REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

PENN PHILIPPINES, INC.,
Respondent.

CTA EB NO. 2512
(CTA CASE NO. 7457)

Present:

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

Promulgated:
JAN 3 1 2024 11:00 am

x - x

DECISION

RINGPIS-LIBAN, ***J.:***

The Case

Before the Court *En Banc* is the Petition for Review filed by the Commissioner of Internal Revenue (CIR) seeking the reversal of the January 19, 2021 Decision[1] and the June 24, 2021 Resolution[2] of the Second Division.

The dispositive portion of the assailed decision reads:

> "**WHEREFORE**, the foregoing considered, petitioner Penn Philippines, Inc.'s Petition for Review filed on 19 April 2006 is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO REFUND or ISSUE A TAX**

---

[1] *Rollo,* pp. 18-37. Penned by Associate Justice Jean Marie A. Bacorro-Villena, with the concurrence of Senior Associate Justice Juanito C. Castañeda, Jr.
[2] *Id.,* pp. 39-43.

CREDIT CERTIFICATE to petitioner in the amount of P2,706,140.07, representing its excess and unutilized input VAT attributable to zero-rated sales for the four (4) quarters of CY 2004.

SO ORDERED."

The dispositive portion of the assailed resolution states:

"**WHEREFORE**, the foregoing considered, respondent-movant Commissioner of Internal Revenue's *Motion for Partial Reconsideration* filed on 08 February 2021 is hereby **DENIED** for lack of merit.

SO ORDERED."

The Parties

Petitioner is the duly appointed CIR with office address at Bureau of Internal Revenue (BIR) National Office Building, Diliman, Quezon City.[3]

Respondent Penn Philippines, Inc. (PPI/taxpayer) is a corporation duly organized and existing under the laws of the Republic of the Philippines, with business address at FTI Avenue, FTI Complex, Taguig, Metro Manila. Formerly, its corporate name was Penn Gold-Zack Philippines, Inc. and prior to that, its original corporate name was Goldzack Philippines, Inc.[4]

The Facts

The facts are not disputed by the petitioner.

Respondent taxpayer is primarily engaged in the manufacture of textile products (elastic fabric) and other products allied thereto and is registered with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) taxpayer.[5]

In 2004, the taxpayer generated sales to Penn Philippines Export, Inc., a Philippine Economic Zone Authority (PEZA)-registered company.[6] It also declared input taxes amounting to PhP4,868,496.87 on its domestic purchases of goods and services and importation of capital goods.[7]

---

[3] *Joint Stipulation of Facts and Issues*, Docket, Vol. I, p. 93.
[4] *Id.*
[5] *Id.*, p. 95.
[6] January 19, 2021 *Decision*, *Rollo*, p. 25 and 30.
[7] *Id.*, pp. 30-31.

Antecedent Proceedings

On March 27, 2006,[8] the taxpayer filed an administrative claim for refund in a letter addressed to the CIR claiming unutilized input VAT amounting to PhP4,868,496.87.[9]

On April 19, 2006, without waiting for the lapse of the 120-day period given to the CIR to decide on the administrative refund claim[10] and in a bid to prevent the action from prescribing, the taxpayer filed its judicial claim before the Court of Tax Appeals (CTA).[11]

The petition, docketed as CTA Case No. 7457, was originally raffled to the Court's First Division. There, petitioner presented the testimonies of the Court-appointed Independent Certified Public Accountant (ICPA), Ma. Victoria Españo (Españo), Benedicto J. Horca III (Horca) and Ma. Lourdes Aguinaldo (Aguinaldo). On the other hand, respondent did not present any witnesses.[12]

On April 6, 2010, after the trial, the Special First Division promulgated its Decision, partially granting the Petition for Review:

> "**WHEREFORE,** the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of **ONE MILLION NINE HUNDRED TWENTY-FOUR THOUSAND THREE HUNDRED FOURTEEN PESOS AND 91/100 (P1,924,314.91)** in favor of petitioner Penn Philippines, Inc., representing its unutilized input VAT for the second, third, and fourth quarters of taxable year 2004.
>
> **SO ORDERED.**"[13]

On April 30, 2010, the taxpayer filed its *Motion for Partial Reconsideration (of the Decision dated 6 April 2010)*. On even date, the CIR likewise filed his *Motion for Partial Reconsideration* by registered mail.[14]

On September 15, 2010, the Special First Division denied both motions for lack of merit.[15]

---

[8] *See* Annex J of *Petition for Review*, Docket, Vol. I, pp. 47-49; April 6, 2010 *Decision*, Docket, Vol. I, p. 550; and May 28, 2013 *Amended Decision*, Docket, Vol. II, p. 785.
[9] January 19, 2021 *Decision*, *Rollo*, pp. 18-19.
[10] May 28, 2013 *Amended Decision*, Docket, Vol. II, p. 785.
[11] January 19, 2021 *Decision*, *Rollo*, p. 19.
[12] *Id.*, p. 19.
[13] *Id.*
[14] *Id.*
[15] *Id.*, p. 20

On October 20, 2010, the CIR filed a *Petition for Review* with the CTA *En Banc*, docketed as CTA EB No. 693.[16]

On June 27, 2012, the CTA *En Banc* rendered a Decision, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant petition is hereby **GRANTED**. Accordingly, the assailed Decision dated April 6, 2010 and Resolution dated September 15, 2010 rendered by the Special First Division in C.T.A. Case No. 7457 are hereby **REVERSED** and **SET ASIDE**. The Petition for Review filed in C.T.A. Case No. 7457 is hereby **DISMISSED** for having been prematurely filed.
>
> **SO ORDERED**."[17]

On July 23, 2012, the taxpayer filed a *Motion for Reconsideration (of the Decision dated 27 June 2012)*.[18] On May 28, 2013, the CTA *En Banc* granted the taxpayer's motion and rendered an *Amended Decision*, thus:

> "**WHEREFORE**, in view of the foregoing considerations, the instant Motion for Reconsideration is **GRANTED**. The Court *En Banc*'s Decision promulgated on June 27, 2012 is hereby **REVERSED** and **SET ASIDE**.
>
> Accordingly, CTA Case No. 7457 is **REMANDED** to the Court of origin for a complete determination of respondent's full compliance with other legal requirements in relation with its subject claim for refund or tax credit of its alleged unutilized input VAT for the first, second, third and fourth quarters of taxable year 2004.
>
> **SO ORDERED**."[19]

On June 27, 2013, the CIR filed his *Motion for Reconsideration* of the *Amended Decision*. However, the CTA *En Banc* denied the motion in its Resolution dated November 11, 2013.[20]

Aggrieved, the CIR filed a *Petition for Review on Certiorari* with the Supreme Court, docketed as G.R. No. 210041. However, the Supreme Court resolved to deny the CIR's petition in a *Resolution* dated September 24, 2018:

> "**WHEREFORE**, the Court **DENIES** the petition for review on certiorari, and **AFFIRMS** the amended decision promulgated on May 28, 2013, without pronouncement on costs of suit.

---

[16] *Id.*
[17] *Id.*
[18] Docket, Vol. II, pp. 750-774.
[19] January 19, 2021 *Decision, Rollo, p. 20.*
[20] *Id.*, p. 21.

SO ORDERED."[21]

Subsequently, on February 19, 2019, the Supreme Court issued an *Entry of Judgment* declaring the foregoing *Resolution* final and executory.[22]

Considering that all of the members of the then Special First Division, which rendered the decision in CTA Case No. 7457 have retired, the case was re-raffled to the Second Division for further proceedings pursuant to the Court *En Banc's* *Amended Decision* dated May 28, 2013.[23]

Despite the Second Division's October 29, 2019 directive for both parties to file their written manifestations alleging any supervening event that may have transpired which they would want the Court to consider, no manifestations were made.[24]

On November 21, 2019, the counsels for the taxpayer filed by registered mail a *Motion for Withdrawal of Appearance as Counsel*, which was granted by the Second Division.[25]

On January 23, 2020, the case was then submitted for decision.[26]

On January 19, 2021, the Second Division issued the assailed decision partially granting the refund claim.[27] The CIR's *Motion for Reconsideration*, without any comment from the taxpayer, was denied for lack of merit.[28] Hence the appeal before the CTA *En Banc*.

Proceedings before the CTA En Banc

On July 13, 2021, the CIR filed a *Motion for Extension of Time to File Petition for Review* asking for a period until *July 28, 2021* within which to file a petition.[29]

On July 26, 2021, the CIR filed by registered mail a *Petition for Review* asking the Court to set aside and reverse the assailed decision and resolution of the Second Division.[30]

[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] Docket, Vol. III, p. 1084.
[26] January 19, 2021 Decision, *Rollo*, p. 21.
[27] *Rollo*, pp. 18-37.
[28] *Rollo*, pp. 39-43.
[29] *Id.*, pp. 1-3.
[30] *Id.*, pp. 5-14.

In a *Minute Resolution* dated July 30, 2021, the Court considered the CIR's motion as deemed granted in view of the filing of the petition within the extension prayed for.[31]

On November 5, 2021, the Court issued a *Resolution* which ordered the taxpayer to file its comment to the petition.[32]

Since the taxpayer failed to file its comment within the period provided for, the case was submitted for decision.[33]

The Issues

The CIR prays that the Court *En Banc review, reevaluate and revisit* the assailed decision based on the following grounds:

1. Penn Philippines Export Inc., as PEZA-registered entity, should have availed of the 5% preferential tax in order for the taxpayer's sales of goods and services to the former to qualify as effectively zero-rated sales. Otherwise, these sales are subject to 12% VAT under Section 108 of the National Internal Revenue Code of 1997 (NIRC);[34]

2. The taxpayer's unsupported alleged zero-rated sales in the amount of PhP16,640,256.91 should be subject to 12% output VAT;[35] *and,*

3. The determination of the taxpayer's output VAT liability is merely for the purpose of ascertaining its entitlement of its unutilized input VAT claim for refund and not for imposing any deficiency tax.[36]

The Ruling of the Court *En Banc*

The taxpayer's sales to Penn Philippines Export Inc., a PEZA-registered enterprise, qualifies as effectively zero-rated sales under Section 106(A)(2)(a)(5) of the NIRC, as amended.

The CIR maintains that under Section 23 of Republic Act No. (RA) 7916,[37] two (2) different fiscal incentives are granted to an ecozone enterprise:

[31] *Id.*, p. 59.
[32] *Id.*, pp. 61-62.
[33] February 1, 2023 Resolution, *Rollo*, pp. 129-133.
[34] *Petition for Review, Rollo*, pp. 9-10.
[35] *Id.*, pp. 10-11.
[36] *Id.*, pp. 11-13.

[37] "SECTION 23. Fiscal Incentives. — Business establishments operating within the ECOZONES shall be entitled to the fiscal incentives as provided for under Presidential Decree No. 66, the law creating

(a) Fiscal incentives provided under Presidential Decree No. 66, the law creating the Export Processing Zone Authority and the 5% preferential tax rate under Section 24 of RA 7916 in lieu of national and local taxes;[38] and, (b) Fiscal incentives under Book VI of Executive Order No. (EO) 226,[39] including but not limited to an income tax holiday of 4-6 years, depending on whether the entity is registered as a pioneer or non-pioneer enterprise. Accordingly, if an ecozone enterprise chooses the 5% preferential tax, it is exempt from payment of all national and local taxes. However, if an ecozone enterprise chooses the ITH, it is only exempt from payment of the income tax and is still subject to other internal revenue taxes including VAT.[40]

In this connection, the CIR is of the view that in order for the taxpayer's sales to Penn Philippines Export Inc., a PEZA-registered entity, to qualify as effectively zero-rated sales, the latter should have availed of the 5% preferential tax. Otherwise, the sales are subject to 12% VAT under Section 108 of the NIRC.

The argument lacks merit.

The taxpayer's refund claim is based on Section 112(A) in relation to Section 106(A)(2)(a)(5) of the NIRC, as amended,

> "**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)

---

the Export Processing Zone Authority, or those provided under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987.

Furthermore, tax credits for exporters using local materials as inputs shall enjoy the same benefits provided for in the Export Development Act of 1994."

[38] "SECTION 24. Exemption from Taxes Under the National Internal Revenue Code. — Any provision of existing laws, rules and regulations to the contrary notwithstanding, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu of paying taxes, five percent (5%) of the gross income earned by all businesses and enterprises within the ECOZONE shall be remitted to the national government. This five percent (5%) shall be shared and distributed as follows:

(a) Three percent (3%) to the national government;

(b) One percent (1%) to the local government units affected by the declaration of the ECOZONE in proportion to their population, land area, and equal sharing factors; and

(c) One percent (1%) for the establishment of a development fund to be utilized for the development of municipalities outside and contiguous to each ECOZONE: Provided, however, That the respective share of the affected local government units shall be determined on the basis of the following formula:

(1) Population — fifty percent (50%);
(2) Land area — twenty-five percent (25%); and
(3) Equal sharing — twenty-five percent (25%)."

[39] Omnibus Investments Code of 1987.
[40] *Petition for Review, Rollo*, pp. 9-10.

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."

"**SEC. 106.** *Value-added Tax on Sale of Goods or Properties.* —

(A) *Rate and Base of Tax.* — There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor: *Provided*, That the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%), after any of the following conditions has been satisfied:

(i) Value-added tax collection as a percentage of Gross Domestic Product (GDP) of the previous year exceeds two and four-fifth percent (2 4/5%); or

(ii) National government deficit as a percentage of GDP of the previous year exceeds one and one-half percent (1 1/2%).

xxx xxx xxx

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) Export Sales. — The term 'export sales' means:

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(2) Sale of raw materials or packaging materials to a nonresident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods and paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP):

(3) Sale of raw materials or packaging materials to export-oriented enterprise whose export sales exceed seventy percent (70%) of total annual production;

(4) Sale of gold to the Bangko Sentral ng Pilipinas (BSP);

(5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws; and

(6) The sale of goods, supplies, equipment and fuel to persons engaged in international shipping or international air transport operations.

(b) Foreign Currency Denominated Sale. — The phrase 'foreign currency denominated sale' means sale to a nonresident of goods, except those mentioned in Sections 149 and 150, assembled or manufactured in the Philippines for delivery to a resident in the Philippines, paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).

(c) Sales to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects such sales to zero rate." (*Underscoring supplied*)

In addition, Articles 23 and 77 of EO 226 defines *export sales* and provides for the tax treatment of export sales, which cover goods purchased by the registered enterprise from the customs territory and brought into the export zone, as in this case, thus:

"ARTICLE 23. 'Export sales' shall mean the Philippine port F.O.B. value, determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of exports products exported directly by a registered export producer or the net selling price of export product sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same: *Provided*, That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents: *Provided, further*, That without actual exportation the following shall be considered constructively exported for purposes of this provision: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) sales to export processing zones; (3) sales to registered export traders operating bonded trading warehouses supplying raw materials used in the manufacture of export products under guidelines to be set by the Board in consultation with the Bureau of Internal Revenue and the Bureau of Customs; (4) sales to foreign military bases, diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products whether paid for in foreign currency or not: *Provided, further*, That export sales of registered export trader may include commission income: and *Provided, finally*, That exportation of goods on consignment shall not be deemed export sales until the export products consigned are in fact sold by the consignee.

Sales of locally manufactured or assembled goods for household and personal use to Filipinos abroad and other non-residents of the Philippines as well as returning Overseas Filipinos under the Internal Export Program of the government and paid for in convertible foreign currency inwardly remitted through the Philippine banking systems shall also be considered export sales."

xxx xxx xxx

BOOK VI
Incentives of Export Processing Zone Enterprises

xxx xxx xxx

ARTICLE 77. Tax Treatment of Merchandise in the Zone. — (1) Except as otherwise provided in this Code, foreign and domestic merchandise, raw materials, supplies, articles, equipment, machineries, spare parts and wares of every description, except those prohibited by law, brought into the zone to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded, or otherwise processed, manipulated, manufactured, mixed with foreign or domestic merchandise whether directly or indirectly related in such activity, shall not be subject to customs and internal revenue laws and regulations nor to local tax ordinances, the provisions of law to the contrary notwithstanding.

(2) Merchandise purchased by a registered zone enterprise from the customs territory and subsequently brought into the zone, shall be considered as export sales and the exporter thereof shall be entitled to the benefits allowed by law for such transaction." (*Underscoring supplied*)

More pertinently, Section 3 of Revenue Memorandum Circular No. (RMC) 74-99[41] provides for the VAT zero-rating of sales of goods and services by a VAT-registered seller located in the customs territory to a PEZA-registered enterprise, *regardless of the fiscal incentive enjoyed by the latter*:

SECTION 3. Tax Treatment Of Sales Made By a VAT Registered Supplier from The Customs Territory, To a PEZA Registered Enterprise. —

(1) If the Buyer is a PEZA registered enterprise which is subject to the 5% special tax regime, in lieu of all taxes, except real property tax, pursuant to R.A. No. 7916, as amended:

(a) Sale of goods (i.e., merchandise). — This shall be treated as indirect export hence, considered subject to zero percent (0%) VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC and Sec. 23 of R.A. No. 7916, in relation to ART. 77(2) of the Omnibus Investments Code.

(b) Sale of service. — This shall be treated subject to zero percent (0%) VAT under the '*cross border doctrine*' of the VAT System, pursuant to VAT Ruling No. 032-98 dated Nov. 5, 1998.

[41] SUBJECT: Tax Treatment of Sales of Goods, Property and Services Made by a Supplier from the Customs Territory to a PEZA Registered Enterprise; and Sale Transactions Made by PEZA Registered Enterprises Within and Without the ECOZONE.

(2) If Buyer is a PEZA registered enterprise which is not embraced by the 5% special tax regime, hence, subject to taxes under the NIRC, e.g., Service Establishments which are subject to taxes under the NIRC rather than the 5% special tax regime:

(a) Sale of goods (i.e., merchandise). — This shall be treated as indirect export hence, considered subject to zero percent (0%) VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC and Sec. 23 of R.A. No. 7916 in relation to ART. 77(2) of the Omnibus Investments Code.

(b) Sale of Service. — This shall be treated subject to zero percent (0%) VAT under the '*cross border doctrine*' of the VAT System, pursuant to VAT Ruling No. 032-98 dated Nov. 5, 1998.

(3) In the final analysis, any sale of goods, property or services made by a VAT registered supplier from the Customs Territory to any registered enterprise operating in the ecozone, regardless of the class or type of the latter's PEZA registration, is actually qualified and thus legally entitled to the zero percent (0%) VAT. Accordingly, all sales of goods or property to such enterprise made by a VAT registered supplier from the Customs Territory shall be treated subject to 0% VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC, in relation to ART. 77(2) of the Omnibus Investments Code, while all sales of services to the said enterprises, made by VAT registered suppliers from the Customs Territory, shall be treated effectively subject to the 0% VAT, pursuant to Section 108(B)(3), NIRC, in relation to the provisions of R.A. No. 7916 and the 'Cross Border Doctrine' of the VAT system.

This Circular shall serve as a sufficient basis to entitle such supplier of goods, property or services to the benefit of the zero percent (0%) VAT for sales made to the aforementioned ECOZONE enterprises and shall serve as sufficient compliance to the requirement for prior approval of zero-rating imposed by Revenue Regulations No. 7-95 effective as of the date of the issuance of this Circular." (*Underscoring supplied*)

Revenue Regulation No. (RR) 16-2005[42] as amended by RR 4-2007[43] implements Section 106(A)(2)(a)(5) of the NIRC, as amended, also reiterates that sales to PEZA-registered enterprises are considered VAT zero-rated sales consistent with the provisions of RMC 74-99:

"**SEC. 4.106-5. Zero-Rated Sales of Goods or Properties.** – xxx xxx xxx.

The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) Export Sales. – xxx xxx xxx.

[42] SUBJECT: Consolidated Value-Added Tax Regulations of 2005.
[43] SUBJECT: Amending Certain Provisions of Revenue Regulations No. 16-2005, As Amended, Otherwise Known as the Consolidated Value-Added Tax Regulations of 2005.

(5) Transactions considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws.

"Considered export sales under Executive Order No. 226" shall mean the Philippine port F.O.B. value determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export 5 producer, or the net selling price of export products sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same; *Provided*, That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents; *Provided, further*, That pursuant to EO 226 and other special laws, even without actual exportation, the following shall be considered constructively exported: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) sales to export processing zones pursuant to Republic Act (RA) Nos. 7916, as amended, 7903, 7922 and other similar export processing zones; (3) sale to enterprises duly registered and accredited with the Subic Bay Metropolitan Authority pursuant to RA 7227; (4) sales to registered export traders operating bonded trading warehouses supplying raw materials in the manufacture of export products under guidelines to be set by the Board in consultation with the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC); (5) sales to diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products whether paid for in foreign currency or not." (*Underscoring supplied*)

Finally, the very same issue raised by the CIR in the petition was already settled by the Supreme Court in *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.) Inc.*[44] It ruled that the distinction between the fiscal incentives availed of by the PEZA-registered enterprise was *abolished* by RMC 74-99, which categorically declared that all sales of goods, properties, and services made by a VAT-registered supplier from the customs territory to an ECOZONE enterprise shall be subject to VAT, at zero percent (0%) rate, *regardless of the latter's type or class of PEZA registration*:

"II

Prior to RMC No. 74-99, however, PEZA-registered enterprises availing of the income tax holiday under Executive Order No. 226, as amended, were deemed subject to VAT.

In his Petition, petitioner CIR opposed the grant of tax credit/refund to respondent Toshiba, reasoning thus —

In the first place, respondent could not have paid input taxes on its purchases of goods and services from VAT-registered suppliers because such purchases being zero-rated, that is, no output tax was paid by the suppliers, no input tax was shifted or passed on to respondent. The VAT is an indirect tax

[44] G.R. No. 150154, August 9, 2005.

> and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services (*Section 105, 1997 Tax Code*).
>
> xxx xxx xxx
>
> Secondly, Section 4.100-2 of Revenue Regulations No. 7-95 provides:
>
> > SEC. 4.100-2. *Zero-rated sales.* — A zero-rated sale by a VAT-registered person, which is a taxable transaction for VAT purposes, shall not result in any output tax. However, the input tax on his purchases of goods, properties or services related to such zero-rated sale shall be available as tax credit or refund in accordance with these regulations.
>
> From the foregoing, the VAT-registered person who can avail as tax credit or refund of the input tax on his purchases of goods, services or properties is the seller whose sale is zero-rated. Applying the foregoing provision to the case at bench, the VAT registered supplier, whose sale of goods and services to respondent is zero-rated, can avail as tax credit or refund the input taxes on its (supplier) own purchases of goods and services related to its zero-rated sale of goods and services to respondent. On the other hand, respondent, as the buyer in such zero-rated sale of goods and services, could not have paid input taxes for which it can claim as tax credit or refund.
>
> xxx xxx xxx

Nevertheless, regardless of his mistake as to the basis for respondent Toshiba's application for tax credit/refund, petitioner CIR validly raised the question of whether any output VAT was actually passed on to respondent Toshiba which it could claim as input VAT subject to credit/refund. If the VAT-registered supplier from the Customs Territory did not charge any output VAT to respondent Toshiba believing that it is exempt from VAT or it is subject to zero-rated VAT, then respondent Toshiba did not pay any input VAT on its purchase of capital goods and it could not claim any tax credit/refund thereof.

<u>The rule that any sale by a VAT-registered supplier from the Customs Territory to a PEZA-registered enterprise shall be considered an export sale and subject to zero percent (0%) VAT was clearly established only on 15 October 1999, upon the issuance of RMC No. 74-99. Prior to the said date, however, whether or not a PEZA-registered enterprise was VAT-exempt depended on the type of fiscal incentives availed of by the said enterprise</u>. This old rule on VAT-exemption or liability of PEZA-registered enterprises, followed by the BIR, also recognized and affirmed by the CTA, the Court of Appeals, and even this Court, cannot be lightly disregarded considering the great number of PEZA-registered enterprises which did rely on it to determine its tax liabilities, as well as, its privileges.

<u>According to the old rule, Section 23 of Rep. Act No. 7916, as amended, gives the PEZA-registered enterprise the option to choose between</u>

> two sets of fiscal incentives: (a) The five percent (5%) preferential tax rate on its gross income under Rep. Act No. 7916, as amended; and (b) the income tax holiday provided under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, as amended.
>
> The five percent (5%) preferential tax rate on gross income under Rep. Act No. 7916, as amended, is in lieu of all taxes. Except for real property taxes, no other national or local tax may be imposed on a PEZA-registered enterprise availing of this particular fiscal incentive, not even an indirect tax like VAT.
>
> Alternatively, Book VI of Exec. Order No. 226, as amended, grants income tax holiday to registered pioneer and non-pioneer enterprises for six-year and four-year periods, respectively. Those availing of this incentive are exempt only from income tax, but shall be subject to all other taxes, including the ten percent (10%) VAT.
>
> This old rule clearly did not take into consideration the Cross Border Doctrine essential to the VAT system or the fiction of the ECOZONE as a foreign territory. It relied totally on the choice of fiscal incentives of the PEZA-registered enterprise. Again, for emphasis, the old VAT rule for PEZA-registered enterprises was based on their choice of fiscal incentives: (1) If the PEZA-registered enterprise chose the five percent (5%) preferential tax on its gross income, in lieu of all taxes, as provided by Rep. Act No. 7916, as amended, then it would be VAT-exempt; (2) If the PEZA registered enterprise availed of the income tax holiday under Exec. Order No. 226, as amended, it shall be subject to VAT at ten percent (10%). Such distinction was abolished by RMC No. 74-99, which categorically declared that all sales of goods, properties, and services made by a VAT-registered supplier from the Customs Territory to an ECOZONE enterprise shall be subject to VAT, at zero percent (0%) rate, regardless of the latter's type or class of PEZA registration; and, thus, affirming the nature of a PEZA registered or an ECOZONE enterprise as a VAT-exempt entity." (*Underscoring supplied*)

Therefore, contrary to the CIR's position, it has been settled by the revenue issuances and the jurisprudence just cited that the taxpayer's sales to Penn Philippines Export Inc., a PEZA-registered enterprise, qualifies as effectively zero-rated *export sales* under Section 106(A)(2)(a)(5) of the NIRC, as amended.

No reversible error was committed when the Second Division resolved that that taxpayer's unsupported zero-rated sales of PhP16,640,256 are not subject to 12% VAT.

The second and the third grounds raised by the CIR are related and will be taken up by the Court *En Banc* together.

In the assailed decision, the Second Division disallowed certain zero-rated sales of the taxpayer because they were not properly substantiated with the invoicing requirements under Sections 113 and 237 of the NIRC, as amended, which provide:[45]

> "**SEC. 113.** *Invoicing and Accounting Requirements for VAT-Registered Persons.* –
>
> (A) *Invoicing Requirements.* - A VAT-registered person shall issue:
>
> (1) A VAT invoice for every sale, barter or exchange of goods or properties; and
>
> (2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.
>
> (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:
>
> (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. *Provided,* That:
>
>> (a) The amount of the tax shall be known as a separate item in the invoice or receipt;
>>
>> (b) If the sale is exempt from value-added tax, the term VAT-exempt sale: shall be written or printed prominently on the invoice or receipt;
>>
>> (c) If the sale is subject to zero percent (0%) value-added tax, the term "*zero-rated sale*" shall be written or printed prominently on the invoice or receipt.
>>
>> (d) If the sale involved goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be known on the invoice or receipt: *Provided,* That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.
>
> (3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and
>
> (4) In the case of sales in the amount of One thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the

[45] June 24, 2021 *Resolution, Rollo*, p. 40.

> name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client.
>
> xxx xxx xxx
>
> **SEC. 237.** *Issuance of Receipts or Sales or Commercial Invoices.* - All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: *Provided, however,* That in the case of sales, receipts or transfers in the amount of One hundred pesos (P100.00) or more, or regardless of the amount, where the sale or transfer is made by a person liable to value-added tax to another person also liable to value-added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client: *Provided, further,* That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer Identification Number (TIN) of the purchaser.
>
> The original of each receipt or invoice shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of three (3) years from the close of the taxable year in which such invoice or receipt was issued, while the duplicate shall be kept and preserved by the issuer, also in his place of business, for a like period.
>
> The Commissioner may, in meritorious cases, exempt any person subject to internal revenue tax from compliance with the provisions of this Section."

The CIR contends that these unsupported zero-rated sales of PhP16,640,256 should be subject to 12% output VAT.

The CIR's position is untenable as it finds no basis in law.

First, as already discussed, the sales of PhP16,640,256 are zero-rated by virtue of the explicit provision in Section 106(A)(2)(a)(5) of the NIRC, as amended, and as interpreted in RMC 74-99 and RR 16-2005 as amended by RR 4-2007.

The disallowance by the Second Division stems from the non-compliance of the sales with the invoicing requirements of the NIRC, as amended, *for purposes of the refund claim.* This non-compliance with Sections 113 and 237 *cannot,* however, change the nature of these transactions as zero-rated sales, which is provided by law. In other words, non-compliance with the invoicing requirements of Sections 113 and 237 does *not* render these zero-rated sales subject to 12% under Section 105 of the NIRC, as amended.

Second, in *Commissioner of Internal Revenue v. Euro-Philippines Airline Services, Inc.*,[46] the Supreme Court upheld the finding of the CTA *En Banc* that the transaction sale made by a taxpayer is entitled to the benefit of zero-rated VAT *despite its failure to comply with invoicing requirements* as mandated by law:

> "Here, there is no dispute that Euro-Phil is VAT registered. Next, it is also not disputed that the services rendered by Euro-Phil was to a person engaged in international air-transport operations. Thus, by application, Section 108 of the NIRC of 1997 subjects the services of Euro-Phil to British Airways PLC, to the rate of zero percent VAT.
>
> While CIR contends that the dissenting opinion of Justice del Rosario that Euro-Phil's failure to present and offer any proof to show that it has complied with the invoicing requirements, deems its sale of services to British Airways PLC subject to 12% VAT, it does not negate the established fact that British Airways PLC is engaged in international air-transport operations.
>
> Moreover, as dictated by Section 113 of the NIRC of 1997, on the said provisions on the 'Consequences of Issuing Erroneous VAT Invoice of VAT Official Receipt', nowhere therein is a presumption created by law that the non-imprintment of the word 'zero rated' deems the transaction subject to 12% VAT. In addition, Section 4.113-4 of Revenue Regulations 16-2005, Consolidated Value-Added Tax Regulations of 2005, also does not state that the non-imprintment of the word 'zero rated' deems the transaction subject to 12% VAT. Thus, in this case, failure to comply with invoicing requirements as mandated by law does not deem the transaction subject to 12% VAT.
>
> In view of the foregoing considerations, the Court finds that the CTA En Banc did not commit any reversible error." (*Underscoring supplied*)

Third, the CIR failed to raise the point that there was deficiency assessment against the taxpayer that is intimately related to and inextricably intertwined with its right to claim for a tax refund for the same year.[47]

It bears emphasis that the CTA does *not* have assessment powers. The term 'assessment' refers to the determination of amounts due from a person obligated to make payments. In the context of national internal revenue collection, it refers to the determination of the taxes due from a taxpayer under the NIRC.[48]

The power and duty to assess national internal revenue taxes are lodged with the BIR as stated in Sections 2 and 6 of the NIRC, as amended.[49]

---

[46] G.R. No. 222436, July 23, 2018.
[47] *Commissioner of Internal Revenue v. Court of Appeals, Citytrust Banking Corporation and Court of Tax Appeals*, G.R. No. 106611, July 21, 1994.
[48] *SMI-ED Philippines Technology, Inc. v. Commissioner of Internal Revenue*, G.R. No, 175410, November 12, 2014.

[49] "**SEC. 2.** *Powers and Duties of the Bureau of Internal Revenue.* - The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and its powers and duties shall comprehend the assessment and collection of all national internal revenue taxes, fees, and

If the CIR were of the opinion that the unsubstantiated sales should have been subjected to 12% VAT, the BIR could have initiated an investigation against the taxpayer once the taxpayer filed the administrative refund claim by issuing a Letter of Authority. After investigation, it could have issued an assessment based on the findings of the revenue examiners. But in the *Answer*[50] as well as the *Joint Stipulation of Facts and Issues*[51] and even during the trial,[52] the CIR *neither* manifested, in general, that a deficiency VAT was found due from the taxpayer after an assessment *nor* raised, in particular, that a deficiency VAT was due on those disallowed sales. Apparently, without its own assessment, the CIR merely relied upon the findings in the assailed decision to hold the taxpayer liable for 12% VAT on the disallowed sales. Prescription to issue an assessment based on the taxpayer's 2004 VAT returns had already set in.

Fourth, as discussed in the assailed resolution, the Supreme Court has ruled, in *Commissioner of Internal Revenue v. Toledo Power Company*,[53] that while the offsetting of taxes due against the taxes covered by the refund claim was allowed in claims under Section 229,[54] the same does *not* apply in claims under Section 112 of the NIRC, as amended:

---

charges, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. The Bureau shall give effect to and administer the supervisory and police powers conferred to it by this Code or other laws.

xxx xxx xxx

SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* -

(A) Examination of Return and Determination of Tax Due. After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: *Provided, however*, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.

The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative.

xxx xxx xxx" (*Underscoring supplied*)

[50] Docket, Vol. I, pp. 52-53.
[51] *Id.*, pp. 93-97.
[52] The CIR did not present any witnesses.
[53] G.R. Nos. 196415 and 196451, December 2, 2015.

[54] SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim

"TPC is not liable for deficiency VAT.

But while TPC's sales of electricity to CEBECO, ACMDC, and AFC are not zero-rated, we cannot hold it liable for deficiency VAT by imposing 10% VAT on said sales of electricity as what the CIR wants us to do.

As a rule, taxes cannot be subject to compensation because the government and the taxpayer are not creditors and debtors of each other. However, we are aware that in several cases, we have allowed the determination of a taxpayer's liability in a refund case, thereby allowing the offsetting of taxes.

In *Commissioner of Internal Revenue v. Court of Tax Appeals*, we allowed offsetting of taxes in a tax refund case because there was an existing deficiency income and business tax assessment against the taxpayer. We said that '[t]o award such refund despite the existence of that deficiency assessment is an absurdity and a polarity in conceptual effects' and that 'to grant the refund without determination of the proper assessment and the tax due would inevitably result in multiplicity of proceedings or suits.'

Similarly, in *South African Airways v. Commissioner of Internal Revenue*, we permitted offsetting of taxes because the correctness of the return filed by the taxpayer was put in issue.

In the recent case of *SMI-ED Philippines Technology, Inc. v. Commissioner of Internal Revenue*, we also allowed offsetting because there was a need for the court to determine if a taxpayer claiming refund of erroneously paid taxes is more properly liable for taxes other than that paid. We explained that the determination of the proper category of tax that should have been paid is not an assessment but is an incidental issue that must be resolved in order to determine whether there should be a refund. However, we clarified that while offsetting may be allowed, the BIR can no longer assess the taxpayer for deficiency taxes in excess of the amount claimed for refund if prescription has already set in.

But in all these cases, we allowed offsetting of taxes only because the determination of the taxpayer's liability is intertwined with the resolution of the claim for tax refund of erroneously or illegally collected taxes under Section 229 of the NIRC. A situation that is not present in the instant case.

In this case, TPC filed a claim for tax refund or credit under Section 112 of the NIRC, where the issue to be resolved is whether TPC is entitled to a refund or credit of its unutilized input VAT for the taxable year 2002. And since it is not a claim for refund under Section 229 of the NIRC, the correctness of TPC s VAT returns is not an issue. Thus, there is no need for the court to determine whether TPC is liable for deficiency VAT.

Besides, it would be unfair to allow the CIR to use a claim for refund under Section 112 of the NIRC as a means to assess a taxpayer for any deficiency VAT, especially if the period to assess had already prescribed. As we have said, the courts have no assessment powers, and therefore, cannot issue assessments against taxpayers. The courts can only review the assessments issued by the CIR, who under the law is vested with the powers

therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

to assess and collect taxes and the duty to issue tax assessments within the prescribed period." (*Citations omitted and underscoring supplied*)

Finally, the CIR's reliance on *Air Canada v. Commissioner of Internal Revenue*[55] is misplaced. *Air Canada* is a claim for refund of alleged erroneously paid income taxes based on the revised definition of Gross Philippine Billings under Section 28(A)(3)(a) in relation to Section 229 of the NIRC, as amended. As already pointed out, this case involves a refund claim under Section 112 in relation to Section 106(A)(2)(a)(5) of the NIRC, as amended. Thus, the facts obtaining in the *Air Canada* cases are not on all fours with the case at bar.

Based on the foregoing discussion, the Court *En Banc* finds no new or substantial matter, or compelling grounds that justify the reversal or modification of the assailed decision and resolution.

WHEREFORE, premises considered, the *Petition for Review* is **DENIED** for lack of merit. The assailed January 19, 2021 Decision and June 24, 2021 Resolution are hereby **AFFIRMED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

[55] G.R. No. 169507, January 11, 2016; CTA Case No. 6572, December 22, 2004.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice