REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

CHEVRON HOLDINGS, INC. [formerly CALTEX (ASIA) LIMITED],
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE NO. 940
(CTA CASE NOS. 7776 & 7813)

Present:

Del Rosario, P.J.
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, JJ.

Promulgated:

OCT 2 9 2014
3:55 p.m.

x --- x

AMENDED DECISION

BAUTISTA, J:

On May 6, 2014, the Court *En Banc* promulgated a Decision, with the dispositive portion stating that:

> "**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 (Php15,085.24) 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.**"

On June 3, 2014, petitioner filed its "Motion for Partial Reconsideration," praying that the Court *En Banc* modify its Decision dated May 6, 2014, in effect allowing additional amounts to be refunded in its favor.

After granting an extension to file her comment, respondent filed her "Comment (To Petitioner's Motion for Partial Reconsideration dated 3 June 2014)" on August 13, 2014. While the Court *En Banc* notes that the "Comment (To Petitioner's Motion for Partial Reconsideration dated 3 June 2014)" was filed two (2) days late, in the interest of justice and equity, the same shall be considered in resolving this "Motion for Partial Reconsideration."

Thus, the "Motion for Partial Reconsideration" is now submitted for resolution.

In its "Motion for Partial Reconsideration," petitioner raises several issues. First, petitioner argues that in determining whether or not there is a valid zero-rated transaction, the only requirement under the law is that the customer is located outside the Philippines when the said services were performed. Petitioner adds that whether or not the said customer is a person engaged in business or a not engaged in business should not affect the determination of whether it was a zero-rated transaction, since the congressional deliberations clearly show that the determinant factor is the consumption of services outside the Philippines.

In addition, petitioner states that a Securities and Exchange Commission ("SEC") Certification of Non-Registration should already be conclusive to show that the customer in this case is not doing business in the Philippines. Petitioner also points out that it submitted Certificates of Inward Remittances from petitioner's customers.

On the second issue, petitioner states that the zero-rated sales in the amount of Php10,025,859.35 (USD$202,609.23), disallowed by the Court *En Banc* for not having the corresponding Foreign Currency Inward Remittance, is supported by the Bank's Chase Insight Information Manager Summary/Long Description Report. Petitioner explains that this system is an online application that keeps the bank statements of its customers, which can be accessed by the bank's customers and protected by a passcode system. As proof, petitioner attached the said report to show that the payments were inwardly remitted in acceptable foreign currency.

Petitioner also advances the theory that since the parties already stipulated on the fact that petitioner declared the amount of Php55,784,354.71 as its excess input tax in its Amended Quarterly VAT return for the fourth quarter of taxable year 2005, the same becomes conclusive between the parties. Thus, given this stipulation, petitioner states it no longer has to adduce evidence to substantiate such fact, and that the findings of the Court *En Banc* that petitioner failed to present VAT invoices or receipts to prove the existence of such amount was erroneous.

Third, petitioner also points out that the Court *En Banc* imposed an additional requirement of substantiating the input tax carried over, since this is absent from Section 112(A) of the National Internal Revenue Code of 1997, as amended ("1997 NIRC"). Petitioner states that there must be a distinction between the input taxes that a taxpayer claims as refund and those which it carries over to the succeeding taxable quarters in payment of output tax liabilities. In addition, petitioner states that the issue on the validity of the "Input Tax Carried Over from Previous Quarter" was not among those raised by respondent in her Answer, nor was it stipulated upon by the parties.

Fourth, petitioner is questioning the disallowance of the amount Php24,598,395.58 due to the fact that the VAT was not separately indicated in the official receipts and sales invoice. It is the theory advanced by petitioner that since there is no intrinsic evil in not indicating it as a separate item, it should be allowed. Petitioner also states that the CIR previously imposed such a requirement under

Revenue Regulation ("RR") No. 8-99 wherein the amount appearing on the sales invoice/receipt is deemed inclusive of the VAT. Petitioner further cites BIR Ruling No. 141-99 dated September 13, 1999 where it was explained that RR No. 8-99 was issued to promote administrative feasibility, and that it was merely following the regulations which were in effect at that period.

Last, petitioner states that the amount Php4,631,883.19 was disallowed incorrectly, since a careful examination of the supporting VAT Receipts show that it was properly supported by documents, showing the VAT breakdown.

On the other hand, respondent states that a party who moves for reconsideration has the burden of clearly demonstrating that it is entitled to a review or reexamination of the Court's Decision, and that petitioner has failed to discharge such a burden.

Respondent also states that the Court *En Banc* was correct in denying the claim for refund for failure to prove that some of its foreign clients are non-resident foreign corporations doing business outside the Philippines, citing the case of *Accenture, Inc. v. Commissioner of Internal Revenue*.[1] Respondent reiterates that in a claim for refund or issuance of a tax credit certificate attributable to zero-rated sales, what is scrutinized is the documentary substantiation of the input VAT paid, and that evidence in this case is insufficient in determining petitioner's entitlement to its claim.

The Court *En Banc* finds partial merit in the Motion for Partial Reconsideration.

In the case of *Bonifacio Water Corporation (formerly Bonifacio Vivendi Water Corporation) v. Commissioner of Internal Revenue*,[2] citing *Western Mindanao Power Corporation v. Commissioner of Internal Revenue*,[3] the Supreme Court held:

> "Petitioner cannot raise the argument that, "non-compliance with the invoicing requirements under the 1997 NIRC, as amended, does not automatically result in the denial of a claim for refund or tax credit when the

N

[1] G.R. No. 190102, July 11, 2012, 676 SCRA 325.
[2] G.R. No. 175142 July 22, 2013.
[3] G.R. No. 181136, June 13, 2012, 672 SCRA 350.

> same is supported by substantial evidence" and that, "In civil cases, such as claims for refund, strict compliance with technical rules of evidence is not required. Moreover, a mere preponderance of evidence will suffice to justify the grant of a claim," in addition to its first ground in the instant petition. **Taxpayers claiming for a refund or tax credit certificate must comply with the strict and mandatory invoicing and accounting requirements provided under the 1997 NIRC, as amended, and its implementing rules and regulations. Rules and regulations with regard to procedures are implemented not to be ignored or to be taken for granted, but are strictly adhered to for they are developed from the law itself.**[13]
>
> **From the foregoing, it is clear that petitioner must show satisfaction of all the documentary and evidentiary requirements before an administrative claim for refund or tax credit will be granted.** Perforce, the taxpayer claiming the refund must comply with the invoicing and accounting requirements mandated by the Tax Code, as well as the revenue regulations implementing them." (*emphasis supplied*)

The Court *En Banc* must reiterate the principle that tax refunds are in the nature of tax exemptions, and are to be construed *strictissimi juris* against the entity claiming the same. Thus, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence, its entitlement to a claim for refund.[4]

With these principles in mind, the Court *En Banc* shall now resolve the issues raised by the parties.

On the issue of whether or not a Certification of Non-Registration of Corporation/Partnership is sufficient to prove that there is a valid zero-rated transaction, the Court *En Banc* finds no merit in the arguments set forth by petitioner.

Contrary to the notions of petitioner, the Court *En Banc* is well aware of the provisions in the 1997 NIRC, which allow both transactions with entities engaged in business and entities not

---

[4] *Philippine Geothermal, Inc. v. The Commissioner of Internal Revenue*, G.R. NO. 154028, July 29, 2005, 465SCRA 308, citing *Commissioner of Internal Revenue v. Solidbank Corporation*, G.R. No. 148191, 25 November 2003, 416 SCRA 436, 461.

engaged in business outside the Philippines to be classified as zero-rated or effectively zero-rated sales. However, it must be pointed out that petitioner alleged in its Petition for Review dated September 27, 2012 that the services were rendered to its foreign affiliates, which is why the Court *En Banc* limited its determination of whether the documents presented were sufficient to prove that the transactions in question were rendered to entities engaged in business outside the Philippines.

Regardless, a careful reading of the provision will reveal that in either case, there are two components which must be substantiated – that person is engaged in or not engaged in business and that the person is outside the Philippines when the services was rendered.

Thus, had petitioner alleged that the services were rendered to entities not engaged in business, the Court *En Banc* would not differ in its findings. On its own, the Certification of Non-Registration of Corporation/Partnership on its own is deemed insufficient. As tax refunds are in the nature of tax exemptions, there is need to employ a stricter standard in determining whether the submissions filed by the taxpayer is enough to support his claim for refund or issuance of tax credit certificate.

It has consistently been the practice that each entity must be supported at the very least by the Certification of Non-Registration of Corporation/Partnership from the SEC and any either a certificate/articles of foreign incorporation/association or printed screenshots of US SEC (or the official regulatory body of a particular jurisdiction) website showing the state/province/country where the entity was organized for entities engaged in business. For entities not engaged in business, the person filing for a refund or tax credit can submit an equivalent of the Certification of Non-Registration of Corporation/Partnership from the said jurisdiction's regulatory body.

As for the disallowance due to lack of documentation of the corresponding foreign currency inward remittance amounting to Php10.025,869.35, the Court also finds no merit in petitioner's arguments. Petitioner has admitted that the Certificate of Inward Remittance did not reflect the foregoing payments. Petitioner wants the Court *En Banc* to eschew the technical rules of procedure in the interest of substantial justice by admitting and considering the attached JP Morgan Insight Information Manager Summary/Long Description Report as proof of the inward remittance.

In this regard, the Court *En Banc* does not agree with petitioner. In the case of *Commissioner of Internal Revenue v. Rosemarie Acosta,*[5] citing the case of *Froehlich & Kuttner v. Collector of Customs,*[6] the Supreme Court held that:

> "Finally, we cannot agree with the Court of Appeals' finding that the nature of the instant case calls for the application of remedial laws. **Revenue statutes are substantive laws and in no sense must their application be equated with that of remedial laws. As well said in a prior case, revenue laws are not intended to be liberally construed.** Considering that taxes are the lifeblood of the government and in Holmes's memorable metaphor, the price we pay for civilization, tax laws must be faithfully and strictly implemented." (*emphasis supplied*)

As for petitioner's theory that the parties have stipulated on the amount of Php55,784,357.71 as petitioner's excess input tax in its Amended Quarterly VAT return for the fourth quarter of taxable year 2005, the Court *En Banc* also finds no merit. A perusal of the Additional Joint Stipulation of Facts dated October 17, 2011 reveals the actual stipulation, as quoted below:

> "1. The amount of Php55,784,357.71 was declared by petitioner as its excess input tax in its Amended Quarterly VAT return for the fourth quarter of taxable year 2005."

Petitioner wants the Court *En Banc* to believe that respondent, by agreeing to this stipulation, also admitted the correctness of the amounts stated in the said return. However, the Court *En Banc* finds that this line of reasoning is simply unacceptable.

The logical and reasonable interpretation of this stipulation is that respondent agrees to the fact that an Amended Quarterly VAT return was indeed filed and that the petitioner did enter the said amount in the return. There was nothing there to show that

[5] G.R. No. 154068, August 3, 2007, 529 SCRA 177.
[6] 18 Phil. 461, 481-482 (1911).

respondent agreed and verified the amount of excess input tax. Again, this is a claim for refund or issuance of tax credit certificate, and therefore requires a stricter standard before it can be granted. Petitioner cannot hide behind its questionable interpretations of the stipulations to avoid the substantiation requirements under the law.

As for petitioner's allegation that requiring the submission of documentation for the input tax carried over amounts to judicial legislation, the Court *En Banc* reiterates that its discussion in the assailed Decision:

> "As shown above, petitioner's properly substantiated input taxes for the second, third and fourth quarters of 2006 are not enough to cover its output taxes for the same quarters. While petitioner reflected in its Quarterly VAT Return for the first quarter of 2006, the amounts of Php3,645,615.75 as 'Input Tax Carried Over from Previous Quarter,' Php52,138,741.96 as 'Transitional Input Tax' and Php779,739.06 as 'Others,' however, **petitioner failed to present VAT invoices or receipts to prove the existence of such amounts**." (*emphasis supplied*)

The Court *En Banc* denied this specific item because it failed to fulfill the requirement that states that input taxes were incurred or paid. A mere reliance on an entry in the current year's Quarterly VAT Return that a certain amount was carried over from the previous taxable year is not enough. Petitioner must be able to prove that the amount in the Quarterly VAT Return is accurate and that it was properly carried over, before the Court *En Banc* can allow it. However, petitioner failed to do so.

Petitioner also argues that respondent failed to raise the issue of the validity of "Input Tax Carried Over from Previous Quarter" in her answer, nor was it jointly stipulated, the Court *En Banc* finds that in order to have a full and complete disposition of the case at hand, it may consider issues and facts not within the pleadings,[7] especially in this case when its determination is crucial to the claim for refund or issuance of tax credit certificate.

---

[7] *Lydia Sumipat, et al. v. Brigido Banga, et al.*, G. R. No. 155810, August 13, 2004, 436 SCRA 521, citing *Catholic Bishop ofBalanga vs. Court of Appeals*, G.R. No. 112519, November 14, 1996, 145 SCRA 439.

As for the amount of Php24,598,395.58 representing petitioner's input VAT claim which was disallowed because the VAT official receipts and sales invoice do not indicate VAT as a separate item, the Court *En Banc* finds no merit in petitioner's arguments. Petitioner recognizes that the law states that VAT should be indicated as a separate item under Republic Act No. 9337, but cites Revenue Regulation ("RR") No. 16-2005 which deems the selling price to be inclusive of VAT if not billed separately, and BIR Ruling [DA-(VAT-081) 519-09] which also deems the selling price to be inclusive of VAT if not billed separately.

However, the provision which petitioner cites in RR No. 16-2005, which was also the basis in BIR Ruling [DA-(VAT-081) 519-09] states that:

> "SECTION 4.106-4. *Meaning of the Term "Gross Selling Price".* — The term "gross selling price" means the total amount of money or its equivalent which the purchaser pays or is obligated to pay to the seller in consideration of the sale, barter or exchange of the goods or properties, excluding VAT. The excise tax, if any, on such goods or properties shall form part of the gross selling price.
>
> In the case of sale, barter or exchange of real property subject to VAT, gross selling price shall mean the consideration stated in the sales document or the fair market value whichever is higher. The term "fair market value" shall mean whichever is the higher of: 1) the fair market value as determined by the Commissioner (zonal value), or 2) the fair market value as shown in schedule of values of the Provincial and City Assessors (real property tax declaration). However, in the absence of zonal value, gross selling price refers to the market value shown in the latest real property tax declaration or the consideration, whichever is higher. If the gross selling price is based on the zonal value or market value of the property, the zonal or market value shall be deemed inclusive of VAT. If the VAT is not billed separately, the selling price stated in the sales document shall be deemed to be inclusive of VAT."

It is clear from the quoted portion of RR No. 16-2005 that the provision petitioner cited only pertains to sale, barter or exchange of real property subject to VAT. Thus, the Court *En Banc* cannot accept petitioner's theory and therefore must uphold the disallowance of Php24,598,395.58. The law is clear in that the amount of tax shall be shown as a separate item in the invoice or receipt.[8]

As for the Php35,353.39 disallowed by the Court *En Banc,* petitioner claims that the following exhibits were not properly appreciated, as the VAT in each were separately indicated – *Exhibits* "AA-1," "AA-380," "AA-580," "AA-1654," "AA-1681," "AA-2168," "AA-2287," and "AA-2349." According to petitioner, the input VAT paid was for its domestic purchase of services.

As per the ICPA Report,[9] the following breakdown was recorded:

Official Receipt No.	Supplier	Input Tax	Exhibit
231721	Innove Communications	16,919.42	"AA-1"
4685	CP Treasure of the Orient, Inc.	1,980.00	"AA-380"
1900/1855	Rustan Coffee Corp.	173.57	"AA-580"
463938	PLDT	974.70	"AA-1654"
12312	RCBC Realty Corp.	330.00	"AA-1681"
875472	Bayan Telecommunications, Inc.	822.00	"AA-2168"
3030	Josiah's Catering Incorporated	11,306.40	"AA-2287"
886513	Bayan Telecommunications, Inc.	822.00	"AA-2349"

However, a review of the said documents reveals the following:

Exhibit	Official Receipt No.	Input Tax per OR	Difference	Supplier
"AA-1"	231721	27,470.22	(10,550.80)	same
"AA-380"	4685	1,980.00	-	same
"AA-580"	1900/1855	173.56	0.01	Starbucks Coffee (member of the Rustan Group of Companies)
"AA-1654"	4946	3,000.00	(2,025.30)	Ponce Enrile Reyes & Manalastas
"AA-1681"	12312	330.00	-	same
"AA-2168"	875472	807.32	14.68	same
"AA-2287"	3030	11,306.38	0.02	same

[8] Section 11, Republic Act No. 9337 entitled "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."
[9] Exhibit "T."

"AA-2349"	886513	807.32	14.68	same

The following findings were also noted:

Exhibit	Findings
Exhibit "AA-1"	The amount Input Tax per Schedule of Input VAT for the period January to December 2006 (Exhibit "T") is lower than the amount indicated in the official receipt. Accordingly, the allowable input tax shall be limited to the amount indicated in Exhibit "T" which is the amount being claimed for refund.
Exhibit "AA-1654"	The official receipt submitted is different from the one declared or recorded, as per Exhibit "T." In the machine copy of the OR per Exhibit "AA-1564," the supplier is "Ponce Enrile Reyes & Manalastas" with input tax amounting to Php3,000.00 but in the Exhibit "T" the supplier indicated therein was PLDT with input tax amounting to only Php974.70. Hence, this claim shall be disallowed for failing to provide the proper supporting documents.
Exhibits "AA-580," "AA-2168," "AA-2287" and "AA-2349"	The amounts recorded in Exhibit "T" are higher than the actual input tax per official receipts. Thus, the amount allowed as input tax should be the amount as indicated in the actual official receipts.

Therefore, the allowable Input Tax for the period January to December of petitioner shall be summarized as follows:

Official Receipt No.	Supplier	Allowable Input Tax	Exhibit
231721	Innove Communications	16,919.42	"AA-1"
4685	CP Treasure of the Orient, Inc.	1,980.00	"AA-380"
1900/1855	Rustan Coffee Corp	173.56	"AA-580"
12312	RCBC Realty Corp	330.00	"AA-1681"
875472	Bayan Telecommunications, Inc.	807.32	"AA-2168"
3030	Josiah's Catering Incorporated	11,306.38	"AA-2287"
886513	Bayan Telecommunications, Inc.	807.32	"AA-2349"
		Php 32,324.00	

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

(Php47,409.24), 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.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(On Leave)
ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice