REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MITSUI & CO., LTD. (MANILA BRANCH),
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 2495
(CTA Case No. 9536)

Members:

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

Promulgated:
SEP 14 2023 3:45pm

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RESOLUTION

CUI-DAVID, J.:

For resolution of this Court is respondent's ***Motion for Partial Reconsideration***, posted on May 11, 2023, with petitioner's ***Comment and Opposition (to the Motion for Partial Reconsideration dated 11 May 2023)***, filed on June 16, 2023. Respondent's *Motion* seeks reconsideration of the *Decision* of this Court dated April 18, 2023, which partially grants petitioner's claim for refund.

The dispositive portion of the assailed *Decision* reads:

> **WHEREFORE**, in light of the foregoing, the instant *Petition for Review* is **PARTIALLY GRANTED**.
>
> Accordingly, the Assailed *Decision* dated 22 January 2020 and the Assailed *Resolution* dated 7 June 2021 of the Court's Second Division in CTA Case No. 9536 are **REVERSED** and **SET ASIDE**.

> Respondent Commissioner of Internal Revenue is **ORDERED** to refund in favor of Mitsui & Co., Ltd. (Manila Branch) the total amount of Twenty Five Million Seven Hundred Forty-Nine Thousand Eight Hundred Fifty-Eight Pesos and 28/100 (₱25,749,858.28), representing unutilized input tax of petitioner.
>
> **SO ORDERED.** [*Citation omitted.*]

In his *Motion*, respondent argues that the case of *Chevron Holdings, Inc. v. Commissioner of Internal Revenue* ("*Chevron*")[1] is not on all fours with the present case and hence, is not applicable, especially considering that the instant case involves a refund under Section 112(B) of the National Internal Revenue Code ("**NIRC**") of 1997, as amended, while *Chevron* dealt with a refund under Section 112(A) of the same law. Respondent argues that the application of *Chevron* "sets a dangerous precedent," allowing taxpayers to refund unsubstantiated input VAT. Respondent then points out the mandatory language of Section 110(A)(1) of the NIRC of 1997, which speaks on the general rules for substantiation of an input tax credit.

Respondent ends his argument by stating that claims for tax refund are in the nature of tax exemption and, thus, must be strictly construed against the taxpayer.

Petitioner, in its *Comment*, emphasizes the similarity of both claims for refund under Sections 112(A) and 112(B) of the NIRC of 1997, as amended. Petitioner states that both cases involve unutilized input tax credits and involve input tax carried over as an issue.

Petitioner emphasizes that it had already complied with the minimum statutory requirements, particularly the fact that it was able to prove that it already had no internal revenue tax liabilities against which the tax credit certificate may be utilized as evidenced by its *Delinquency Verification* from BIR Revenue Region No. 8A – Makati City and *Certificate of No Outstanding Tax Liability*. Thus, petitioner avers that the burden of proof is shifted to respondent, and respondent failed to overcome such.

[1] G.R. No. 215159, July 5, 2022.

Anent the argument that the application of *Chevron* "sets a dangerous precedent," petitioner counters that the Supreme Court has already made it clear that input tax carryover need not be substantiated and that the validity of the input tax carryover is already the subject of the regular investigation by the Bureau of Internal Revenue ("**BIR**"). Citing *Chevron*, petitioner states that it is not for the Court to determine and rule in a judicial claim for refund that the taxpayer had insufficient or unsubstantiated input taxes to cover its output tax liability; this is for the BIR to determine in an administrative proceeding for assessment of deficiency taxes.

We resolve.

A perusal of respondent's arguments reveals that the main issue to be threshed out and discussed in resolving the instant *Motion* is whether petitioner should be required to substantiate its input tax carryover.

We find respondent's arguments bereft of merit.

Section 112(B) of the NIRC of 1997, as amended, provides:

> Section 112. Refunds or Tax Credits of Input Tax. -
>
> ... ...
>
> (B) *Cancellation of VAT Registration.* - A person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 106(C) of this Code may, within two (2) years from the date of cancellation, **<u>apply for the issuance of a tax credit certificate for any unused input tax which may be used in payment of his other internal revenue taxes</u>**. [*Emphasis and underscoring supplied.*]

Section 4.112-1 of Revenue Regulations ("**RR**") No. 16-2005, [2] as amended, implemented the above provision. Accordingly:

> Section 4.112-1. Claims for Refund/Tax Credit Certificate of Input Tax.
>
> x x x
>
> (b) Cancellation of VAT registration

[2] Consolidated Value-Added Tax Regulations of 2005, September 1, 2005.

> A VAT-registered person whose registration has been cancelled due to retirement from or cessation of business or due to changes in or cessation of status under Sec. 106 (C) of the Tax Code may, within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which he may use in payment of his other internal revenue taxes; ***Provided*, however, that he shall be entitled to a refund if he has no internal revenue tax liabilities against which the tax credit certificate may be utilized.** [*Emphasis and underscoring supplied.*]

As We have stated in the assailed *Decision*, to be entitled to a claim for refund under Section 112(B) of the NIRC of 1997, as amended, the following requisites must be complied with:

1. The administrative claim for refund has been timely filed, *i.e.*, within two years from the date of cancellation of registration;

2. The judicial claim for refund has been timely filed, *i.e.*, within thirty (30) days from receipt of the decision denying its claim for refund or after the expiration of the 120-day[3] period to decide;

3. The claimant was a VAT-registered taxpayer;

4. There is a valid cancellation of the registration of the claimant due to retirement from or cessation of business or due to changes in or cessation of status under Section 106(C) of the NIRC of 1997, as amended;

5. The claimant has no internal revenue tax liabilities against which the TCC may be utilized; and

6. The input tax subject of the claim for refund is unused or unutilized.

From the exhaustive disquisition made in the assailed *Decision*, it is settled and unrebutted that petitioner has complied with the above requisites. First, petitioner's administrative claim has been timely filed. Second, petitioner's judicial claim has been timely filed. Third, petitioner's *Certificate of Registration*[4] reveals that it is a VAT-registered taxpayer. As this is undisputed, We ruled that the third

[3] Now ninety (90) days, under Republic Act No. 10963, otherwise known as the Tax Reform for Acceleration and Inclusion ("TRAIN") Act.
[4] Division Docket – Vol. I, p. 115.

requisite has been complied with. Fourth, petitioner ceased conducting any business and commercial activity in the Philippines as evidenced by its *Affidavit of No Operation*[5] and its filing of an *Application for Registration Information Update* (BIR Form No. 1905) with the BIR RDO No. 50-South Makati for the cessation of its registration on 20 February 2015.[6] Fifth, petitioner has no internal revenue tax liabilities against which the tax credit certificate may be utilized as evidenced by the *Delinquency Verification* from the BIR Revenue Region No. 8A-Makati City (RR No. 8A) duly signed by OIC-Assistant Chief, Collection Division, Gladys L. Almerido,[7] and a *Certificate of No Outstanding Tax Liability* (BIR Form No. 2320) issued by Revenue District Officer Thelma D. Mangio of BIR RR No. 8A, Revenue District Office (RDO) No. 50,[8] and sixth, petitioner has unutilized input VAT.

In the assailed *Decision*, We reversed the disallowance of the Court in Division of the input tax carried over from previous quarter (per 1Q of FY 2004) amounting to ₱17,854,880.31 because petitioner failed to present any document to substantiate the same.

In connection with this reversal, We cited *Chevron*, where the Supreme Court held that it was *improper* for this Court to require Chevron to substantiate its excess input tax carryover as it is not a requirement for entitlement to a refund of unused or unutilized input VAT attributable to zero-rated sales, *viz.*:

> All told, it was erroneous for the CTA to charge the validated and substantiated input taxes against Chevron Holdings' output taxes first and use the resultant amount as the basis for computing the allowable amount for refund. **The CTA also erred in requiring Chevron Holdings to substantiate its excess input tax carried over from the previous quarter as it is not a requirement for entitlement to a refund of unused or unutilized input VAT from zero-rated sales.**
>
> We reiterate that although the burden of proof to establish entitlement to a refund is on the taxpayer-claimant, the Court has consistently held that once the minimum statutory requirements have been complied with, the claimant should be considered to have successfully discharged their burden to prove its entitlement to the refund. **After the claimant has successfully established a *prima facie* right**

[5] Division Docket – Vol. I, p. 181.
[6] Division Docket – Vol. III, p. 1266.
[7] Division Docket – Vol. IV, p. 1513.
[8] *Id.*, p. 1521.

> **to the refund by complying with the requirements laid down by law, the burden is shifted to the opposing party, i.e., the BIR, to disprove such claim.** Otherwise, we would unduly burden the taxpayer-claimant with additional requirements which have no statutory nor jurisprudential basis. In the present case, **Chevron Holdings sufficiently proved compliance with all the requisites for entitlement to a refund or credit of unutilized input tax allocable to zero-rated sales under Section 112 (A) of the Tax Code.** [*Emphasis and underscoring supplied.*]

This Court has noted that the *Chevron* case specifically tackled Section 112(A) of the NIRC of 1997, as amended, whereas the refund in the instant case is based on a different provision, *i.e.*, Section 112(B) of the same law.

Section 112(A) of the NIRC of 1997, as amended, provides:

> 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, **<u>to the extent that such input tax has not been applied against output tax</u>**: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales. *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B) (6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales. [*Emphasis and underscoring supplied.*]

By way of emphasis, Section 112(B) of the same law provides:

> SEC. 112. Refunds or Tax Credits of Input Tax. -

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> (B) Cancellation of VAT Registration. - A person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 106(C) of this Code may, within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for **<u>any unused input tax</u>** which may be used in payment of his other internal revenue taxes. [*Emphasis and underscoring supplied.*]

We agree with respondent's observation that *Chevron* is not on all fours with the instant case. However, notwithstanding these differences, the ***ratio decidendi*** **and the principles laid down in *Chevron* are applicable in the instant case and warrant consideration by this Court.**

First, the input tax refunds or credits under Sections 112(A) and 112(B) pertain to **unutilized or unused input tax**. Section 112(A) allows a refund or credit of input tax attributable to zero-rated or effectively zero-rated sales to the extent that such input tax has not been applied against output tax, while Section 112(B) allows a refund[9] or credit of any unused input tax due to retirement from or cessation of business.

Accordingly, although based on different refundable transactions or events, We ruled that the similarities in phraseology constrained this Court to apply the Supreme Court ruling in *Chevron* to the present case.

Second, even assuming arguendo that *Chevron* is inapplicable, We note that respondent seeks that petitioner substantiate its input tax credit as far back as before FY 2004. This runs even beyond BIR's recordkeeping requirements for taxpayers[10] and counters the well-settled pronouncements of

[9] Sec. 4.112-1 (b), Revenue Regulation No. 16-2005, issued on September 1, 2005, implementing Section 112 (B) of the NIRC of 1997, as amended.

[10] Section 2 of Revenue Regulations ("**RR**") No. 17-2013 provides:

> "SECTION 2. Retention Periods.— All taxpayers are required to preserve their books of accounts, including subsidiary books and other accounting records, for a period of ten (10) years reckoned from the day following the deadline in filing a return, or if filed after the deadline, from the date of the filing of the return, for the taxable year when the last entry was made in the books of accounts.
>
> The term "other accounting records" includes the corresponding invoices, receipts, vouchers and returns, and other source documents supporting the entries in the books of accounts. They should also be preserved for a period of ten (10) years counted from the date of last entry in the books to which they relate.
>
> The term "last entry" refers to a particular business transaction or an item thereof that is entered or posted last or latest in the books of accounts when the same was closed.
>
> The foregoing notwithstanding, if the taxpayer has any pending protest or claim for tax credit/refund of taxes, and the books and records concerned are material to the case, the taxpayer is required to

the Supreme Court regarding prescription and other mandatory periods in the NIRC. Clearly, for this Court to compel petitioner to substantiate such input tax credit is for the Court to require petitioner to do the absurd and impossible. These periods exist to safeguard taxpayers from any unreasonable examination or investigation.

Third, applying our *second* discussion above, respondent's contention that the period covered in Section 112(B) is not just a specific quarter but the entire operations of the business, *i.e.*, from its inception until its retirement or cessation, has no merit as well. By way of example, indeed, Section 112(B) did not envision that an entity operating for a hundred years that has been accumulating input VAT since inception would be likewise required to substantiate its input VAT for a hundred years as well. To provide such a requirement which the law does not require, would be to place an undue burden on the taxpayer's refund claim.

Fourth, respondent's fears that the *Decision* sets a dangerous precedent are unfounded. At the first point, the precedent has already been set by *Chevron.* At the second point, again assuming arguendo that *Chevron* is inapplicable, respondent's fears that taxpayers may accumulate its input tax carryover and subsequently have it refunded is exaggerated and may be eliminated, or at best, mitigated, by its statutorily granted power to examine returns of taxpayers, [11] which includes VAT returns reflecting input tax carryovers. However, respondent fails to point out any instance in which it had previously disallowed petitioner's input tax carryover. In fact,

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preserve his/its books of accounts and other accounting records until the case is finally resolved." xxx

We note that the last paragraph herein is inapplicable as ten (10) years has already lapsed before the administrative claim for refund was filed.

[11] Section 6(A) of the NIRC of 1997, as amended, provides:

> 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, notwithstanding any law requiring the prior authorization of any government agency or instrumentality: 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.
>
> Any return, statement of declaration filed in any office authorized to receive the same shall not be withdrawn: *Provided*, That within three (3) years from the date of such filing, the same may be modified, changed, or amended: *Provided, further*, That no notice for audit or investigation of such return, statement or declaration has in the meantime been actually served upon the taxpayer.

petitioner has even secured a *Delinquency Verification* from the BIR RR No. 8A [12] and a *Certificate of No Outstanding Tax Liability.* [13]

Respondent cannot forever hide under the truism that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the person or entity claiming the refund. As stated in the assailed Decision, considering that the petitioner has complied with the minimum statutory requirements, it should be deemed to have successfully discharged its burden to prove its entitlement to the refund. Accordingly, the burden is shifted to the opposing party, *i.e.*, the BIR, to disprove such claim. Otherwise, we would unduly burden the taxpayer-claimant with additional requirements which have no statutory nor jurisprudential basis. [14]

WHEREFORE, in light of the foregoing, respondent's *Motion for Partial Reconsideration* is **DENIED**.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

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[12] Division Docket – Vol. IV, p. 1513.
[13] *Id.*, p. 1521.
[14] *Supra* at note 1.

(With due respect, I maintain my Dissenting Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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

CORAZON G. FERRER-FLORES
Associate Justice