REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

REMA TIP TOP PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2623
(CTA Case No. 9836)

Present:

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

Promulgated:
APR 1 9 2024

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RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution are the following:

1. Respondent Commissioner of Internal Revenue's (**respondent**'s) "Motion for Reconsideration (En Banc Decision dated 04 October 2023)"[1] (**MR**) filed on 27 October 2023, with petitioner Rema Tip Top Philippines, Inc.'s (**petitioner**'s) "Comment (Re: Respondent's Motion for Reconsideration dated 25 October 2023)"[2] (**Comment**) filed *via* registered mail on 28 November 2023[3]; and,

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[1] *Rollo*, pp. 170-174.
[2] Id., pp. 203-216.
[3] Received on 04 December 2023.

2. Petitioner's "Motion for Partial Reconsideration"[4] (**MPR**) filed *via* registered mail on 31 October 2023[5], without respondent's comment.[6]

Both the MR and the MPR seek the reversal or modification of the *En Banc* Decision dated 04 October 2023[7] (**assailed Decision**) that partially granted petitioner's prayer for value-added tax (**VAT**) refund. The dispositive portion thereof states:

> ...
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> **WHEREFORE**, in view of the foregoing, the instant Petition for Review filed by petitioner Rema Tip Top Philippines, Inc. on 10 June 2022 is hereby **PARTIALLY GRANTED**. The assailed Decision dated 25 May 2021 and assailed Resolution dated 27 April 2022, of the First Division in CTA Case No. 9836 entitled *Rema Tip Top Philippines, Inc. v. Commissioner of Internal Revenue,* are **MODIFIED** insofar as the amount of refundable input tax is concerned.
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> Accordingly, respondent Commissioner of Internal Revenue or any person duly acting on his or her behalf is **ORDERED** to refund, or in the alternative, issue a tax credit certificate in favor of petitioner in the total amount of ₱218,677.62, representing unutilized input tax attributable to zero-rated sales for the period of 01 January to 31 December 2016.
>
> **SO ORDERED.**
>
> ...

RESPONDENT'S MOTION FOR RECONSIDERATION (MR).

In the MR, respondent solely argues that the Court erred in partially granting the VAT refund by applying the excess input taxes carried over from the previous period to the output tax for taxable year (**TY**) 2016. Citing the dissenting opinion of Justice Lazaro-Javier in *Chevron Holdings, Inc. (Formerly Caltex Asia Limited) v. Commissioner of Internal Revenue*[8] (**Chevron**), respondent opines that a taxpayer needs to substantiate the input taxes carried over from the previous period before output taxes may be credited against it.

4 *Rollo*, pp. 175-198.
5 Received on 08 November 2023.
6 See Records Verification dated 08 January 2024.
7 *Rollo*, pp. 144-169.
8 G.R. No. 215159, 05 July 2022.

In its Comment, petitioner counters that there is no statutory basis to require a taxpayer to substantiate its input VAT carry-over as the latter has no bearing on the refund claim. It adds that the Court *En Banc* properly applied the *Chevron* ruling in the instant case.

PETITIONER'S MOTION FOR PARTIAL RECONSIDERATION (MPR).

Reiterating its previous arguments in the Petition for Review[9], petitioner vehemently insists that it sufficiently established all the requisites for the VAT refund or issuance of tax credit certificate (**TCC**).

Petitioner points out that the Independent Certified Public Accountant (**ICPA**) Report confirmed the following: (1) petitioner is engaged in zero-rated sales; (2) the input taxes paid in TY 2016 were not applied against any output taxes; (3) the input taxes being claimed are attributed and allocated proportionately to zero-rated sales; and, (4) the payment for the sales to the non-resident foreign corporations (**NRFCs**) are paid in foreign currency. Likewise, the ICPA traced, examined, and verified the supporting documents submitted to substantiate the input VAT refund claim.

Banking on the ICPA's tracing and verification procedures, petitioner asks the Court *En Banc* to reconsiders its ruling on the disallowed purchases and importations due to the supposed non-compliance with the invoicing requirement and the submission of mere photocopies of the supporting documents. It maintains that the ICPA has already determined that these documents were duly compliant with the invoicing requirements and sufficient to prove the VAT refund; hence, the ICPA's findings deserve great weight in the resolution of the instant case.

Apart from the ICPA's confirmation, petitioner also avers that the zero-rated sales were properly substantiated since it submitted the relevant bank statements, payment advices, and official receipts (**ORs**) proving that the sales were made to NRFCs. It also claims that the said supporting documents comply with the invoicing requirements under the National Internal Revenue Code (**NIRC**) of 1997, as amended.

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9 *Rollo*, pp. 8-59.

Moreover, petitioner asserts that during the Pre-Trial Conference, respondent stipulated that the input taxes applied for refund were paid in accordance with the prevailing laws, rules, and regulations. As the stipulation is a judicial admission, the fact of payment is beyond contest and no longer requires the presentation of evidence to prove the same.

Lastly, petitioner insists that the photocopies of the supporting documents should be accepted since duplicates are now treated as originals under the Revised Rules on Evidence.[10]

We resolve.

The MR and MPR failed to raise any new argument or present novel matter which the Court *En Banc* has not previously scrutinized, studied, and discussed. However, for emphasis, We shall expound on some selected points to address the parties' misgivings on the assailed Decision.

THE INPUT TAX CARRY-OVER NEED NOT BE SUBSTANTIATED.

As ruled in the assailed Decision, *Chevron* has already clarified and settled that input tax carry-over need not be substantiated before it can be applied against the output tax:

> ...
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> To echo *Chevron*, it is not for the CTA to determine and rule in a judicial claim for refund under Section 112(A) of the NIRC of 1997, as amended, that the taxpayer had insufficient or unsubstantiated input VAT to cover or pay its output VAT and, for this reason, it is not proper to charge the taxpayer's substantiated or valid input VAT against its output VAT first and use the resultant amount as basis for computing the allowable amount for refund, *viz*:
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> > ...
> >
> > *Fourth*, that the taxpayer failed to prove that it had sufficient creditable input taxes to cover or "pay" its output tax liability in a given period, hence, there is no refundable "excess" input tax, which is an issue distinct, separate, and independent from a claim for refund or issuance of tax credit certificate of **unutilized** input VAT attributable to zero-rated sales. For one, the taxpayer-claimant is not asking to refund the "excess" creditable input taxes from the output

[10] A.M. No. 19-08-15-SC.

> tax. To be sure, the "excess" input tax may only be carried over to the succeeding periods and cannot be refunded. But, on the other hand, **the taxpayer is asking to refund the unutilized or unused input tax from zero-rated sales.**
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> 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.
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> ...
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> **All told, it was erroneous for the CTA to charge the validated and 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. After the claimant has successfully established a *prima facie* right to the refund by complying with the requirements laid down by law, 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. 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.
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> ...

Clearly from the aforestated, when a taxpayer-claimant has excess input VAT carried over from previous period, it need not substantiate the same for purposes of establishing its entitlement to a refund of excess input VAT from zero-rated sales. The declared excess input tax carried over from previous period is presumed correct and is used to cover or pay for the output VAT due in the period of claim."[11]

...

[11] Citations omitted, emphasis and italics in the original text.

THE COURT IS NOT BOUND TO THE FINDINGS OF THE INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT (ICPA).

We are not swayed with petitioner's assertions that We should have relied on the ICPA Report. To reiterate:

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> Section 3, Rule 13 of the RRCTA provides:
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> > ...
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> > SEC. 3. *Findings of independent CPA.* — The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. **The findings and conclusions of the independent CPA** may be challenged by the parties and **shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification.**
> >
> > ...
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> As stated, the ICPA's findings and conclusions are not conclusive to this Court. The ICPA Report is but a tool or guide to aid the Court in the resolution of the case. The merit or the probative value of such report is still subject to Our final determination; hence, the Court is free to adapt or disregard, completely or partially, the findings of the ICPA. It can even make its own audit and evaluation of the documents pertinent to the case presented during the trial in order to intelligently resolve the conflict brought before it.[12]
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> ...

As petitioner's other contentions are mere rehash of arguments already submitted to and pronounced to be without merit by this Court in its assailed Decision, the Court *En Banc* finds no needful use to discuss them anew. In *Ortigas and Company Limited Partnership v. Judge Tirso Velasco, et al.*[15], the Supreme Court declared:

> ...
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> The filing of a motion for reconsideration, authorized by Rule 52 of the Rules of Court, does not impose on the Court the obligation to deal individually and specifically with the grounds relied upon

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[12] Emphasis and italics in the original, citations omitted.

> therefor, in much the same way that the Court does in its judgment or final order as regards the issues raised and submitted for decision. This would be a useless formality or ritual invariably involving merely a reiteration of the reasons already set forth in the judgment or final order for rejecting the arguments advanced by the movant; and it would be a needless act, too, with respect to issues raised for the first time, these being, as above stated, deemed waived because not asserted at the first opportunity. It suffices for the Court to deal generally and summarily with the motion for reconsideration, and merely state a legal ground for its denial (Sec. 14, Art. VIII, Constitution); i.e., the motion contains merely a reiteration or rehash of arguments already submitted to and pronounced without merit by the Court in its judgment, or the basic issues have already been passed upon, or the motion discloses no substantial argument or cogent reason to warrant reconsideration or modification of the judgment or final order; or the arguments in the motion are too unsubstantial to require consideration, etc.
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> ...

WHEREFORE, premises considered, respondent's "Motion for Reconsideration (En Banc Decision dated 04 October 2023)" filed on 27 October 2023 and petitioner's "Motion for Partial Reconsideration" filed on 31 October 2023 are hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice