2) the input tax is attributable to the zero-rated sales; (3) the input tax is not transitional; (4) the input tax was not applied against the output tax; and (5) in case the taxpayer is engaged in mixed transactions, *i.e.*, VAT-able, exempt,

---

[51] *Commissioner of Internal Revenue v. Philex Mining Corporation*, G.R. No. 230016, November 23, 2020; *Eastern Telecommunications Phil., Inc. v. Commissioner of Internal Revenue*, 693 Phil. 464, 472 (2012).

[52] Id. at *Commissioner of Internal Revenue v. Philex Mining Corporation.*

and zero-rated sales and the input taxes cannot be directly and entirely attributable to any of these transactions, only the input taxes proportionately allocated to zero-rated sales based on sales volume may be refunded or issued a tax credit certificate.[53]

The first, second, third, and fifth requisites have been established. Only the amount of ₱9,081,815.00[54] is valid and substantiated creditable input tax, the amount is related to Chevron Holdings' regular and zero-rated sales from January 1 to December 31, 2006, and the input taxes are not transitional. Further, the CTA allocated the validated input taxes to the zero-rated sales based on sales volume.

The dispute lies with the fourth requirement.

The CTA *En Banc* ruled that the amounts of ₱3,645,615.75 (input tax carried over from the previous quarter), ₱52,138,741.96 (transitional input tax), and ₱779,739.06 (others), or a total of ₱56,564,096.77, cannot be validly applied against output taxes for the second, third, and fourth quarters because Chevron Holdings failed to present VAT invoices and receipts to prove that these were incurred or paid.[55] Thereafter, the CTA charged the substantiated and validated input taxes against the output taxes, and only after finding that there existed excess input taxes from the output taxes did the CTA conclude that Chevron Holdings might be entitled to a refund. It seemed that the tax court required Chevron Holdings to substantiate its prior quarters' excess input taxes so that there would be a sufficient amount to cover its output tax liability, and, only after the output tax had been paid or "covered" that the CTA allowed a refund.

The Court cannot adhere to this view.

A brief review of the principles underlying the Philippine VAT system is in order. The VAT was introduced to the Philippine taxation system in 1987 through Executive Order No. 273[56] to simplify tax administration and make the tax system more equitable. Under the Philippine VAT system, it is the end-user of consumer goods or services that ultimately shoulders the tax because the liability is passed on to them by the providers of these goods or services.[57] The end-users, in turn, may deduct their VAT liability (or input tax) from the VAT payments they receive from the final consumers (or output VAT).[58] One entity's output tax is another person's input tax. This mechanism allows taxpayers to offset the tax they have paid on their purchases

---

[53] See *Southern Power Corp. v. Commissioner of Internal Revenue*, 675 Phil. 732, 736-737 (2011).
[54] *Rollo*, pp. 92-93.
[55] Id. at 93, 120.
[56] Entitled "ADOPTING A VALUE-ADDED TAX," July 25, 1987.
[57] *Commissioner of Internal Revenue v. Magsaysay Lines, Inc.*, 529 Phil. 64, 72 (2006).
[58] See *Commissioner of Internal Revenue v. Magsaysay Lines, Inc.*, Id.

of goods and services against the tax they charge on their sales of goods and services. The input-output credit system is consistent with the nature of VAT as a tax levied only on the value-added and to avoid the so-called "tax on tax" or a cascading effect. Simply put, no tax is imposed on goods or services previously taxed in the chain. The Court explained in *Commissioner of Internal Revenue v. San Roque Power Corp.*,[59] to wit:

> As its name implies, the Value-Added Tax system is a tax on the value added by the taxpayer in the chain of transactions. For simplicity and efficiency in tax collection, the VAT is imposed not just on the value added by the taxpayer, but on the entire selling price of his goods, properties[,] or services. However, the taxpayer is allowed a refund or credit on the VAT previously paid by those who sold him the inputs for his goods, properties, or services. The net effect is that the taxpayer pays the VAT only on the value that he adds to the goods, properties, or services that he actually sells.

Thus, the seller-taxpayer pays to the government only the "excess" of the output VAT from the input VAT or the tax on the value that he adds to the goods and services that he is selling. If the taxpayer had more creditable input taxes[60] than output taxes in a given period, the excess shall be carried forward to the succeeding periods and applied against its future output VAT.[61]

It must be stressed that the taxpayer can charge its input tax only against its output tax.[62] The taxpayer cannot ask for a refund of or credit against its other internal revenue tax liabilities the "excess" input tax because the tax is not an excessively collected tax under Section 229 of the Tax Code.[63] And, even if the "excess" input tax is in fact "excessively" collected, the person who can file the judicial claim for refund is the person legally liable to pay the input tax, not the person to whom the tax was passed on as part of the purchase price.[64] The taxpayer will be entitled to the refund or tax credit of the "excess"

---

[59] *Supra* note 19 at 367.

[60] See SEC. 110 (C), Tax Code and Section 4.110-5, RR No. 16-2005.
[SEC. 110 (C), Tax Code]
(C) Determination of Creditable Input Tax. — The sum of the excess input tax carried over from the preceding month or quarter and the input tax creditable to a VAT-registered person during the taxable month or quarter shall be reduced by the amount of claim for refund or tax credit for value-added tax and other adjustments, such as purchase returns or allowances and input tax attributable to exempt sale. xxx.
[Section 4.110-5, RR No. 16-2005]
SEC. 4.110-5. Determination of Input Tax Creditable during a Taxable Month or Quarter. — The amount of input taxes creditable during a month or quarter shall be determined in the manner illustrated above by adding all creditable input taxes arising from the transactions enumerated under the preceding subsections of SEC. 4.110 during the month or quarter plus any amount of input tax carried-over from the preceding month or quarter, reduced by the amount of claim for VAT refund or tax credit certificate (whether filed with the BIR, the Department of Finance, the Board of Investments or the BOC) and other adjustments, such as purchases returns or allowances, input tax attributable to exempt sales and input tax attributable to sales subject to final VAT withholding.

[61] See SEC. 110 (B), Tax Code, as amended by RA No. 9361. See also *supra* note 19 at 350.

[62] See *Commissioner of Internal Revenue v. San Roque Power Corp.*, id. at 351-352.

[63] Id. at 353.

[64] Id. 365-366.

and unused input tax only when its VAT registration is cancelled.[65]

This rule, however, is not absolute. Sections 110 (B) and 112 (A) of the Tax Code read in part below:

> Section. 110. Tax Credits. — x x x
>
> (B) Excess Output or Input Tax. — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: Provided, however, That **any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.**[66] (Emphasis supplied.)
>
> Section 112. Refunds or Tax Credits of Input Tax. –
>
> (A) Zero-Rated or Effectively Zero-Rated Sales. – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, **apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales**, except transitional input tax, **to the extent that such input tax has not been applied against output tax**: x x x. (Emphasis supplied.)

Thus, the input tax attributable to zero-rated sales may, at the option of the VAT-registered taxpayer, be: (1) charged against output tax from regular 12% VAT-able sales, and any unutilized or "excess" input tax may be claimed for refund or the issuance of tax credit certificate; **or** (2) claimed for refund or tax credit in its entirety. It must be stressed that **the remedies of charging the input tax against the output tax and applying for a refund or tax credit are alternative and cumulative.** Furthermore, the option is vested with the taxpayer-claimant. 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. 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,[67] from the output taxes. These procedures find no basis in law and jurisprudence.

We explain.

---

[65] The cancellation of VAT registration is due to retirement from or cessation of business, or due to changes in or cessation of status under SEC. 106 (C) of the Tax Code. See SEC. 112 (C), Tax Code and Section 4.112-1, RR No. 16-2005.

[66] As amended by Republic Act No. 9361, Entitled "AMENDMENT TO SECTION 110 (B) OF NIRC OF 1997," December 13, 2006.

[67] See SEC. 110 (C), Tax Code and Section 4.110-5, RR No. 16-2005. See also Line 20, BIR Form No. 2550-Q, Quarterly Value-Added Tax Return, February 2007 (ENCS).

First, Section 112 (A) of the Tax Code 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.**" In *Commissioner of Internal Revenue v. Taganito Mining Corp.*,[68] we held:

> x x x Section 112 (A) of the Tax Code of 1997, as amended, states that, "[a]ny VAT-registered person, whose sales are zero-rated or effectively zero-rated may x x x apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales x x x to the extent that such input tax has not been applied against output tax." **This means that input VAT attributable to zero-rated sales may, at the option of the taxpayer, be (a) applied directly against output VAT due on other transactions, or (b) claimed as tax refund/credit.** The second option is the only one available for taxpayers whose transactions are 100% zero-rated as it will not have any output VAT against which it may apply its input VAT. It may also be the more favorable option for taxpayers with mixed transactions as the refunded amount will be cash on hand, while the TCC issued may be applied to all national internal revenue taxes (not just limited to output VAT). **When the taxpayer avails itself of the second option, it must prove that it has not previously availed itself of the first option.** The necessary implication of all this is that input VAT attributable to zero-rated sales is still creditable input VAT, and having the second option available to the taxpayer does not change its nature. (Emphases supplied.)

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.

The foregoing interpretation is consistent with Section 110 (C) of the

---

[68] G.R. Nos. 219630-31 & 219635-36, December 7, 2021.

Tax Code and Section 4.110-5 of RR No. 16-2005 which prescribe the method for computing the total creditable input tax chargeable against the output tax, *viz.*:

> [Section 110 (C), Tax Code]
>
> (C) **Determination of Creditable Input Tax.** — The sum of the excess input tax carried over from the preceding month or quarter and the input tax creditable to a VAT-registered person during the taxable month or quarter **shall be reduced by the amount of claim for refund or tax credit for value-added tax** and other adjustments, such as purchase returns or allowances and input tax attributable to exempt sale.
>
> x x x x (Emphases supplied.)
>
> [Section 4.110-5, RR No. 16-2005]
>
> (C) SECTION 4.110-5. **Determination of Input Tax Creditable during a Taxable Month or Quarter.** — The amount of input taxes creditable during a month or quarter shall be determined in the manner illustrated above by adding all creditable input taxes arising from the transactions enumerated under the preceding subsections of Sec. 4.110 during the month or quarter plus any amount of input tax carried-over from the preceding month or quarter, **reduced by the amount of claim for VAT refund or tax credit certificate** (whether filed with the BIR, the Department of Finance, the Board of Investments or the BOC) and other adjustments, such as purchases returns or allowances, input tax attributable to exempt sales and input tax attributable to sales subject to final VAT withholding. (Emphases supplied.)

The total creditable input tax is computed as follows:[69]

Input tax incurred for the quarter	XXX
Input tax carried over from the previous quarter	XXX
Input tax-deferred on capital goods exceeding 1 million from the previous quarter	XXX
Transitional input tax	XXX
Presumptive input tax	XXX
Total Available Input Tax	**XXX**
Less:	
Input tax on purchases of capital goods exceeding 1 Million deferred for the succeeding period	(XXX)
Input tax on sale to government closed to expense	(XXX)
Input tax allocable to exempt sales	(XXX)
VAT claimed for refund or tax credit	**(XXX)**
Total Allowable Input Tax	XXX

Thus, before the input tax from zero-rated sales may even form part of

[69] See Lines 20 to 24, BIR Form No. 2550-Q, Quarterly Value-Added Tax Return, February 2007 (ENCS).

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[70] 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. During the September 7, 1993 hearing of the House of Representatives Committee on Ways and Means on House Bills No. 10693 and 10694 relatives to the passage of Republic Act (RA) No. 7716[71] or the Expanded VAT Law, the body had the occasion to discuss the distinction between the input tax from regular twelve percent (12%) VAT-able sales and zero-rated sales:

> HON. FIGUEROA: I would like to ask the BIR if the VAT input taxes are refundable. Because it seems that we are confused in that issue. To

---

[70] Under Republic Act No. 9337, entitled "VALUE-ADDED TAX (VAT) REFORM ACT," the total input tax that may be credited in every quarter shall not exceed seventy percent (70%) of the output VAT. *N.B.* The 70% cap was removed in Republic Act No. 9361, entitled "AMENDMENT TO SECTION 110 (B) OF NIRC OF 1997."

[71] Entitled "EXPANDED VALUE-ADDED TAX (VAT) LAW," approved on May 5, 1994 and published in "*Malaya*" and the "*Philippine Times Journal*" on May 12, 1994 and in "*Manila Bulletin*" on June 5, 1994 and in the Official Gazette, Vol. 90 No. 31 page 4489 on August 1, 1994.

my understanding, input taxes as far as VAT is concerned, are not refundable. They are only creditable against tax liability.

Whereas, in the case of that mining industry which claims the refund of taxes paid, I think, it is an exemption given by BOI. I think it is a tax credit given by BOI as far as our Incentives Act is concerned.

MR. FRIANEZA: Ordinarily, Your Honor, **value-added tax can only be tax credited or refunded for input tax credits that are attributable to export sales or effective zero-rated transaction.** Ordinarily, they are not given as refund or tax credit in that form.

What is allowed in ordinary transactions is that taxes paid or VAT paid on your purchases of capital equipment, supplies, raw materials, and services, can be claimed as a credit against your output tax. Ordinarily. That is the only allowable credit that is given under the law.

XXXX

THE CHAIRMAN. **But supposing the input tax exceeds the output tax.** That will be a problem.

MR. FRIANEZA. **In the ordinary transactions, not exporters or zero[-]rated transactions.** When the input tax exceeds that output tax as when you, for example, bought a big equipment and therefore your VAT paid at Customs is quite big and it is more than what your output tax is for the period, then that excess of input tax can be carried over to the next taxable period, monthly period or quarter.

XXXX

THE CHAIRMAN. For how long? That will be ...

MR. FRIANEZA. There's no limit. There is no limit, Your Honor.

THE CHAIRMAN. That will be a credit owed by the government.[72] (Emphases supplied.)

Later, it was emphasized that applying for a refund or tax credit is a "right or privilege" of the taxpayer engaged in zero-rated transactions:

MR. FRIANEZA. The matter of tax credits, Your Honor, is ... if we will ... because basically, essentially, the value[-]added tax is a process of output and input tax. And what ... the input tax, we call that a credit against the output tax. Now, but [*sic*] if we are referring to the tax credits which are in excess of the VAT payable per return, they are taken cared [*sic*] of by the process of the filing of the return. So when a taxpayer files the return, then from his output tax, meaning the 10% [now 12%] of his gross sales; the input tax for which he is entitled to are automatically deducted from the output tax and we call this the input tax.

Now, there are tax credits, however, that are given to the taxpayers because their gross sales is [*sic*] subject to zero[-] rate ... zero[-] rated, like

---

[72] House of Representatives Committee on Ways and Means, September 7, 1993, pp. 59-61.

> in the case of exports. The export sales do not bear any kind of tax. But, **the law gives to the exporters the right or the privilege to recover whatever was paid at prior stages to the point of exports. And that is one of the reason [*sic*], Your Honor, why the value[-]added tax was adopted in 1988, to boost the export industry.**[73] (Emphasis supplied.)

Then, much later during the Bicameral Conference Committee on the Disagreeing Provisions of House Bill Nos. 3705 and 3555 and Senate Bill No. 1950, which became RA No. 9337,[74] Senator Ralph G. Recto explained how the input VAT from zero-rated sales works, to wit:

> REP. TEVES. Mr. Chairman, how do you differentiate the 0% exempt? The zero (0) means it is a zero-rated VAT, Value Added Tax which you can get a refund[,] or is it just a mere exempt because there's a lot of difference between exempt and zero (0)?
>
> MR. BONOAN. Yes. I understand the Senate made the zero (0) rating on the theory that these are akin to export sales. So, would that be accurate, Senator Recto?
>
> CHAIRMAN RECTO. Yes, only with respect to international passengers and international cargo similar to how other countries have a VAT system with regard to airlines.
>
> REP. TEVES. So, they can collect input VAT. **They can get a refund of input VAT.**
>
> MR. BONOAN. **They would be able to in the case of a 0% output VAT if they incur input VAT of any amount.**
>
> REP. TEVES. We can discuss that later.
>
> CHAIRMAN RECTO. **Yes, only ratably to their international sales[,] not on their domestic sales.**[75] (Emphases supplied.)
>
> x x x x
>
> CHAIRMAN RECTO. If I can explain [to] Congressman Villafuerte, how this will operate, as far as Senate is concerned, is this: **Total gross sales of an airline company, if 80% of the gross sales was [*sic*] used for international, then the 80% is immediately refundable. If 20% of his gross sales, which is domestic, by way of cargo or passengers, then the 20% is subject now to creditable VAT on a quarterly basis.** So, it's ratably. Now, it's easier for the BIR as well to collect. For example, in this case, as far as the zero-rating for exclusively an international transport, let's say, those service providers of Lufthansa, Cathay Pacific, I think who provide service with them, let's say, Macro Asia, maliwanag ngayon under the Senate version that these people are zero-rated. Maliwanag ngayon because right now, hindi maliwanag iyan under the Tax Code.

---

[73] House of Representatives Committee on Ways and Means, November 5, 1993, p. 9.
[74] Entitled "VALUE-ADDED TAX (VAT) REFORM ACT," July 1, 2005.
[75] Bicameral Conference Committee on the Disagreeing Provisions of HB Nos. 3705 & 3555 and SB No. 1950 Re: Value Added Tax Bills, April 15, 2005, pp. 48-49.

REP. VILLAFUERTE. What happens to the Philippine Airlines plane that flies to domestic and then…

CHAIRMAN RECTO. **Again, let me reiterate, Congressman Villafuerte, the entire gross sales for that month or for that quarter of Philippine Airlines if 80% is attributable to international passenger and international cargo, then it is 80% of his VAT input is refundable, is zero-rated.**

REP. VILLAFUERTE. Yeah, but you are not applying exclusively then.

CHAIRMAN RECTO. Now, for domestic[,] because we are VATing domestic passenger and domestic cargo.

REP. VILLAFUERTE. No, no, no. It says here "exclusively"…

CHAIRMAN RECTO. Yes, but there is another provision Congressman Villafuerte that says here that transport of passengers and cargo by air or sea to foreign countries is zero-rated. There is another provision that will apply to that.

REP. VILLAFUERTE. Zero-rated. But what I'm trying to say is that you are not applying the word "exclusively" to a particular vessel or airplane, you know. It is the used that you are saying, but can be done both ways, domestic and foreign or international, even if that plane is used for both.

CHAIRMAN RECTO. That's right. That's ratably.

REP. VILLAFUERTE. So, in other words, that particular airplane will not forgo the zero VAT even if used domestically.

CHAIRMAN RECTO. If you uses [*sic*] it domestically…

REP. VILLAFUERTE. And also internationally.

CHAIRMAN RECTO. … then you cannot get a refund. The portion, again, let me reiterate…

REP. VILLAFUERTE. **The portion on foreign only.**

CHAIRMAN RECTO. Yes, that's right.[76] (Emphases supplied.)

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

---

[76] Bicameral Conference Committee on the Disagreeing Provisions of HB Nos. 3705 & 3555 and SB No. 1950 Re: Value Added Tax Bills, April 15, 2005, pp. 71-74.

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.[77] 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.[78] 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[79] 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.[80]

The Court is not unaware that in *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*,[81] we implied that only the **excess** input tax allocable to zero-rated sales against the output tax may be refunded or issued a tax credit certificate.[82] The pronouncement made in that case should not, however, be considered binding as a precedent as the issue was limited to the entitlement of a PEZA-registered enterprise to refund of unutilized input VAT paid on capital goods purchased. Whether the taxpayer may refund the entire input tax attributable to zero-rated sales and not only the "excess" of the total creditable input taxes from the output tax was never raised as an issue. The Court's statement is, at best, merely an *obiter dictum* – an opinion expressed by a court upon some question of law, which is not necessary to the decision of the case before it. It is a remark made, or opinion expressed, by a judge, in his decision upon a cause, "by the way," that is, incidentally or collaterally, and not directly upon the question before him, or upon a point not necessarily involved in the determination of the cause, or introduced by way of illustration, or analogy or argument.[83]

Instead, the case of *Atlas Consolidated Mining and Development Corp. v. Commissioner of Internal Revenue*[84] is more apt. In that case, we affirmed the CTA's denial of the taxpayer's application for a refund on the ground that

---

77 See Sections 106 (A) (2) and 108 (B), Tax Code.
78 See Section 110 (A), Tax Code.
79 See Sections 110 (B) and (C), Tax Code.
80 See Section 112 (A), Tax Code.
81 491 Phil. 317 (2005).
82 Id. at 333. The Decision reads in part:

> If at the end of a taxable quarter the output taxes charged by a seller are equal to the input taxes passed on by the suppliers, no payment is required. It is when the output taxes exceed the input taxes that the excess has to be paid. If, however, the input taxes exceed the output taxes, the excess shall be carried over to the succeeding quarter or quarters. **Should the input taxes result from zero-rated or effectively zero-rated transactions or from the acquisition of capital goods, any excess over the output taxes shall instead be refunded to the taxpayer or credited against other internal revenue taxes.** (Emphasis supplied.)

83 *Commissioner of Internal Revenue v. Philex Mining Corp.*, G.R. No. 230016, November 23, 2020.
84 655 Phil. 499 (2011).

it failed to prove that the input tax subject of the refund was *not applied* against any of its output tax liability.[85] We held that:

> x x x when claiming tax refund/credit, the VAT-registered taxpayer must be able to establish that it does have **refundable or creditable input VAT, and the same has not been applied against its output VAT liabilities** — information which are [*sic*] supposed to be reflected in the taxpayer's VAT returns. Thus, an application for tax refund/credit must be accompanied by copies of the taxpayer's VAT return/s for the taxable quarter/s concerned. (Emphasis supplied.)[86]

In the present case, the independent auditor's Report[87] showed that the amount subject to the refund, *i.e.*, ₱36,802,956.72, **was not applied against Chevron Holdings's output tax liabilities**, to wit:

> 3. We have ascertained and verified that **the total amount of valid unutilized input VAT were** [*sic*] **recognized in the books as input taxes, reported in the monthly/quarterly VAT Returns (BIR Form 2550M and 2550Q) for the period of January to December 2006 and were not applied against output tax.** We have noted that the amount of claim was not carried over to the succeeding VAT returns beginning April 2008 and thereafter since this was when it was determined by the Company's management that the excess input tax attributable to zero-rated sales/receipts amounting to Thirty[-]Six Million Eight Hundred Two Thousand Nine Hundred Fifty-Six and 72/100 Pesos (₱36,802,956.72) would not be utilized against output tax in the succeeding periods. x x x. (Emphasis supplied.)[88]

As in ordinary civil cases, a claim for refund or tax credit necessitates only the preponderance-of-evidence threshold.[89] Chevron Holdings proved its entitlement by preponderant evidence.

Fourth, that the taxpayer failed to prove that it had sufficient creditable input taxes[90] 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.[91] But, on the other hand, **the taxpayer is asking to refund the unutilized or unused input tax**

---

85 Id. at 509.

86 Id. at 509-510.

87 *Rollo*, pp. 492-503.

88 Id. at 501.

89 *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, 640 Phil. 613, 617-618 (2010); citing *Commissioner of Internal Revenue v. Mirant Pagbilao Corp.*, 586 Phil. 712, 725 (2008).

90 See Lines 20, 21, 22, 23 and 24, BIR Form No. 2550-Q, Quarterly Value-Added Tax Return, February 2007 (ENCS).

91 See Section 4.110-7 of RR No. 16-2005. See also *Commissioner of Internal Revenue v. San Roque Power Corp.*, *supra* note 19 at 350-351.

from zero-rated sales.

Next, the substantiation of input taxes that can be credited against the output tax is an issue relevant to the assessment for potential deficiency output VAT liability. In turn, it is not for the CTA and the Court to determine and rule in a judicial claim for refund under Section 112 (A) of the Tax Code that the taxpayer had insufficient or unsubstantiated input taxes to cover its output tax liability. This is for the BIR to determine in an administrative proceeding for assessment of deficiency taxes.

It is true, in several cases,[92] 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"[93] 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."[94] We explained in *Commissioner of Internal Revenue v. Court of Appeals*, to wit:[95]

> x x x 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.[96]

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.

All told, it was erroneous for the CTA to charge the validated and

---

[92] See *Commissioner of Internal Revenue v. Court of Appeals*, 304 Phil. 518, 526 (1994), quoted in *Air Canada v. Commissioner of Internal Revenue*, 776 Phil. 119, 164 (2016), *Commissioner of Internal Revenue v. Toledo Power Company*, 774 Phil. 92, 115 (2015), *South African Airways v. Commissioner of Internal Revenue*, 626 Phil. 566, 578 (2010).

[93] *Commissioner of Internal Revenue v. Court of Appeals*, *supra* note 89.

[94] Id. at 527.

[95] 304 Phil. 518 (1994).

[96] Id. at 527.

substantiated input taxes against Chevron Holdings' output taxes first and use the resultant amount as the basis for computing the allowable amount for refund. The CTA also erred in requiring Chevron Holdings to substantiate its excess input tax carried over from the previous quarter as it is not a requirement for entitlement to a refund of unused or unutilized input VAT from zero-rated sales.

We reiterate that although the burden of proof to establish entitlement to a refund is on the taxpayer-claimant, the Court has consistently held that once the minimum statutory requirements have been complied with, the claimant should be considered to have successfully discharged their burden to prove its entitlement to the refund.[97] After the claimant has successfully established a *prima facie* right to the refund by complying with the requirements laid down by law,[98] the burden is shifted to the opposing party, *i.e.*, the BIR, to disprove such claim. Otherwise, we would unduly burden the taxpayer-claimant with additional requirements which have no statutory nor jurisprudential basis.[99] In the present case, Chevron Holdings sufficiently proved compliance with all the requisites for entitlement to a refund or credit of unutilized input tax allocable to zero-rated sales under Section 112 (A) of the Tax Code.

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,[100] as follows:

> SEC. 4.110-4. Apportionment of Input Tax on Mixed Transactions. — xxx
>
> [2. If any input tax cannot be directly attributed to either a VAT taxable or VAT-exempt transaction, the input tax shall be pro-rated to the VAT taxable and VAT-exempt transactions and only the ratable portion pertaining to transactions subject to VAT may be recognized for input tax credit.]
>
> 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** |

---

[97] *Commissioner of Internal Revenue v. Philippine National Bank*, G.R. No. 212699, March 13, 2019.

[98] *Winebrenner & Iñigo Insurance Brokers, Inc. v. Commissioner of Internal Revenue*, 752 Phil. 375, 395 (2015).

[99] *Commissioner of Internal Revenue v. Philippine National Bank*, G.R. No. 212699, March 13, 2019.

[100] AMENDING CERTAIN PROVISIONS OF REVENUE REGULATIONS NO. 16-2005, AS AMENDED, OTHERWISE KNOWN AS THE CONSOLIDATED VALUE-ADDED TAX REGULATIONS OF 2005, February 7, 2007.

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**

x x x x

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	
₱100,000.00 / ₱400,000.00 X ₱20,000.00	— ₱ 5,000.00
Total input tax attributable to zero-rated sales for the month	₱ 8,000.00

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.

The CTA *En Banc* found that only ₱155,654,748.22[101] qualified for VAT zero-rating of sales of services to foreign affiliates. Out of the total reported input VAT of ₱40,152,123.09 attributable to both twelve percent (12%) VAT-able and zero-rated transactions, only ₱9,081,815.00[102] was substantiated with VAT official receipts and invoices. Thus:

	Valid zero-rated sales	Valid input taxes not directly attributable to any activity
First Quarter	₱ 5,762,011.70	₱ 1,276,656.14
Second Quarter	4,669,743.23	1,650,503.65
Third Quarter	66,091,331.71	1,860,385.53

[101] *Rollo*, pp. 88-90.
[102] Id. at 92-93.

Fourth Quarter	79,131,661.58	4,294,269.68
Total	₱ 155,654,748.22	₱ 9,081,815.00

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,[103] 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.[104]

FOR THESE REASONS, the Petition for Review on *Certiorari* is **PARTLY GRANTED**. The Court of Tax Appeals *En Banc*'s Decision dated May 6, 2014, and Amended Decision dated October 28, 2014, in CTA EB No. 940 are **AFFIRMED with MODIFICATIONS**. The Commissioner of Internal Revenue is ordered to refund, or in the alternative, issue a tax credit certificate in favor of Chevron Holdings, Inc. in the total amount of One Million One Hundred Forty Thousand Three Hundred Eighty-One Pesos and 22/100 (₱1,140,381.22), representing unutilized input tax attributable to zero-rated sales for the period of January 1 to December 31, 2006.

SO ORDERED.

MARIO V. LOPEZ
Associate Justice

[103] Id. at 10-12.

[104] *San Roque Power Corp. v. Commissioner of Internal Revenue*, 620 Phil. 554, 583 (2009); *Commissioner of Internal Revenue v. Philippine Air Lines, Inc.*, 610 Phil. 392, 405-406 (2009).

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice

MARVIC M.V.F. LEONEN
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
See Dissent.

RAMON PAUL L. HERNANDO
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice
See Dissent.

HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

ANTONIO T. KHO, JR.
Associate Justice

MARIA FILOMENA D. SINGH
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

ALEXANDER G. GESMUNDO
Chief Justice

CERTIFIED TRUE COPY

MARIA LUISA M. SANTILLA
Deputy Clerk of Court and
Executive Officer
OCC-En Banc, Supreme Court

EN BANC

G.R. No. 215159 — CHEVRON HOLDINGS, INC. (FORMERLY CALTEX [ASIA] LIMITED), *petitioner, versus* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

Promulgated:

July 5, 2022

x- x

DISSENTING OPINION

CAGUIOA, *J.*:

The *ponencia* modifies the Decision of the Court of Tax Appeals (CTA) *En Banc* (CTA EB) by increasing the amount of unutilized input tax refundable to petitioner Chevron Holdings, Inc. (Formerly Caltex [Asia] Limited), for taxable year 2006 from Php47,409.24, as determined by the CTA EB, to Php1,140,381.22.[1]

In arriving at the increased amount, the *ponencia* found erroneous the formula used by the CTA EB in computing the refundable amount. In particular, the *ponencia* holds that the substantiation of a taxpayer's creditable input tax, including prior quarter's excess input tax, is not required in claims for refund or credit of unutilized input tax attributable to zero-rated sales, because this supposedly has no basis in law and jurisprudence.[2] The *ponencia* also rules that it was erroneous for the CTA EB to first charge the validated unutilized input tax attributable to zero-rated sales against the taxpayer's output tax for the period covered by the refund, and thereafter use the resultant amount as basis in computing the refundable input tax. The *ponencia* holds that to do so would render nugatory the options accorded by law to the taxpayer, to either claim for a refund of its unutilized input tax attributable to zero-rated sales or to credit the same against its output tax.[3]

I strongly dissent. The *ponencia*'s formula in computing for the refundable amount of input tax attributable to zero-rated sales **<u>contravenes the plain language of the law and undermines the basic principles of a sound tax system</u>**.

---

1 *Ponencia*, pp. 6, 24-28.
2 Id. at 22-24.
3 Id. at 16-22.

I.

Sections 110 and 112 of the National Internal Revenue Code of 1997,[4] as amended (1997 NIRC), requires that only the "excess" input tax attributable to zero-rated sales is refundable to the taxpayer

It is a basic rule in statutory construction that —

> The law must not be read in truncated parts; its provisions must be read in relation to the whole law. It is [a] cardinal rule in statutory construction that a **statute's clauses and phrases must not be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole.** Every part of the statute must be interpreted with reference to the context, *i.e.*, **that every part of the statute must be considered together with other parts of the statute and kept subservient to the general intent of the whole enactment.**[5]

In line with this principle, I take strong exception on how the majority of the Court blindly read Section 112 of the 1997 NIRC, in isolation or apart from the other provisions thereof, particularly Section 110(B). To be sure, Section 110(B), which provides for the determination of a taxpayer's excess output tax or excess input tax in a given quarter, makes initial reference to the grant of refund or credit of input tax to a taxpayer, *viz.*:

> SECTION. 110. *Tax Credits.* –
>
> x x x x
>
> (B) *Excess Output or Input Tax.* – If at the end of any taxable quarter **the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person.** If the **input tax exceeds the output tax**, the excess shall be carried over to the succeeding quarter or quarters. *Provided, however*, **That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.** (Emphasis supplied)

Breaking down the foregoing provision, a taxpayer incurs Value-Added Tax (VAT) liability if, at the end of a given quarter, it[6] has excess output tax, *i.e.*, its output tax is more than its input tax. Conversely, no VAT liability is due from a taxpayer if it has excess input tax in a given quarter, *i.e.*, its input tax is more than its output tax. In such a case, the excess input tax shall be used as credit against its output tax in the succeeding quarters. However, if

---

4 Otherwise known as the "TAX REFORM ACT OF 1997," approved on December 11, 1997.

5 *Mactan-Cebu International Airport Authority v. Urgello*, 549 Phil. 302, 322 (2007); emphasis supplied, citation omitted.

6 "It" is used given that the taxpayer in this case is a corporation.

the excess input tax in a given quarter is attributable to its zero-rated sales, then the taxpayer, aside from crediting it against the output tax for the succeeding quarters, has the additional options of either: (1) claiming for a refund; or (2) crediting it against other internal revenue taxes. These additional options may be exercised subject to the requirements of Section 112.

In simple terms, Section 112 is foremost circumscribed by how a taxpayer's VAT liability is determined or computed under Section 110(B). Stated differently, the requisites for claiming for refund of input tax attributable to zero-rated sales are not confined to the provisions of Section 112 alone. Before Section 112 may even operate to grant a taxpayer a refund or credit, the requirement of Section 110(B) must first be satisfied — that is, the taxpayer must first have excess input tax. In other words, the taxpayer's option for refund or credit under Section 112 arises only when the excess input tax is attributable to zero-rated sales.

Clearly, in contrast to the *ponencia*'s ruling, a taxpayer's right to a refund or credit of input tax attributable to zero-rated sales is neither absolute nor automatic. Refund or credit can only be granted when the taxpayer complies with the requirements of Section 112 **and**, pursuant to Section 110(B), it has excess input tax over output tax in the period or periods covered by the claim. Thus, apart from complying with the requirements of Section 112, the taxpayer must also establish that it has excess input tax in the given quarter to be entitled to refund of the claimed input tax attributable to zero-rated sales; otherwise, following Section 110(B), the taxpayer is instead liable to pay its VAT liability.

Therefore, in charging the substantiated and validated input taxes against the output taxes, the CTA did nothing more than determine whether petitioner is entitled to its claimed refund. In doing so, the CTA had to determine whether petitioner had outstanding output tax liability — an issue that is inextricably linked to the resolution of the claimed refund. Again, Section 110(B) of the 1997 NIRC is clear when it states that "[i]f at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person."

Relevantly, this reading of Section 110(B) in relation to Section 112, has already been established by the Court as far back as 2005 in the case of *Commissioner of Internal Revenue v. Seagate Technology (Phils.)*[7] (*Seagate*). Contrary to the characterization made by the *ponencia*, the Court's pronouncement in *Seagate* that only the "excess" input tax over output tax shall be refunded to the taxpayer is not *obiter dictum*.[8] To be sure, *Seagate* involves a claim for refund or credit of input tax attributable to zero-rated sales. And in determining Seagate's entitlement thereto, the Court discussed the VAT system and applied Section 110(B) and the requirements for input tax refund, *viz.*:

---

7 491 Phil. 317 (2005).

8 *See ponencia*, p. 23

Nature of the VAT and the Tax Credit Method

Viewed broadly, the VAT is a uniform tax ranging, at present, from 0 percent to 10 percent levied on every importation of goods, whether or not in the course of trade or business, or imposed on each sale, barter, exchange or lease of goods or properties or on each rendition of services in the course of trade or business as they pass along the production and distribution chain, the tax being limited only to the value added to such goods, properties or services by the seller, transferor or lessor. It is an indirect tax that may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. As such, it should be understood not in the context of the person or entity that is primarily, directly and legally liable for its payment, but in terms of its nature as a tax on consumption. In either case, though, the same conclusion is arrived at.

The law that originally imposed the VAT in the country, as well as the subsequent amendments of that law, has been drawn from the tax credit method. Such method adopted the mechanics and self-enforcement features of the VAT as first implemented and practiced in Europe and subsequently adopted in New Zealand and Canada. Under the present method that relies on invoices, an entity can credit against or subtract from the VAT charged on its sales or outputs the VAT paid on its purchases, inputs and imports.

If at the end of a taxable quarter the output taxes charged by a seller are equal to the input taxes passed on by the suppliers, no payment is required. It is when the output taxes exceed the input taxes that the excess has to be paid. **If, however, the input taxes exceed the output taxes, the excess shall be carried over to the succeeding quarter or quarters. Should the input taxes result from zero-rated or effectively zero-rated transactions or from the acquisition of capital goods, any *excess* over the output taxes shall instead be refunded to the taxpayer or credited against other internal revenue taxes.**

x x x x

Tax Refund or Credit in Order

Having determined that respondent's purchase transactions are subject to a zero VAT rate, the tax refund or credit is in order.

x x x x

Compliance with All Requisites for VAT Refund or Credit

As further enunciated by the Tax Court, respondent complied with all the requisites for claiming a VAT refund or credit.[9]

That only the excess input tax may be refunded under Section 112 was reiterated in the Court *En Banc* case of *Abakada Guro Party List v. Ermita*[10]

---

[9] *Commissioner of Internal Revenue v. Seagate Technology (Phils.)*, supra note 7, at 331-349; emphasis, italics and underscoring supplied, citations omitted.

[10] G.R. Nos. 168056, 168207, 168461, 168463 & 168730, September 1, 2005, 469 SCRA 14.

(*Abakada Guro*), where the constitutionality of Republic Act No. 9337[11] was upheld. The Court, explaining the VAT crediting system, said:

> As earlier stated, the input tax is the tax paid by a person, passed on to him by the seller, when he buys goods. Output tax meanwhile is the tax due to the person when he sells goods. In computing the VAT payable, three possible scenarios may arise:
>
> *First*, if at the end of a taxable quarter the output taxes charged by the seller are equal to the input taxes that he paid and passed on by the suppliers, then no payment is required;
>
> *Second*, when the output taxes exceed the input taxes, the person shall be liable for the excess, which has to be paid to the Bureau of Internal Revenue (BIR); and
>
> ***Third*, if the input taxes exceed the output taxes, the excess shall be carried over to the succeeding quarter or quarters. Should the input taxes result from zero-rated or effectively zero-rated transactions, any *excess over the output taxes* shall instead be refunded to the taxpayer or credited against other internal revenue taxes, at the taxpayer's option.**[12]

Indeed, the issue discussed in the *ponencia* has long been settled by jurisprudence; and to revisit and reverse the same is completely unwarranted as it is contrary to the plain letter of the law.

To reiterate, Section 112 should be read in conjunction with Section 110(B). Based on these provisions, before a taxpayer can be granted a refund of input tax from zero-rated sales, it must first be established that it has no output tax liability but, in fact, has excess input tax for the period or periods covered by the claim. As such, charging/offsetting the validated input tax against the taxpayer's output tax liability in the quarter subject of the claim is necessary and required by law to determine the amount of excess input tax, if any, which may be refunded to the taxpayer.

The *ponencia* also points out that the term "excess" does not apply to zero-rated transactions because it is technically a misnomer; and that Section 110(B) uses the word "any" in referring to the input tax attributable to zero-rated sales that a taxpayer may opt to refund or credit against other internal revenue taxes.[13]

However, contrary to the foregoing postulation, the term "excess" also applies to zero-rated sales because it is a VAT-taxable transaction; only that, for a taxpayer engaged in purely zero-rated transactions, its "excess" input tax pertains entirely to the amount of its input tax attributable to zero-rated sales.

---

[11] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES, May 24, 2005.

[12] *Abakada Guro Party List v. Ermita*, supra note 10, at 132-133; emphasis, italics and underscoring supplied, citations omitted.

[13] *See ponencia*, pp. 18, 22-23.

Moreover, the *proviso* in Section 110(B) cannot be read in isolation or apart from the general concept discussed therein, which is the determination of a taxpayer's VAT liability. Again, it bears emphasis that the meaning of the law is not to be extracted from any single part, portion or section or from isolated words and phrases, clauses or sentences but from a general consideration or view of the act as a whole.[14] Thus, a taxpayer's entitlement for refund or tax credit under Section 112 is always subject to whether the taxpayer has excess input tax or is liable for VAT in a given quarter. Had the Legislature intended that a taxpayer can simply refund any of its input tax attributable to zero-rated sales, even if the taxpayer is, in fact, liable for output tax for the given quarter, then it should not have included such *proviso* under Section 110(B). Section 112 would have been a sufficient basis for a taxpayer's entitlement for input tax refund or credit. However, the Legislature did not. Instead, the Legislature was explicit that the refund or credit of input tax attributable to zero-rated sales must satisfy both Section 110(B) and Section 112.

Worthy of note as well is the fact that despite the Court's categorical pronouncements in *Seagate* and *Abakada Guro*, the relevant portions of Section 110(B) and Section 112 were neither amended nor repealed by Congress in the recent laws[15] it enacted that amended the 1997 NIRC.

Further, the *ponencia* refers to Section 110(C),[16] which requires the taxpayer to deduct the amount of claim for refund or tax credit from its creditable input tax in a taxable month or quarter. According to the *ponencia*, this supports the construction that the taxpayer has the option to automatically claim for a refund of input tax attributable to zero-rated sales.

Section 110(C) reads:

> SECTION 110. *Tax Credits.* –
>
> x x x x
>
> (C) *Determination of Creditable Input Tax.* – **The sum of the excess input tax carried over from the preceding month or quarter and the input tax creditable to a VAT-registered person during the taxable month or quarter shall be reduced by the amount of claim for refund or tax credit for value-added tax and other adjustments, such as purchase returns or allowances and input tax attributable to exempt sale.**
>
> The claim for tax credit referred to in the foregoing paragraph shall include not only those filed with the Bureau of Internal Revenue but also

---

[14] *Aisporna v. CA, et al.*, 198 Phil. 838, 847 (1982).

[15] *See* Republic Act No. (RA) 10963 or the "TAX REFORM FOR ACCELERATION AND INCLUSION (TRAIN)" Law and RA 11534 or the "CORPORATE RECOVERY AND TAX INCENTIVES FOR ENTERPRISES ACT (CREATE)."

[16] *See ponencia*, pp. 17-18.

> those filed with other government agencies, such as the Board of Investments and the Bureau of Customs. (Emphasis supplied)

Again, this is egregiously wrong. Section 110(C) does not negate or contradict the requirement under Section 110(B) that only the excess input tax attributable to zero-rated transactions shall be refunded or credited against other internal revenue taxes. These two provisions are distinct and independent of each other. What Section 110(C) simply ensures is that there will be no double recovery of input tax. Mandating that the amount of the claim for input tax refund be deducted from creditable input tax for the month or quarter prevents the taxpayer from also crediting the same against its output tax in that given quarter or from the output tax of the succeeding quarters. On the other hand, what Section 110(B) requires is that the taxpayer proves that it has no output tax liability in the given quarter before it can be granted a refund or credit of the excess input tax.

Substantiation of accumulated input tax carry-over is mandatory in input tax refund

I also cannot agree with the *ponencia*'s ruling that, in cases of refund of input tax attributable to zero-rated sales, the taxpayer is not required to substantiate its creditable input tax, including those carried over from the previous quarter.[17]

As earlier emphasized, the entitlement of a taxpayer to a refund or credit of input tax attributable to zero-rated sales depends on whether it has excess input or excess output tax. To determine this, input tax is deducted or credited against the output tax. In the quarterly VAT return,[18] the allowable input tax that may be credited against the output tax due for a given period includes, among others, the amount pertaining to *input tax carried over from previous quarter*. Thus, excess input tax carried over from the previous quarter, if any, is crucial in computing a taxpayer's net VAT payable,[19] and ultimately, the amount of input tax refundable to a taxpayer.

However, before any input tax may be credited against the output tax, the law requires that the same be duly validated or substantiated. Section 110(A)(1)[20] of the 1997 NIRC states that any input tax shall be creditable against the output tax only if the same is evidenced by a VAT invoice or official receipt issued in accordance with Section 113. In turn, Section

---

17 *Ponencia*, pp. 24-26.

18 *See* BIR Form No. 2550Q, February 2007 (ENCS).

19 Id.; Net VAT payable is computed by deducting allowable input taxes from output tax due for the quarter.

20 The relevant provision reads:

> 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[.] (Emphasis supplied).

113(A)[21] describes a valid VAT invoice and VAT official receipt. Consequently, only those input taxes duly supported by valid VAT invoice or VAT official receipt can be credited against the output taxes. In fact, it has long been settled in jurisprudence that if a taxpayer fails to present VAT invoices or official receipts to substantiate its input tax, the amount cannot be credited against the output tax.[22] Therefore, a mere declaration in the VAT return of the amount of excess input tax carried over from prior quarters, without supporting VAT invoices or VAT official receipts, is insufficient. The taxpayer must present valid VAT invoices or VAT official receipts to prove the same.

Relative thereto, the majority's Decision to not require the substantiation of accumulated input tax carry-over indicates a total failure to appreciate the nature of the proceedings in the CTA.

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 taxpayer has to convince the appellate court that the quasi-judicial agency *a quo* did not have any reason to deny its claims. In the present 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,[23] **which should include presenting VAT invoices or receipts to substantiate its accumulated input tax carry-over**.

Second, cases filed in the CTA are litigated *de novo*. Thus, a taxpayer 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 taxpayer 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.[24]

---

[21] The relevant provision reads:

> SECTION 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* –
>
> (A) *Invoicing Requirements.* – A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and
>
> (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.

[22] *See Sitel Phils. Corp. v. Commissioner of Internal Revenue*, 805 Phil. 464, 486 (2017), citing *Western Mindanao Power Corp. v. Commissioner of Internal Revenue*, 687 Phil. 328 (2012).

[23] *Atlas Consolidated Mining and Dev't. Corp. v. Commissioner of Internal Revenue*, 547 Phil. 332, 339 (2007).

[24] Id. at 339.

In stark contrast to the *ponencia*'s ruling that the substantiation of excess input tax carried over from the previous quarter is not a requirement for entitlement to a refund of unutilized input VAT from zero-rated sales, I submit that the submission of VAT invoices or receipts to prove a taxpayer's accumulated input tax carry-over is exactly what the law requires under Section 110(A)(1) in relation to Section 113 of the 1997 NIRC.

In this case, considering that petitioner failed to present VAT invoices or official receipts to establish the existence of its excess input tax carried over from the previous quarter, the CTA EB is therefore correct in disallowing the same from being credited against the output tax.[25] At bottom, the CTA EB correctly applied what is written in the 1997 NIRC.

In fine, it bears to emphasize the well-established rule in taxation that tax refunds, as that provided under Section 110(B) in relation to Section 112, is in the nature of tax exemption. As such, the law must be construed in *strictissimi juris* against the taxpayer and liberally in favor of the government.[26] Aside from this, the pieces of evidence presented entitling a taxpayer to a refund or exemption are also *strictissimi* scrutinized and must be duly proven.[27] Accordingly, an applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim, but also compliance with all the documentary and evidentiary requirements required by law.[28]

II.

The ponencia's formula undermines the basic principles of a sound tax system

The canons of a sound tax system are the following:

(a) Fiscal adequacy – the sources of revenues must be adequate to meet government expenditures and their variations;[29]

(b) Ability-to-pay – the tax burden must be in proportion to the taxpayer's ability to pay;[30] and

(c) Administrative feasibility – the tax system should be capable of being effectively administered and enforced with the least inconvenience to the taxpayer.[31]

---

25 *See ponencia*, p. 12, citing the assailed CTA EB Decision.

26 *Eastern Telecommunications Phils., Inc. v. Commissioner of Internal Revenue*, 757 Phil. 136, 146 (2015).

27 *KEPCO Phils. Corp. v Commissioner of Internal Revenue*, 656 Phil. 68, 86 (2011), citing *Atlas Consolidated Mining and Dev't. Corp. v. Commissioner of Internal Revenue*, 569 Phil. 483 (2008).

28 *Eastern Telecommunications Phils., Inc. v. Commissioner of Internal Revenue*, supra note 26, at 144; *Atlas Consolidated Mining and Dev't. Corp. v. Commissioner of Internal Revenue*, id.

29 *Chavez v. Ongpin*, 264 Phil. 695, 704 (1990).

30 *Abakada Guro Party List v. Ermita*, supra note 10.

31 *Municipality of Cainta v. City of Pasig, et al.*, 811 Phil. 666, 679 (2017).

Although these principles are not mandatory, they have been used by the Court as a guide in construing and determining the validity of tax provisions and related rules and regulations. For example, in ruling that Executive Order No. 73[32] is constitutional, the Court in *Chavez v. Ongpin*[33] stated that "to continue collecting real property taxes based on valuations arrived at several years ago, in disregard of the increases in the value of real properties that have occurred since then, is not in consonance with a sound tax system[,]"[34] specifically, the principle of fiscal adequacy.[35] Also, in *Municipality of Cainta v. City of Pasig, et al.*,[36] the Court ruled that for tax compliance purposes, taxpayers should be allowed to rely on the location reflected in their certificate of title. "To hold otherwise would subject taxpayers to the vagaries of boundary disputes, to their prejudice and inconvenience and to the detriment of proper tax administration. Such scenario is contrary to the canons of a sound tax system."[37]

The formula for computing the refundable amount of input VAT attributable to zero-rated sales, as deduced by the *ponencia* from its interpretation of Sections 110 and 112, contravenes the principles of administrative feasibility and fiscal adequacy.

To be sure, "[a]dministrative convenience cannot thwart legislative mandate."[38] However, where said mandate cannot be readily determined from a plain reading of specific tax provisions, the Court has ruled that Congress is deemed to have enacted a valid, sensible, and just law, one that intends to promote, rather than defeat, administrative feasibility.[39] Thus, in *University Physicians Services Inc.-Mgmt., Inc. v. Commissioner of Internal Revenue*,[40] the Court ruled, as follows:

> *Second*, on the premise that the carry-over is to be disallowed due to the pending application for refund, it would be more complicated and circuitous if the government were to grant first the refund claim and then later assess the taxpayer for the claim of automatic tax credit that was previously disallowed. ***Such procedure is highly inefficient and expensive on the part of the government due to the costs entailed by an assessment. It unduly hampers, instead of eases, tax administration and unnecessarily exhausts the government's time and resources. It defeats, rather than promotes, administrative feasibility. Such could not have been intended***

---

32 PROVIDING FOR THE COLLECTION OF REAL PROPERTY TAXES BASED ON THE 1984 REAL PROPERTY VALUES, AS PROVIDED FOR UNDER SECTION 21 OF THE REAL PROPERTY TAX CODE, AS AMENDED, November 25, 1986.

33 Supra note 29.

34 Id. at 704.

35 Id.

36 Supra note 31.

37 Id. at 679.

38 *Commissioner of Internal Revenue v. Seagate Technology (Phils.)*, supra note 7, at 348.

39 *See University Physicians Services Inc.-Mgmt., Inc. v. Commissioner of Internal Revenue*, 827 Phil. 376, 391 (2018), citing *Lawyers Against Monopoly and Poverty (LAMP), et al. v. The Secretary of Budget and Management, et al.*, 686 Phil. 357, 372-373 (2012), further citing *Fariñas v. The Executive Secretary*, 463 Phil. 179, 197 (2003).

40 Id.

> ***by our lawmakers. Congress is deemed to have enacted a valid, sensible, and just law.***
>
> Thus, in order to place a sensible meaning to paragraph (c) of Section 228, it should be interpreted as contemplating only that situation when an application for refund or tax credit certificate had already been previously granted. Issuing an assessment against the taxpayer who benefited twice because of the application of automatic tax credit is a wholly acceptable remedy for the government.
>
> Going back to the case wherein the application for refund or tax credit is still pending before the BIR, but the taxpayer had in the meantime automatically carried over its excess creditable tax in the taxable quarters of the succeeding taxable year(s), the only judicious course of action that the BIR may take is to deny the pending claim for refund. ***To insist on giving due course to the refund claim only because it was the first option taken, and consequently disallowing the automatic tax credit, is to encourage inefficiency or to suppress administrative feasibility, as previously explained.*** Otherwise put, imbuing upon the choice of refund or tax credit certificate the character of irrevocability would bring about an irrational situation that Congress did not intend to remedy by means of an assessment through the issuance of a FAN without a prior PAN, as provided in paragraph (c) of Section 228. It should be remembered that Congress' declared national policy in passing the NIRC of 1997 is to rationalize the internal revenue tax system of the Philippines, including tax administration.[41]

The formula espoused by the *ponencia* from its interpretation of Sections 110 and 112 is no different. **The dangerous consequences of the majority's Decision in the present case cannot and should not be ignored. By removing the output tax from the formula for granting a refund of input tax attributable to zero-rated sales, the majority's Decision encourages inefficiency and suppresses administrative feasibility.** In fine, the *ponencia* submits that a taxpayer can refund its unutilized input tax as long as it is attributable to its zero-rated transactions, regardless if the taxpayer still has excess output tax. As discussed above, excess output tax results in a VAT liability which must be paid by the taxpayer to the government.

Verily, instead of interpreting Sections 110 and 112 in such a way that the taxpayer is required to first charge the amount it wants to refund from the government against the amount it has to pay to the government, thereby promoting administrative feasibility, the *ponencia* suggests a multistep approach that unnecessarily exhausts the government's time and resources and causes inconvenience to the taxpayer. It would be more complicated and circuitous if the government were to grant first the refund claim and then later collect from the taxpayer the outstanding output tax liability. Such procedure defeats, rather than promotes, administrative feasibility, as previously explained.

---

[41] Id. at 391-392; emphasis, italics and underscoring supplied, citations omitted.

Too, the *ponencia*'s formula also undermines the principle of fiscal adequacy. Instead of ensuring collection of the taxpayer's VAT liability by already debiting the same from the amount of refundable input tax allowed to be claimed from the government, the *ponencia* suggests an interpretation that mainly guarantees tax refund which, as mentioned, is in the nature of a tax exemption. This clearly is not the intent of Congress as it is not in consonance with the objective of the government to collect taxes and revenues sufficient enough to meet the government's disbursements and expenses.

Just a final observation at this juncture. It seems to me that the majority of the Court fails to recognize that by granting the input tax refund without charging against the taxpayer's output tax liability, the government would always be on the losing end — refunding input tax attributable to zero-rated sales even if the taxpayer-claimant owes the government output tax. **Leaving out the output tax from the equation would drain government funds while also delaying the collection of much-needed revenue for government operations.**

In view of these glaring violations of the canons of a sound tax system, I am compelled to maintain my dissent.

To summarize:

The *ponencia* finds erroneous the following procedures used by the CTA EB in computing for the refundable amount, if any, as these, according to the *ponencia*, find no basis in law and jurisprudence: (1) the substantiation of the prior quarter's excess input tax; and (2) the charging against the output tax the validated unutilized input tax to arrive at the refundable amount.

However, as discussed, the provisions of the 1997 NIRC and relevant jurisprudence in fact support the formula adopted by the CTA EB. Section 110 in relation to Section 112 provides that only the excess input tax attributable to zero-rated transactions may be refunded to the taxpayer. In arriving at the refundable amount, it is necessary therefore that: (1) the taxpayer substantiate its input tax, including the input tax carried over from the previous quarter, before the same may be credited/offset against the output tax; and (2) the validated input tax must be charged against the output tax first to determine if there is *excess* input tax that may still be refunded to the taxpayer.

The formula adopted by the CTA EB and its interpretation of Sections 110 and 112 are also reinforced by the principles of administrative feasibility and fiscal adequacy of a sound tax system.

Accordingly, I vote to **DENY** the Petition.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFIED TRUE COPY

MARIA LUISA M. SANTILLA
Deputy Clerk of Court and
Executive Officer
OCC-En Banc, Supreme Court

EN BANC

G.R. No. 215159 – CHEVRON HOLDINGS, INC. (FORMERLY CALTEX (ASIA) LIMITED) V. COMMISSIONER OF INTERNAL REVENUE

Promulgated:

July 5, 2022

x----------x

DISSENT

LAZARO-JAVIER, *J.*:

The Majority affirmed with modification, the decision of the Court of Tax Appeal (*CTA*) *En Banc* by increasing the amount of unutilized input tax refundable to petitioner Chevron Holdings Inc. (*Chevron*) for taxable year 2006 to ₱1,140,381.22 from ₱47,409.24

Hence, the Majority computed the refundable amount differently from the CTA *En Banc*. In arriving at the increased amount, the Majority held:

(1) The substantiation of a taxpayer's prior quarter's excess input tax is NOT required in claims for refund or credit of unutilized input tax attributable to zero-rated sales because this has no basis in law and jurisprudence.

(2) It was erroneous for the CTA *En Banc* to charge against the taxpayer's output tax for the period covered by the refund the validated unutilized input tax first and use the resultant amount as basis in computing the refundable amount; because to do so would be to disregard the option of the taxpayer, accorded by law, to either claim for a refund or credit the same against the output tax.

I dissent.

Claims for Value-Added Tax (*VAT*) Refund under Section 112, National Internal Revenue Code (*NIRC*),[1] as amended, on "**excess or**

[1] REPUBLIC ACT NO. 8424, AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES, DECEMBER 11, 1997; REPUBLIC ACT NO. 9337, AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117,

1

unutilized input taxes" require: (1) the taxpayer to prove that output taxes (if any) for the period has been charged against input taxes; and (2) the input taxes (including excess from previous quarters) be substantiated.

"Excess or Unutilized input taxes" is the result of charging Input Taxes against Output Taxes

In computing for the taxpayer's VAT liability in a given quarter, Section 110, NIRC,[2] as amended, provides:

> Sec. 110. Tax Credits. -
>
> x x x x
>
> The term "input tax" means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person.
>
> It shall also include the transitional input tax determined in accordance with Section 111 of this Code. The term "output tax" means the value-added tax due on the sale or lease of taxable goods or properties or services by any person registered or required to register under Section 236 of this Code.
>
> (B) *Excess Output or Input Tax.* - If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the Vat-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. x x x *Provided, however*, That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.[3]
>
> x x x x

Summarily, Section 110(B) provides:

VAT Formula:	
Output Tax	xxx
Less: Input Tax	xxx
VAT Payable (Excess)	xxx
Output Tax exceeds Input Tax	Excess paid (BIR calls this VAT Payable)

119, 121, 148, 151, 236, 237, AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES, JULY 1, 2005.

2 Id.

3 Id.

Input Tax exceeds Output Tax	Carried Over to Succeeding Quarters (BIR calls this Excess VAT or **Unutilized Input Taxes**) **Why excess or unutilized:** The output tax is not enough. **Option:** If any of these unutilized input tax is attributable to zero-rated sales, VAT-registered taxpayer may claim for refund or credit against other internal revenue taxes.
The term **"output tax"** means the value-added tax due on the sale or lease of taxable goods or properties or services by any person registered or required to register under Section 236 of this Code. The term **"input tax"** means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. It shall also include the transitional input tax determined in accordance with Section 111 of this Code.	

"**Excess or Unutilized input tax**," as basis for claim for refund should therefore undergo this formula. **There can be no unutilized or excess input tax if the output tax (if any) has not been "consumed."** More, if in the previous quarter, the taxpayer chooses to instead "carry over" or used the excess input tax as a charge (deduction) in succeeding quarters, it cannot be considered as part of excess input taxes subject of claim for refund.

Verily, the taxpayer's option for a refund or credit of "**excess or unutilized input tax**" is only **available** when the taxpayer has an **excess input tax over the output tax**. This fact should be **established** by the taxpayer in a claim for refund or issuance of a tax credit certificate (*TCC*) under Section 112 of the NIRC. This is supported by Section 112 itself. Section 112(A) states that the excess or unutilized input tax from zero-rated transactions may be refunded or credited to other internal revenue taxes to the extent that it has not been applied against the output tax, *viz.*:

> Sec. 112. *Refunds or Tax Credits of Input Tax.* --
>
> (A) *Zero-rated or Effectively Zero-rated Sales.* - Any VAT-registered person, whose sales are zero-rated or effectively zero- rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, ***to the***

> ***extent that such input tax has not been applied against output tax***: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency 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.[4] (Emphasis supplied)
>
> x x x x

Accordingly, as provided in Section 110(B) in relation to Section 112, NIRC, as amended, a taxpayer must have "**excess or unutilized input tax**" AFTER output tax for the taxable quarter has been applied for purposes of refund or tax credit. **This situation only arises once there is computation involving input taxes being charged (deducted)[5] from output taxes for the quarter.**

To be allowed a refund of "**excess or unutilized input tax**" from zero-rated sales in a given period, instead of output tax liability (VAT Payable), the taxpayer must show that it has "**excess or unutilized input tax**" for the period or periods covered by the claim. Clearly, charging the validated input tax against the taxpayer's output tax in a given quarter is a necessary step in determining the amount of input tax, if any, which may be refunded to the taxpayer.

In *Coca-Cola Bottlers Philippines, Inc. v. CIR*,[6] the Court interpreted Section 110(B) in relation to Section 112, NIRC, as amended:

> A plain and simple reading of the aforequoted provisions [Section 110(B) and Section 112, NIRC] reveals that ***if and when the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. It is only when the sales of a VAT-registered person are zero-rated or effectively zero-rated that he may have the option of applying for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales.*** Such is the **clear import** of the Court's ruling in *San Roque*, to wit:

---

4 Id.

5 Charge or Credit. The term is used if the items for computation involves taxes. You don't say deducted but it the same as deduction because you reduce. In this case, Output Tax is reduced by Input Tax. Traditionally, deduction or deducted is used as term for computing tax base not taxes.

6 826 Phil. 329–348 (2018).

> Under Section 110(B), a taxpayer can apply his input VAT only against his output VAT. The only exception is when the taxpayer is expressly "zero-rated or effectively zero-rated" under the law, like companies generating power through renewable sources of energy. Thus, a non zero-rated VAT-registered taxpayer who has no output VAT because he has no sales cannot claim a tax refund or credit of his unused input VAT under the VAT System. Even if the taxpayer has sales but his input VAT exceeds his output VAT, he cannot seek a tax refund or credit of his "excess" input VAT under the VAT System. **He can only carry-over and apply his "excess" input VAT against his future output VAT.** If such "excess" input VAT is an "excessively" collected tax, the taxpayer should be able to seek a refund or credit for such "excess" input VAT whether or not he has output VAT. The VAT System does not allow such refund or credit. Such "excess" input VAT is not an "excessively" collected tax under Section 229. The "excess" input VAT is a correctly and properly collected tax. However, ***such "excess" input VAT can be applied against the output VAT because the VAT is a tax imposed only on the value added by the taxpayer.*** If the input VAT is in fact "excessively" collected under Section 229, then it is the person legally liable to pay the input VAT, not the person to whom the tax was passed on as part of the purchase price and claiming credit for the input VAT under the VAT System, who can file the judicial claim under Section 229.[7]

The Majority ordained that for VAT refunds to be granted, the following must be complied with: (1) the input tax is a creditable input tax due or paid; (2) the input tax is attributable to the zero-rated sales; (3) the input tax is not transitional; **(4) the input tax was not applied against the output tax;** and (5) in case the taxpayer is engaged in mixed transactions, *i.e.*, VAT-able, exempt, and zero-rated sales and the input taxes cannot be directly and entirely attributable to any of these transactions, only the input taxes proportionately allocated to zero-rated sales based on sales volume may be refunded or issued a TCC.

But even though the requirements already stated that output tax is relevant, the Majority still did not agree that only after the input tax has been charged to output tax will a refund be allowed.

Section 112, NIRC, as amended, cannot be read in isolation.

It must be read in light of Section 110 on how "**excess or unutilized input tax**" is computed. While Section 112, NIRC, as amended, does not categorically mention that "output tax" is a required factor, it does not necessarily mean that it is not part of the computation.

---

[7] Id. at 343–344.

When a taxpayer alleged "excess or unutilized input tax," it is a condition precedent that the **taxpayer must prove that the input tax (including excess input tax from previous quarters) have been charged (deducted) from any output taxes**. Besides, the phrase "*to the extent that such input tax has not been applied against output tax*," clearly belies the claim that output taxes is not needed in the computation for claims for refund.

Excess input tax from previous quarter is required to be substantiated

Excess input tax carried over from the previous quarter is essential in determining the proper input tax refundable to the taxpayer. It is still input tax, albeit coming from previous quarter. It must still be duly validated or substantiated.

To determine a taxpayer's VAT liability or excess input taxes, input tax is deducted or credited against the output tax. In the quarterly VAT return, the allowable input tax that may be credited against the output tax due for a given period include, among others, the amount pertaining to input tax carried over from previous quarter. Thus, excess input tax carried over from the previous quarter, if any, is crucial to computing a taxpayer's net VAT payable, and ultimately, the amount of input tax refundable to the taxpayer.

As the taxpayer will use it as a charge (deduction) to output taxes in succeeding quarters, it is part of the computation for VAT Payable or Excess VAT. As previously discussed, the taxpayer cannot allege that it has "excess or unutilized input tax" without going thru the computation. Since excess input tax from previous quarter is needed to arrive at "excess or unutilized input tax," it must be duly validated or substantiated.

Section 110(A)(1) of the NIRC,[8] as amended, states that any input tax shall be creditable against the output tax only if the same is evidenced by a VAT invoice or official receipt issued in accordance with Section 113(A) of the NIRC,[9] as amended. Also, jurisprudence has set that if a taxpayer fails to present VAT invoices or official receipts to substantiate his input tax, the amount cannot be credited against his output tax.

---

8 REPUBLIC ACT No. 8424, AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES, DECEMBER 11, 1997; REPUBLIC ACT NO. 9337, AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237, AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES. JULY 1, 2005.

9 Id.

Thus, mere declaration in the VAT return of the amount of excess input tax carried over from prior quarters, without supporting invoices or official receipts, is insufficient. The taxpayer must present valid invoices or receipts to prove the same.

Here, the taxpayer failed to present VAT invoices or official receipts to establish the existence of its excess input tax carried over from the previous quarter. Verily, the CTA *En Banc* was correct in disallowing the same from being credited against the output tax.

In *Nippon v. CIR*,[10] the Court stated that input taxes requires substantiation, to be entitled to refund or tax credit under Section 112, NIRC:

> As stated in our introduction, the **burden of a claimant** who seeks a **refund of his excess or unutilized creditable input VAT** pursuant to Section 112 of the NIRC is two-fold: (1) **prove payment of input VAT to suppliers;** and (2) prove zero-rated sales to purchasers. Additionally, the taxpayer-claimant has to show that the VAT payment made, called input VAT, is attributable to his zero-rated sales.[11]

Input taxes, whether for the present taxable period, or is an "excess or utilized input tax" from preceding period, is not only a part of the computation of VAT, it needs to be validated and substantiated as well. Here, since the taxpayers where not able to substantiate their respective "excess or utilized input tax from preceding period, it cannot be used as part of the computation and refund as well.

A claim for unutilized input value-added tax is in the nature of a tax exemption. Thus, strict adherence to the conditions prescribed by law is required of the taxpayer. Refunds need to be proven and their application raised in the right manner as required by law.

Section 110(B), in relation to Section 112(A) is clear and unambiguous

The Majority separated the option to refund from the formula mandated under Section 110(B), NIRC,[12] as they are allegedly alternative and cumulative, not sequential, *viz.*:

---

[10] 836 Phil. 379–399 (2018).

[11] Id. at 392.

[12] REPUBLIC ACT NO. 8424, AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES, DECEMBER 11, 1997; REPUBLIC ACT NO. 9337, AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237, AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES, JULY 1, 2005.

> SEC. 110. Tax Credits. — x x x
>
> (B) *Excess Output or Input Tax.* – If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: x x x *Provided, however*, [t]hat any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.65 (Emphasis supplied.)
>
> Section 112. Refunds or Tax Credits of Input Tax. –
>
> (A) Zero-Rated or Effectively Zero-Rated Sales. – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: x x x.[13]

Again, I beg to disagree.

Indulging in compartmentalization or segmentation will definitely achieve the desired result. But Section 110(B) should not be segmented as the second sentence started with the word "*Provided, however x x x*" which clearly means that the option to refund is controlled by the first sentence – the formula "Excess Output or Input Tax." It sets a condition on what precedes it.

It is the cardinal rule in statutory construction "that the particular words, clauses and phrases should not be studied as detached and isolated expressions, but the whole and every part of the statute must be considered in fixing the meaning of any of its parts and in order to produce a harmonious whole. A statute must so construed as to harmonize and give effect to all its provisions whenever possible."[14] It is very clear that the second sentence is merely an adjunct and controlled by the first sentence. More, the second sentence itself qualifies the option which the Majority interpreted as a singular option outside the provision of Section 110(B), NIRC, *i.e.*, "*subject to the provisions of Section 112.*"

Section 112(A), NIRC **specifically refers several conditions before refund can be made**: (a) the taxpayer must be VAT-registered; (b) the sale must be zero-rated or effectively zero-rated; (c) apply for refund within two (2) years after the close of the taxable quarter when the sales were made; (d) apply for the issuance of a TCC 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**. All of these conditions point to Section 110(B) after the simple formula is applied.

---

[13] Id.

[14] *National Tobacco Administration, et al. v. Commission on Audit*, 370 Phil. 793, 808 (1999).

From a boarder perspective, if this was the real intent of the law as the Majority opined, then why would the Legislature include this option for refund in Section 110(B), NIRC under the title "Excess Output or Input Tax"? It should have been placed under Section 110(A), NIRC under the title "Creditable Input Tax."

The truth is, the VAT law was placed as one formula:

Persons Liable	Section 105. Persons Liable
Output Tax	Section 106. VAT on Sale of Goods or Properties Section 107. VAT on Importation of Goods Section 108. VAT on Sale of Services and Use or Lease of Properties
Exempt from Output Tax	Section 109. Exempt Transactions
Creditable Input Tax	Section 110(A). Creditable Input Tax
Excess	Section 110(B). Excess Output or Input Tax

Most telling is Section 110(C), NIRC[15] which states that "*[t]he sum of the **excess input tax** carried over from the preceding month or quarter and the input tax creditable to a VAT-registered person during the taxable month or quarter **shall be reduced by the amount of claim for refund** or tax credit for value-added tax and other adjustments, such as purchase returns or allowances and input tax attributable to exempt sale.*" This clearly negates the Majority's interpretation that the option of refund is a separate provision since refund is a factor in excess input taxes.

In the Bicameral Conference Committee which led to the passage of Republic Act No. 9337,[16] Sen. Ralph G. Recto explained that zero-rated is "*immediately refundable*." But we all know that this is not the case. **The Tax Code specifically provides requirements for a claim for refund through a myriad of provisions specifically designed to give the taxpayer an alternative.**

In fine, the CTA *En Banc* correctly computed the amount of claim for refund based on Section 112, in relation to Section 110, NIRC, as amended, ordering a refund of ₱15,085.24 representing unutilized excess input VAT for

---

[15] REPUBLIC ACT NO. 8424, AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES, DECEMBER 11, 1997; REPUBLIC ACT NO. 9337, AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237, AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES, JULY 1, 2005.

[16] REPUBLIC ACT NO. 9337, AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237, AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES, JULY 1, 2005.

the first quarter of 2006 which is attributable to its zero-rated sales for the same period.

AMY C. LAZARO-JAVIER

CERTIFIED TRUE COPY

MARIA LUISA M. SANTILLA
Deputy Clerk of Court and
Executive Officer
OCC-En Banc, Supreme Court