REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2230** *(CTA Case No. 9649)*
	Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
-versus-	
LEPANTO CONSOLIDATED MINING COMPANY, *Respondent.*	Promulgated: JUN 14 2021 2:50 pm

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* is a **PETITION FOR REVIEW ("Petition")**, filed on 12 February 2020,[1] with respondent's **COMMENT (to the Petition for Review dated 10 February 2020) ("Comment")**, filed on 30 June 2020.[2]

The Parties

Petitioner **COMMISSIONER OF INTERNAL REVENUE** is the head of the Bureau of Internal Revenue ("BIR"), duly appointed to exercise the powers and perform the duties of his office including, *inter alia,* the power to decide disputed assessments, refunds of internal revenue taxes, fees, other

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[1] Records, pp. 1-44.
[2] *Id.*, pp. 48-60.

charges, and penalties imposed in relation thereto, or other matters arising under the Tax Code. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Respondent **LEPANTO CONSOLIDATED MINING COMPANY** is a domestic corporation duly organized and existing under Philippine laws. It is engaged in the mining and processing of gold and other precious metals.

The Facts

Respondent claims that for calendar year ("CY") 2015, it exported one hundred percent (100%) of its total sales volume/value of gold and silver to Heraeus, Ltd., a corporation based in Hong Kong. The said transactions were paid for in U.S. Dollars, which was coursed through United Coconut Planters Bank (UCPB). By virtue of these export transactions, respondent asserts that it incurred input value-added tax ("VAT") in the total amount of Php14,930,299.09.[3]

Consequently, on 17 March 2017, respondent filed an Application for Tax Credits/Refunds (BIR Form No. 1914) seeking a refund of its excess and/or unutilized input VAT arising from said export transactions.[4]

Due to petitioner's inaction, respondent filed a Petition for Review before the Court in Division on 11 August 2017.[5]

On 23 September 2019, the Court in Division partially granted respondent's claim for input VAT refund, *viz*:[6]

> "**WHEREFORE,** the instant Petition for Review is **PARTIALLY GRANTED.** Accordingly, respondent is **ORDERED** to **ISSUE TAX CREDIT CERTIFICATE** in favor of petitioner, in the amount of **P12,752,844.69** representing its unutilized excess input VAT attributable to its zero-rated sales for the four quarters of CY 2015.
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> **SO ORDERED.**"

Petitioner filed his Motion for Partial Reconsideration (Re: Decision promulgated 23 September 2019) on the Court in Division's Decision, which was denied by the Court in Division in a Resolution, dated 17 January 2020.[7]

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[3] Annex "A", Petition, *id.*, p. 19.
[4] *Ibid.*
[5] *Ibid.*
[6] *Id.*, p. 40.
[7] Annex "B", Petition, Records, pp. 41-44.

On 12 February 2020, petitioner filed the instant Petition.

In a Resolution, dated 26 February 2020, this Court *En Banc* directed respondent to comment on the Petition,[8] which was complied with when respondent filed the Comment on 30 June 2020.

On 14 July 2020, this Court *En Banc* issued a Resolution submitting the Petition for decision.[9]

Hence, this Decision.

The Assigned Errors

In the Petition, petitioner raised the following issue: [10]

> **"WHETHER OR NOT THE SECOND DIVISION OF THE HONORABLE COURT ERRED IN RULING THAT RESPONDENT WAS ABLE TO SUFFICIENTLY ESTABLISH ITS ENTITLEMENT TO THE REFUND/TAX CREDIT IN THE AMOUNT OF P12,752,844.69 REPRESENTING ITS UNUTILIZED EXCESS INPUT VAT FOR THE FOUR QUARTERS OF CALENDAR YEAR 2015."**

Arguments of the Parties

In the Petition, petitioner alleged the following:[11]

1. The law requires that only "creditable input taxes" that are "directly attributable" may be refunded. No attributability was established between the input tax on purchases vis-à-vis the zero-rated sales. The Court in Division merely assumed the same. It merely ruled that respondent was able to sufficiently establish its entitlement to the refund of unutilized excess input VAT which is attributable to zero-rated sales/receipt. This is a claim for refund, and respondent must establish its claim by the quantum of evidence and not by assumption.

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[8] Records, pp. 45-47.
[9] *Id.*, pp. 61-63.
[10] *Id.*, p. 3.
[11] *Id.*, pp. 3-8.

2. To be creditable, the input tax must come from purchases of goods that form part of the finished product of the taxpayer or be directly used in the chain of production;

3. In addition, the law requires a second evaluation to determine which of the creditable input VAT are attributable. To be attributable, the connection between the purchases and the finished product is concrete, not imaginary or remote;

4. In the cases of ***Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue,***[12] ***Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue,***[13] and ***Commissioner of Internal Revenue v. Coral Bay Nickel Corporation and Coral Bay Nickel Corporation v. Commissioner of Internal Revenue,***[14] it was mandated that in order for input taxes to be refundable, the same must be directly attributable to its zero-rated sales; and

5. A tax refund is in the nature of a tax exemption, which must be construed *strictissimi juris* against the taxpayer. The taxpayer must present convincing evidence to substantiate a claim for refund.

In its Comment, respondent alleged the following:[15]

1. The Honorable Court in Division correctly held that the respondent's input tax is directly attributable to its zero-rated sales. Petitioner failed to illustrate in his Petition how the connections between respondent's import purchases and the exported products are merely imaginary or remote. It was proven convincingly that the input taxes being refunded were paid by respondent on its importations of materials and equipment that were necessary and/or used in its mining operations, the end product of which were the gold and metals produced and exported during the pertinent periods from which zero-rated sales arose;

2. The Honorable Court in Division correctly held that respondent was able to prove, with convincing evidence, its claim for tax refund or a tax credit certificate. *First,* respondent presented sufficient evidence to prove that it has accumulated input VAT in 2015 from importations, capital amortization, and services rendered by non-residents, which were used directly in the production of gold and other metals. *Second,* respondent also presented clear and convincing evidence proving that it exported one hundred percent

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[12] G.R. No. 159471, 26 January 2011.
[13] G.R. Nos. 141104 & 148763, 8 June 2007.
[14] CTA EB Nos. 1735 and 1737, CTA Case No. 8905, 18 July 2019.
[15] *Id.*, pp. 48-58.

(100%) of its metal production in CY 2015 to a foreign country, the payments for which were remitted in U.S. Dollars and in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas. *Third,* while respondent also accumulated output VAT during said period due to its incidental transactions, such as the sale of scraps, its input VAT for said period was considerably more than said output VAT, rendering it entitled to a credit or refund of its net input VAT. *Fourth,* both the administrative and judicial claims of respondent were timely filed. *Fifth,* even the Court-commissioned Independent Certified Public Accountant, after combing through the evidence on record, held that respondent is entitled to a tax credit or refund of its input VAT for CY 2015; and

3. The factual findings of the Court in Division are conclusive in the absence of any allegation of grave abuse of discretion. Factual findings by the Court in Division are not only accorded great weight; they are also conclusive in the absence of any allegation of grave abuse of discretion on its part.

The Ruling of the Court En Banc

Following a studied review of the arguments, we **DENY** the Petition for lack of merit.

The arguments alleged in the Petition have already been adequately and judiciously passed upon by the Court in Division in its Resolution, dated 17 January 2020. The Petition posits no cogent reason for the Court *En Banc* to reverse, modify, or at the very least revisit the dispositions made by the Court in Division on the present case. On this note alone, this Petition deserves scant consideration. As such, this Court *En Banc* has no other recourse but to deny the same. But to finally resolve any doubt existing in the mind of petitioner, we shall tackle once more the very same issue he raised in his Motion for Partial Reconsideration (Re: Decision promulgated 23 September 2019), filed on 7 October 2019 in the Court in Division.

Mere allegations cannot overturn a ruling by the Court in Division duly supported by evidence on record.

Basic is the rule that allegations without corresponding proof cannot overturn a judgment which has been rendered painstakingly through the thorough examination of the pieces of evidenced adduced during trial. Thus, in ***Republic of the Philippines v. Team (Phils.) Energy Corporation***

(formerly, Mirant (Phils.) Energy Corporation),[16] the High Court ruled that "the findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties."

In the Petition, petitioner simply alleged principles regarding the VAT system as basis for its grant and the corresponding reversal of the input VAT refund allowed by the Court in Division. He did not specifically raise a particular error committed by the Court in Division which shows a misappreciation of the evidence presented and offered during trial. Petitioner simply alleged generally that respondent failed to prove direct attributability of the input VAT it seeks to refund with its zero-rated sales. This he did without presenting any supporting proof.

Consequently, such general allegations by petitioner cannot overturn the following findings by the Court in Division which was made through circumspect examination of the pieces of evidence adduced during trial, to wit:[17]

> "Be that as it may, this Court has painstakingly scrutinized the evidence on record and has determined that petitioner has valid zero-rated sales for calendar year 2015 and, furthermore, determined that petitioner incurred input taxes attributable thereto. As held in the assailed Decision, *viz.:*
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> > Unfortunately, however, only the input VAT of P12, 752,844.69 is attributable to the valid zero-rated sales of P1,079,925,322.01, computed as follows:

Input VAT Allocated to Zero-Rated Sales	19,678,705.22
Less: Net Output VAT Payable	6,102,713.29
Excess Input VAT attributable to zero-rated sales	**P13,575,991.93**
Divided by Declared Zero-Rated Sales	1,149 630,362.03
Multiply by Valid Zero-Rated Sales	1,079,925,322.01
Refundable Input VAT attributable to Zero-Rated Sales	**P12,752,844.69**

> In view of the foregoing, the Court finds no convincing reason to reverse or modify the Decision promulgated on September 23, 2019."

[16] G.R. No. 188016, 14 January 2015.
[17] Resolution, dated 17 January 2020, Annex "B", Records, pp. 43-44.

<u>Section 112 of the National Internal Revenue Code, as amended ("NIRC"), does not absolutely require that input taxes subject of a refund/TCC claim be directly attributable to zero-rated sales.</u>

Petitioner's main and sole contention for the allowance of his Petition is that respondent failed to prove that the input taxes sought to be refunded are directly attributable to its alleged zero-rated sales. Consequently, this failure on the part of respondent should result in the denial of its claim for input VAT refund. This is terribly misplaced.

As to whether an input VAT subject of refund should be directly attributable to zero-rated sales, this issue has already long been settled. ***Section 112 of the NIRC*** does not require absolute direct attribution of the purchases (the input VAT of which is subject of a refund/TCC claim) to zero-rated sales. In fact, the said provision allows the allocation of input VAT that cannot be directly attributed to any of the taxpayer's sales (*i.e.,* zero-rated sales, taxable sales or exempt sales), *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): **<u>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.</u>** 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."
>
> (Emphasis and Underscoring, Ours)

This Court *En Banc* agrees with the ruling of the CTA Division in the Resolution, dated 17 January 2020, interpreting this provision, to wit:[18]

> "Contrary to respondent's argument, petitioner is not required to prove which of its purchases are directly attributable to its zero-rated transactions and which are directly attributable to its taxable transactions. In fact, Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides for a situation where the taxpayer is engaged in zero-rated or effectively zero-rated sales and in taxable or exempt sales, and the input taxes cannot be directly and entirely attributed to any of the sales, in which case, the input taxes shall be allocated proportionately on the basis of the volume of sales, xxx."

Moreover, in ***Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.***,[19] this Court *En Banc* has ruled on a similar issue, as follows:

> **"The Court in Division correctly ruled that an input tax need not be directly and entirely attributable to the zero-rated sales to be refundable or creditable.**
>
> The petitioner's claim that the assailed Decision and Resolution of the Court in Division are erroneous for having failed to establish the direct attributability between respondent's input tax on purchases and its zero-rated sales is bereft of merit.
>
> ***Section 112(A) of the Tax Code*** provides for the grounds when input tax may be refunded or claimed as tax credit in cases of zero-rated sales, to wit:
>
> > '**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(8)(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 sales 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**

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[18] *Id.*, pp. 42-43.
[19] CTA EB No. 2082, CTA Case No. 9496, 21 July 2020.

> **<u>the transactions, it shall be allocated proportionately on the basis of the volume of sales:</u>** *Provided, finally,* That for a person making sales that are zero-rated under Section 108(8)(6), the input taxes shall be allocated ratably between his zero-rated and nonzero-rated sales.'

Contrary to the argument of the petitioner, there is nothing in the provision which states that the input tax needs to be directly attributable or a factor in the chain of production to the zero-rated sale in order for it to be creditable or refundable. In fact, the aforementioned provision allows as tax credit an allocable portion of a taxpayer's input tax that is not directly and entirely attributable to the zero-rated sales.

Further, ***Section 110(A) of the Tax Code,*** which enumerates the transactions upon which creditable input tax may be claimed, only requires that the transaction was incurred or paid in connection with the taxpayer's trade or business whether directly or indirectly and that it is evidenced by a VAT invoice or official receipt, to wit:

> 'SEC. 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 **<u>shall be creditable</u> against the output tax:**
>
> **(a) Purchase or importation of goods:**
>
> **(i) For sale; or**
>
> **(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or**
>
> **<u>(iii) For use as supplies in the course of business;</u> or**
>
> **(iv) For use as materials supplied in the sale of service; or**
>
> **(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.**
>
> **(b) Purchase of services on which a value-added tax has been actually paid.**
>
> **XXX XXX XXX**
>
> **<u>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.</u>** It shall also include the transitional input tax determined in accordance with Section 111 of this Code.'

Clearly, based on the foregoing provisions, the Tax Code does not require the input tax to be directly attributable to zero-rated sales to be refundable or creditable.

In fact, this is not the first time the Court En Banc resolved the issue raised by the petitioner. In ***Deutsche Knowledge Services Pte. Ltd. V. Commissioner of Internal Revenue***, this Court ruled, to wit:

> 'The CIR's insistence that 'to be creditable, the input tax must come from purchases of goods that form part of the finished product of the taxpayer or it must be directly used in the chain of production' is not entirely consistent with the above-quoted Section 110. **This is so because the said provision, as clearly stated, did not limit itself to purchases or importation of goods which are to be converted into or intended to form part of a finished product for sale, or to be used in the chain of production; but also includes, inter alia, purchases or importation of goods for use as supplies in the course of business, or for use in trade or business for which deduction for depreciation or amortization is allowed; as well as purchase of services for which VAT has been actually paid.**
>
> **Accordingly, provided that the subject input tax is evidenced by a VAT invoice or official receipt issued in accordance with Section 113 of the NIRC of 1997, as amended, the same may be creditable against the output VAT.**
>
> We likewise do not find merit in the CIR's allegation that for an input tax to be attributable to zero-rated sales, it must be shown that 'the connection between the purchases and finished product is 'concrete' and not 'imaginary' or 'remote'.
>
> XXX XXX XXX
>
> Based from the foregoing, creditable input taxes which cannot be directly or entirely attributable to any sale transaction (i.e., zero- rated or effectively zero-rated sale and taxable or exempt sale of goods of properties or services), shall be allocated proportionally on the basis of the volume of sales. Evidently. contrary to the CIR's allegation, the attribution of the input VAT to the zero-rated sales need not always be direct.
>
> Moreover, the word 'attribute', the adjective form of which is 'attributable', is defined as 'to explain as to cause or origin', or simply, to 'ascribe'. Thus, when Section 112(A) of the NIRC of 1997, as amended, states that the input VAT must be attributable to the zero-rated or effectively zero-rated sales, it simply means that the input VAT must be regarded as being caused by such sales. Accordingly, We sustain the Court in Division's ruling that is it not required that the claimed input tax be directly attributable to zero- rated sales in order to be creditable.'

Moreover, we find that petitioner's reliance in the ***Atlas Cases*** is misplaced. In the said cases, the Supreme Court decided the same under the defunct Revenue Regulations ('RR') No. 5-87 dated 1 September 1987, as amended by RR No. 3-88 dated 15 February 1988, Section 16 of which provides, to wit:

> 'In all cases, the amount of refund or tax credit that may be granted shall be limited to the amount of value- added tax (VAT) paid **directly and entirely attributable to the zero-rated transaction** during the period covered by the application for credit or refund.'
>
> However, the requirement that the input tax being claimed for tax credit or refund should be directly and entirely attributable to the zero-rated sales, has not been retained in RR No. 14-2005 and in its amendments, which is the applicable VAT regulation in the present case.
>
> Given the foregoing, we affirm the assailed Decision and Resolution and find that the input tax need not be directly attributable to the zero-rated sales in order for it to be refunded or claimed as tax credit."

Clearly, then, on the strength of ***Section 112 of the NIRC*** and the previous ruling of the Court, it is not necessary for input taxes to be directly attributable to zero-rated sales so that they can be validly refunded.

WHEREFORE, the instant Petition is hereby **DENIED** for lack of merit. Accordingly, the Decision, dated 23 September 2019, and Resolution, dated 17 January 2020, promulgated by the Court in Division are hereby **AFFIRMED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice