REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CARMEN COPPER CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 2428
(CTA Case No. 9543)

Present:

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

Promulgated:
APR 05 2023 10:20 a.m.

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AMENDED DECISION

CUI-DAVID, J.:

For the resolution of the Court *En Banc* are the following:

1. Respondent's ***Motion for Reconsideration (Re: Decision promulgated 22 June 2022)***[1] filed on 8 July 2022, with petitioner's ***Comment (To Respondent's Motion for Reconsideration)***[2] filed on 2 August 2022;

2. Petitioner's ***Motion for Reconsideration (Decision dated June 22, 2022)***[3] filed on 15 July 2022, without respondent's comment.[4]

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[1] *En Banc (EB)* Docket (CTA *EB* No. 2428), pp. 133-142.
[2] *Id.*, pp. 162-168.
[3] *Id.*, pp. 146-155.
[4] Records Verification dated 29 September 2022, *EB* Docket, p. 174.

Both parties seek the reconsideration of the Court *En Banc*'s Decision promulgated on 22 June 2022 (assailed *En Banc* Decision),[5] the dispositive portion of which reads:

> **WHEREFORE,** in view of the foregoing discussion, the Petition for Review filed by Carmen Copper Corporation is hereby **PARTIALLY GRANTED**. The assailed Decision dated June 25, 2020 and Resolution dated January 8, 2021 rendered by the Court in Division are **SET ASIDE.** This case is hereby **REMANDED** to the Court in Division for determination of the refund due to petitioner, if any, in accordance with the foregoing disquisition.
>
> **SO ORDERED.**

The assailed *En Banc* Decision, partially granting petitioner's *Petition for Review,* was received by respondent on 28 June 2022. Thus, he had until 13 July 2022 to file a *Motion for Reconsideration.* Accordingly, on 8 July 2022, respondent timely filed his *Motion for Reconsideration (Re: Decision promulgated 22 June 2022).*

On the other hand, petitioner received its copy on 30 June 2022. Thus, it had until 15 July 2022 to file a *Motion for Reconsideration.* Accordingly, petitioner timely filed its *Motion for Reconsideration (Decision dated June 22, 2022)* on 15 July 2022.

We now discuss the merits.

<u>Petitioner's Motion for Reconsideration</u>

Petitioner, in its *Motion,* insists on the grant of the full amount of its refund claim. It argues that:

> 1. The violation of its due process right must have consequences, specifically, its refund claim should be deemed granted in full.
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> 2. While the validity of petitioner's zero-rated sales is essential to the determination of its entitlement to its claim for refund and something that could have been considered as a "related issue," it was improper for the Court to raise it as an issue considering that it was not elevated to the CTA's

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[5] *EB* Docket, pp. 94-127, penned by Presiding Justice ROMAN G. DEL ROSARIO, with Associate Justice Juanito C. Castañeda, Jr., Associate Justice Erlinda P. Uy, Associate Justice Maria Rowena Modesto-San Pedro and Associate Justice Marian Ivy F. Reyes-Fajardo concurring, and Associate Justice Ma. Belen M. Ringpis-Liban, Associate Justice Catherine T. Manahan, Associate Justice Jean Marie A. Bacorro-Villena and Associate Justice Lanee S. Cui-David dissenting.

exclusive appellate jurisdiction having been already decided upon by respondent, in the exercise of his exclusive and original jurisdiction to decide tax refunds.

3. Exports sales supported by bills of lading should qualify as zero-rated sales. Consistent with the Court En Banc's pronouncement that a BOI-registered exporter should only prove actual exportation of goods, it necessarily follows that there is no more reason to disallow the alleged ₱105,471,946.18 export sales simply because the amount in the sales invoices cannot be traced to the Summary List of Sales (SLS).

As far as the sale of goods is concerned, the Tax Code provides that sales invoices are the primary evidence to prove the same. The invoicing requirements duly established in Bureau of Internal Revenue (BIR) regulations and in countless decisions of the CTA never required that the VAT sales invoice, to be valid, must tally with the SLS. The SLS only shows the breakdown of the sales reported in the VAT returns. It is not controlling when there is a discrepancy between the amount in the invoice and in the SLS. The sales invoice, being the source document, must prevail.

Had the ICPA been recalled and allowed to explain the report, the ICPA would have testified that only the partial amount of ₱105,471,946.18 was reported in the third quarter of TY 2014 because some portions of the invoice amount were already reported in prior periods.

After carefully examining petitioner's arguments, it is noted that they are mere reiterations of matters already considered in the assailed *En Banc* Decision. Nonetheless, We discuss each argument in *seriatim* to clarify any lingering doubt on the subject.

Respondent's violation of petitioner's due process right does not result in the automatic grant of the latter's refund claim.

Anent petitioner's first argument, it alleges[6] that:

3. In its Decision, the Court recognizes that decisions issued or actions taken in violation of the right to due process are void ab initio, ... Nevertheless, the Court refuses to grant petitioner's plea that its claim for refund must be granted in full as a necessary consequence of the violation. ...

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[6] *Id.*, pp. 147-148.

4. We believe that there is nothing inconsistent with the trial *de novo* nature of the proceedings before the CTA and the grant of the claim for refund on account of violations of due process. We believe the automatic grant of a claim for refund is not unfair to the government, who already had the opportunity to look into the taxpayer's documents during the administrative proceeding. Rather, it is consistent with the Court's holding that the BIR's denial of the claim is *void ab initio.*

5. The Court in its Decision believe that in spite of the due process violation, the Court must still be allowed to proceed with the factual determination of the entitlement of the taxpayer's claim in a full blown trial. We would like to impress on the Court that it should not considering that the trial itself will be tainted with injustice, there being an absence of fairness on the taxpayer. ...

We digress.

As ruled in the assailed *En Banc Decision,* petitioner's contention that as a necessary consequence, its refund claim should be deemed as fully granted, has no leg to stand on.

It must be stressed that an applicant for tax refund or credit must not only prove entitlement to the claim but also *comply* with all the documentary and evidentiary requirements, such as Value-Added Tax (VAT) invoicing requirements provided by tax laws and regulations.[7]

Being a derogation of the State's power of taxation, tax refunds or credits — just like tax exemptions — are *strictly* construed against taxpayers and liberally in favor of the State. Strict compliance with the mandatory and jurisdictional conditions prescribed by law to claim such tax refund or credit is essential and necessary for such claim to prosper.[8]

Under Section 8 of the Republic Act (R.A.) No. 1125, the Court of Tax Appeals (CTA) is described as a court of record. As cases filed before it are litigated *de novo, party litigants should prove every minute aspect of their cases.*[9]

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[7] *Philippine Gold Processing and Refining Corp. v. Commissioner of Internal Revenue*, G.R. No. 222904 (Notice), 15 July 2020; *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 183531, 25 March 2015.
[8] *Philippine National Bank v. Commissioner of Internal Revenue*, G.R. Nos. 242647 & 243814 & 242842-43 (Notice), 15 March 2022.
[9] *Id.*

As applied in the instant case, since the claim for a tax refund was litigated *anew* before the CTA, the latter's decision should be *solely* based on the evidence formally presented before it, notwithstanding any pieces of evidence that may have been submitted (or not submitted) to the Commissioner of Internal Revenue (CIR). Thus, what is vital in the determination of a judicial claim for a tax credit/refund of Creditable Withholding Tax, is the evidence presented before the CTA, regardless of the body of evidence found in the administrative claim.[10]

Hence, petitioner cannot conclude that, since the BIR's denial of its administrative claim for refund is not in accordance with the tenets of due process, its refund claim before this Court should be automatically granted. That is not the contemplation of the law.

The burden is on the taxpayer, like petitioner, to show that it has strictly complied with the conditions for the grant of the tax refund or credit.[11]

The Court has the authority to resolve issues not raised by the parties.

As to the second argument, petitioner posits that the validity of petitioner's zero-rated sales was already settled and decided upon by respondent. Accordingly, since this was not elevated to the CTA's exclusive appellate jurisdiction, it was improper for the Court to have raised it as an issue. Further, it is petitioner's view that the Court could have orderly resolved the claim without touching on the validity of its zero-rated sales because it is already assumed.[12]

We disagree.

Settled is the rule that the Court is empowered to rule upon issues not brought by the parties before the Court.

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[10] *Commissioner of Internal Revenue v. Philippine Bank of Communications*, G.R. No. 211348, 23 February 2022.
[11] *Commissioner of Internal Revenue v. San Roque Power Corp.*, G.R. Nos. 187485, 196113 & 197156, 12 February 2013, 703 SCRA 310-434.
[12] Par. 15, Motion for Reconsideration, Docket (CTA *EB* No. 2428), p. 150.

Under Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals (RRCTA), this Court, whether sitting in Division or *En Banc,* is not precluded from ruling on any issues not raised that are necessary for an orderly disposition of the case.[13]

The Supreme Court, in *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.,*[14] affirmed the authority of this Court to rule on issues not raised by the parties, *viz:*

> "On whether **the CTA can resolve an issue which was not raised by the parties**, we rule in the affirmative.
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> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. xxx
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> The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda. The CTA *En Banc* was likewise correct in sustaining the CTA Division's view concerning such matter." [*Emphasis and underscoring supplied.*]

All told, the Court in Division was justified in ruling on issues not disputed by the parties, *i.e.*, the requirement of proof of inward remittance of acceptable foreign currency to substantiate the export sales of Carmen Copper, the same being a related issue necessary to achieve an orderly disposition of the case.

It is unnecessary to recall the ICPA to again testify on his findings.

Anent the third argument, petitioner alleges that:

> 19. The ICPA in his Report already held that he was able to review Petitioner's export sales and concluded the same to be duly substantiated . ... . Had the ICPA been recalled and

[13] RULE 14 – JUDGMENT, ITS ENTRY AND EXECUTION
SECTION 1. Rendition of judgment. —
... ...
In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.
[14] G.R. No. 183408, 12 July 2017.

> allowed to explain his report, he would have testified as regards the nature of the discrepancy in the SLS and the amount in the invoices. He would have testified that only the partial amount of Php105,471,946.18 were reported in the third quarter of TY 2014 because some portions of the invoice amount were already reported in prior periods, as shown below ...

To address this argument, We reiterate and quote our ruling in the assailed *En Banc Decision*,[15] *viz.*:

> While the recall of a witness is sanctioned by the rules, the same is subject to the sound discretion of the Court.
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> The Court En Banc agrees with the Court in Division that petitioner's justification for the recall of the ICPA is insufficient to warrant the reopening of the case, viz.:
>
>> "In the present case, petitioner prays that this Court allow the recall of the ICPA whom petitioner believes to be in the best position to explain how the amount of P105,471,946.18 could be traced to the sales invoices presented by petitioner.
>>
>> Unfortunately, the Court finds petitioner's justification insufficient to qualify as a "**good reason and in the furtherance of justice**" to warrant the reopening of the present case. Notably, petitioner offers no evidence that is newly discovered, or has been omitted through inadvertence or mistake, or the purpose of which is to correct evidence previously offered. To allow the ICPA to clarify his procedures and to submit working papers or schedules to prove how the amount of P105,471,946.18 could be traced to the sales invoices, at this point in time, would only be an exercise in futility. x x x" (Boldfacing added)
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> Furthermore, it is worthy to note that the Court is not bound by the findings of the ICPA, as provided in Section 3, Rule 13 of the RRCTA, thus: ...
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> In other words, the Court is free to either adopt (completely or partially) or even disregard the ICPA's findings and conclusions, after making its own verification and evaluation of the same and the evidence on record. Petitioner cannot then insist that the ICPA's findings are sufficient to

[15] *EB* Docket, pp. 109-110.

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> validate its claims, since the ultimate determination rests upon the Court based on the evidence presented.
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> To be sure, the ICPA's findings on petitioner's zero-rated sales vis-à-vis the pertinent pieces of evidence presented to support the said zero-rated sales were taken into consideration, and were thoroughly examined by the Court in Division in arriving at its conclusions in the assailed Decision and Resolution.
>
> For the above reasons, the Court finds it unnecessary to recall the ICPA to testify on the latter's report and the evidence presented, which were already verified, evaluated and scrutinized by the Court in Division. [*Citations omitted.*]

Evidently, the intended additional testimony of the Independent Certified Public Accountant (ICPA) is not new. Moreover, We have already stated in the assailed *En Banc* Decision that the ICPA's findings, vis-à-vis the pertinent pieces of evidence presented to support petitioner's zero-rated sales, were thoroughly examined, scrutinized, and considered by the Court in Division in arriving at its conclusions in the assailed Decision and Resolution. [16] We likewise ruled that the disallowance of petitioner's export sales amounting to Php105,471,946.18 which sales invoices cannot be traced to the SLS is proper.[17]

Hence, it is pointless to recall the ICPA to testify, once again, on the latter's findings and report.

<u>Respondent's Motion for Reconsideration</u>

We now proceed to discuss respondent's arguments in his *Motion for Reconsideration.*

Respondent posits, in his *Motion for Reconsideration,* that the Court *En Banc* erred in ruling that petitioner is *not required to prove* that its direct export sales to foreign entities were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP). Respondent quotes the disquisition of the Court in Division in the assailed *Division Decision* and the *Dissenting Opinion* of Associate Justice Ma. Belen M. Ringpis-Liban on the assailed *En Banc Decision.*[18]

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[16] *Id.*
[17] *Id.*, pp.118-120.
[18] *EB Docket*, pp. 136-138.

Petitioner maintains its position that its sales are zero-rated in accordance with Section 106(A)(2)(a)(5) of the National Internal Revenue Code (NIRC) of 1997, [19] as amended. According to petitioner, in relation to Executive Order (EO) No. 226,[20] such sales do not require proof of payment in acceptable foreign currency as accounted for in accordance with the rules and regulations of the BSP to be zero-rated.

In its *Comment,* petitioner counters that respondent essentially cites the CTA Third Division's decision in CTA Case No. 9543 and the dissenting opinion of Justice Ma. Belen M. Ringpis-Liban to support his motion. The Court *En Banc* had already considered these views when it issued the assailed Decision in petitioner's favor. Thus, without espousing any new legal arguments, petitioner posits that respondent's motion must be dismissed.[21]

Petitioner further counters that:

3. Under Section 106, Tax Code, export sales are subject to zero-rated. The term "export sales" is defined under Section 106(A)(2)(a), Tax Code, as follows: ...

4. The above provision is not complicated. It enumerates various transactions that fall within the term "export sales" subject to zero percent (0%) VAT rate. Moreover, under paragraph 5 above, it categorically provides that those considered export sales under Executive Order (EO) No. 226, or the Omnibus Investments Code, are likewise considered "export sales" for purposes of VAT zero-rating. Therefore, by making a reference to the definition of "export sales" found in EO No. 226, the Tax Code effectively incorporated that definition as one of the meanings of "export sales" defined under its Section 106(A)(2)(a) that are subject to 0% VAT. ...

5. Under Article 23 of EO 226, "export sales" is defined as follows: ...

6. As can be seen from the definition above, there is no requirement that goods actually exported must be paid for in foreign currency to be considered as "export sales." As we understand it, the dissent of Justice Liban, as cited by the respondent, took the view that the absence of requirement of foreign currency

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[19] Section 106. Value-Added Tax on Sale of Goods or Properties. -
(A) Rate and Base of Tax. - ... ...
(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
(a) Export Sales. - The term "export sales" means:
(5) Those considered export sales under Executive Order NO. 226, otherwise known as the "Omnibus Investment Code of 1987", and other special laws.
[20] Omnibus Investments Code of 1987, 16 July 1987.
[21] *Id.* at 163.

payment for direct exports would be superfluity since "direct export sales are necessarily paid using foreign currency." Thus, the dissent concluded that foreign currency payment is not required for constructive export sales but is required for direct export sales.

7. We believe the dissenting opinion is not supported by the text of the law. If at all, it is more imperative to require the payment of foreign currency on constructive export sales than for direct export sales. The dissent's interpretation would actually put actual exporters in a more burdensome situation than those whose sales are merely presumptively "exported." ...

8. The law was categorical when the requirement of foreign currency is mandatory...Since the law did not require payment of foreign currency for direct and constructive exports, we should not interpret the same as effectively include. If the intent was to include foreign currency payment as an essential requirement, it would have been expressly stated as what it did with the second paragraph of Article 23, EO No. 226.

9. We do not agree that the requirement of foreign currency payment or remittance was not expressly mentioned for direct export sales in Article 23 of EO No. 226 because it would be superfluous to do so. If that is so, Section 106(A)(2)(a)(1), Tax Code, would have not expressly mentioned it as a requirement because it would also be superfluous to include it in that situation.

10. The reason why export sales are zero-rated is not the payment in foreign currency. Rather, it is founded on the very nature of VAT as a consumption tax. Exports are VAT-free, imports are VATable. Therefore, it is not surprising for the Tax Code to treat as zero-rated for VAT purposes, those considered as export sales under EO 226 because those transactions fall within the purposes of VAT to free exports from the burden of the tax.

After taking a second hard look at the facts of the case and the above arguments of the parties, the Court *En Banc* is convinced that an amendment of the assailed *En Banc* Decision is in order.

Petitioner must prove that its direct export sales to foreign entities were paid for in acceptable foreign currency and duly accounted for in accordance with BSP rules and regulations.

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Contrary to our previous position in the assailed *En Banc* Decision, the Court in Division correctly ruled that petitioner is required to prove that its direct export sales to foreign entities were paid for in acceptable foreign currency and duly accounted in accordance with the BSP rules and regulations.

The Court *En Banc* quotes with an affirmation the Court in Division's disquisition on this point,[22] *viz.*:

> Again, petitioner claims that the requirement that the direct export sales must be paid for in acceptable foreign currency duly accounted for in accordance with the rules and regulations of the BSP does not apply to BOI-Registered enterprises who export 100% of their production, conversely, what it only needs to prove is the fact of actual exportation of goods. Petitioner further insists that it is entitled to have its export sales be treated as zero-rated sales, and any doubt as to its treatment should be resolved in favor of petitioner by express provision of law.
>
> The Court does not agree.
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> To begin with, there is no automatic grant of a tax refund. There is no basis for petitioner to claim that as a BOI-registered enterprise, it is already entitled to have its export sales be treated as zero-rated sales. Like all claimant for refund, petitioner must still present substantial evidence to prove his claim.
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> Also, there is no obscurity in the wordings of Section 106 (A)(2)(a)(1) of the National Internal Revenue Code (NIRC) of 1997, as amended, and as implemented by Section 4.106-5 (a)(1) of Revenue Regulations (RR) No. 16-05, that would pose an ambiguity in its applications. As categorically stated therein, the sale and actual shipment of goods from the Philippines to a foreign country must be "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 BSP. It is for such reason that only export sales supported by below enumerated three (3) types of documents shall qualify for VAT zero rating, *viz.*:
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> 1. the sales invoice as proof of sale of goods;
> 2. the bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and
> 3. bank credit advice, certificate of bank remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services.

[22] Resolution, CTA Case No. 9543, *EB Docket*, pp. 57-63.

> Perforce, the Court needs to go through the supporting bank credit advice, certificate of bank remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services of the alleged export sales to ensure that the goods subject of the zero-rated sales were indeed exported and that the foreign currency given in payment for the said goods were in fact inwardly remitted to the Philippines, before any claim for tax refund is granted. Thus, export sales invoice/receipts or export documents alone would not suffice to establish the truthfulness of the amount of export sales involved.

The Court *En Banc* likewise adopts the well-reasoned point expressed by Associate Justice Ma. Belen M. Ringpis-Liban in her dissent to the assailed *En Banc* Decision.[23] She painstakingly discussed why the direct export sales under Article 23 of EO No. 226 [and consequently Section 106(A)(2)(a)(5)] are subject to the BSP rules on foreign currency exchange, *viz.*:

> The National Internal Revenue Code ("NIRC") of 1997, as amended, provides that export sales by value-added tax ("VAT") registered persons shall be subject to zero percent (0%) rate. Export sales is defined under Section 106(A)(2)(a) as to include the following:
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> > "SEC. 106. **Value-Added Tax on Sale of Goods or Properties.** -
> >
> > xxx xxx xxx
> >
> > (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);
> >
> > xxx xxx xxx
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> > (5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws; and ...

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[23] Dissenting Opinion, CTA *EB* No. 2428 (CTA Case No. 9543), 22 June 2022, *EB Docket*, pp. 122-127.

In relation thereto, Section 112 of the NIRC of 1997, as amended, allows the refund or tax credit of unutilized excess input VAT attributable to zero-rated or effectively zero-rated sales, subject to the condition that the acceptable foreign currency exchange proceeds had been duly accounted for in accordance with the rules and regulations of the BSP, in export sales falling under Sections 106 (A) (2) (a) (1) and (2), 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,...: *Provided, however*, **<u>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>**: ..."

The *ponencia* ruled that since Petitioner alleged that its direct export sales are zero-rated based on Section 106 (A) (2) (a) (5), and not under Sections 106 (A) (2) (a) (1) and (2) of the NIRC of 1997, as amended, the requirement above need not be complied with.

At first glance, this may seem sound. However, a plain reading of the pertinent provisions of Executive Order ("EO") No. 226 show that export sales are classified into two (2) categories, the direct export sales and the constructive export sales. Articles 23 and 77 (2) of EO No. 226 are reproduced hereunder:

> "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."

"ARTICLE 77. Tax Treatment of Merchandise in the Zone. —

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(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 exported thereof shall be entitled to the benefits allowed by law for such transaction."

From the foregoing, the classification of export sales (by the nature of the sales transaction) under EO No. 226 may be summarized as follows:

1) direct export sales

a. exports products exported directly by a registered export producer; and
b. 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

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returning Overseas Filipinos under the Internal Export Program of the government.

2) constructive export sales

a. export product sold by a registered export producer to another export producer or to an export trader that subsequently and actually exports the same;
b. sales to bonded manufacturing warehouses of export-oriented manufacturers;
c. sales to export processing zones;
d. sales to registered export traders operating bonded trading warehouses ...;
e. sales to foreign military bases, diplomatic missions and other agencies and/or instrumentalities ...; and
f. merchandise purchased by a registered zone enterprise from the customs territory and subsequently brought into the zone.

The classification above is further supported by the inclusion of the phrase "whether paid for in foreign currency or not" to sales to foreign military bases, diplomatic missions and other agencies and/or instrumentalities granted tax immunities, which intimates that Congress intended to group the said sales as constructive export sales (notwithstanding the fact that they may be actually directly exported), and be exempted from the BSP rules on foreign currency. Conversely, the inclusion of the phrase "paid for in convertible foreign currency inwardly remitted through the Philippine banking systems" to sales of locally manufactured or assembled goods for household and personal use to Filipinos abroad and other Filipino non-residents indicates their treatment as direct export sales.

Incidentally, the phrase "paid for in foreign currency" was not conjugated to "exports products exported directly by a registered export producer." And yet, it would be too much of a stretch to construe that Congress intended the absence of the said phrase on direct export sales. On the contrary, Congress may have been well aware the same is superfluous for direct export sales are necessarily paid using foreign currency.

Thus, it is inaccurate to say that the condition found in Section 112 of the NIRC of 1997, as amended, does not apply to export sales falling under Section 106 (A) (2) (a) (5). The correct conclusion is that the BSP rules on foreign currency exchange is not required for constructive export sales under EO No. 226, but not those which constitute direct export sales.

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> Indeed, Section 106 (A) (2) (a) (1) of the NIRC of 1997, as amended, clearly states that "the sale and actual shipment of goods from the Philippines to a foreign country" (*i.e.*, referring to direct export sales) should be paid for in acceptable foreign currency and accounted for in accordance with BSP rules. By adding Section 106 (A) (2) (a) (5) in the enumeration of export sales under the Tax Code, the lawmakers in all likelihood acknowledged the existence of constructive export sales, and the inapplicability of using foreign currency on these transactions.
>
> *Interpretare et concordare leges legibus, est optimus interpretandi modus.* The best method of interpretation is that which makes laws consistent with other laws. To say that direct export sales under Article 23 of EO No. 226 [and consequently Section 106 (A) (2) (a) (5)] are exempt from BSP rules on foreign currency exchange, will contradict the provision of Section 106 (A) (2) (a) (1) of the NIRC of 1997, as amended. Hence, such interpretation should be frowned upon.

Indeed, it is inaccurate to state that the condition found in Section 112 of the NIRC of 1997, as amended, does not apply to export sales falling under Section 106(A)(2)(a)(5); similarly, it is incorrect to hold that the requirement that the direct export sales must be paid in acceptable foreign currency duly accounted in accordance with the BSP rules and regulations does not apply to Board of Investments (BOI)-Registered enterprises who export 100% of their production, like petitioner.

Finally, We note that this controversy is not novel. It is not one of first impression as this is not the first time that petitioner has forwarded the argument that it is not required to prove that its sales are paid for in acceptable foreign currency being a BOI-registered enterprise.

In a recent case entitled *Commissioner of Internal Revenue v. Carmen Copper Corporation* and *Carmen Copper Corporation v. Commissioner of Internal Revenue,*[24] We ruled that Article 23 of EO No. 226 does not provide that payment in foreign currency is not necessary for a sale to be considered an export sale. Additionally, there is nothing in the NIRC of 1997, as amended, that indicates that paragraph (1) of Section 106 (A) (2) (a) does not cover actual export sales made by BOI-registered entities, *viz.*:

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[24] CTA *EB* Case Nos. 2480 & 2515 (CTA Case No. 10016), 10 January 2023.

Carmen Copper claims that the Court in Division erred in citing only paragraph (1) of Section 106 (A) (2) (a) of the NIRC as basis for determining the zero-rated sales of Carmen Copper because there are other instances that would be considered as export sales.

Carmen Copper argues that its direct export sales are zero-rated based on paragraph (5) of Section 106 (A) (2) (a) of the NIRC.

Paragraph (5) of Section 106 (A) (2) (a) of the NIRC treats export sales of BOI-registered enterprises as VAT zero-rated, as can be found in the definition of 'export sales' under Executive Order (EO) No. 226, which requires in Article 23 thereof the actual shipment of goods from the Philippines to a foreign country. Thus, **Carmen Copper argues that the required proof that the sales be paid in foreign currency duly accounted for under the rules and regulations of the BSP is *not* applicable to BOI-registered enterprises, which only need to prove the fact of actual exportation of goods**.

The Court does not agree.

Paragraphs (1) and (5) of Section 106 (A) (2) (a) provide:

xxx xxx xxx

Contrary to Carmen Copper's position, Article 23 neither provides that proof of actual exportation is the only requirement nor does it provide that payment in foreign currency is not necessary in order for a sale to be considered an export sale.

Additionally, there is nothing in the NIRC that indicates that paragraph (1) of Section 106 (A) (2) (a) does not cover actual export sales made by BOI-registered entities.

In *Atlas*, the Supreme Court held that the term 'export sales' is defined in the counterpart provision of Section paragraph (1) of 106 (A) (2) (a) in the 1977 Tax Code and is more comprehensively defined in EO No. 226. Conversely, the definition of export sales under EO No. 226 which includes *"export products exported directly by a registered export producer"* contemplates export sales as defined in paragraph (1) of 106 (A) (2) (a) of the NIRC, to wit:

xxx xxx xxx

The *Atlas* case thus illustrates that **there is no inconsistency between paragraphs (1) and (5) of Section 106 (A) (2) (a) of the NIRC.**

> It is established that a statute must be construed to be consistent with itself and to be harmonious with other laws on the same subject matter to form a complete, coherent, and intelligible system, as expressed in the maxim, *"interpretare et concordare legibus est optimus interpretandi."*
>
> Therefore, harmonizing paragraphs (1) and (5) of Section 106 (A) (2) (a) (1) of the NIRC and quoting the ruling of the Court in Division, We find that:
>
>> [A]s long as there is an actual shipment of goods from the Philippines to a foreign country, **regardless of the incentive the exporter is enjoying**, it must be supported with a certificate of inward remittance or a bank-certified credit memo to show that it was paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP.
>
> Moreover, the non-requirement of proof that the sales were paid in foreign currency duly accounted for under the rules and regulations of the BSP under paragraph (5) of Section 106 (A) (2) (a) pertains to export sales of a VAT-registered seller to a BOI-registered buyer as in the case of *Commissioner of Internal Revenue v. Filminera Resources Corporation (Filminera).* In contrast, Carmen Copper is challenging the disallowed zero-rated sales to MRI Trading AG, a non-resident foreign corporation, whose sales were supported by VAT sales invoices but cannot be properly traced to the certificate of inward remittance by the Court in Division.
>
> Therefore, the Court in Division correctly required the proof of inward remittance for Carmen Copper's actual export sales pursuant to paragraph (1) of Section 106 (A) (2) (a) and Section 112 (A) of the NIRC and rightfully disallowed as zero-rated sales the sales of Carmen Copper which cannot be properly traced to the certificate of inward remittance amounting to P1,668,174,095.22.

In another case,[25] although Carmen Copper did not raise that as BOI-registered enterprise, it is not required to submit proof that its export sales were paid in acceptable foreign currency, we clarified that for a VAT-registered taxpayer claiming VAT zero-rated direct export sales like petitioner Carmen Copper, at least three (3) types of documents *must* be presented, one of which is the bank credit advice, certificate of bank remittance or any other document **proving payment of**

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[25] *Carmen Copper Corporation v. Commissioner of Internal Revenue*, CTA *EB* Case No. 1461 (CTA Case No. 8418), 16 November 2017.

<u>goods in acceptable foreign currency or its equivalent in goods and services</u>, *viz.*:

> Thus, to establish that there is a VAT zero-rated direct export sale, the VAT-registered taxpayer claiming VAT zero-rated direct export sales must present at least three (3) types of documents, to wit:
>
> 1. the sales invoice as proof of sale of goods;
>
> 2. the export declaration and bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and
>
> 3. the bank credit advice, certificate of bank remittance or any other document **<u>proving payment of goods in acceptable foreign currency or its equivalent in goods and services</u>**. [*Emphasis and underscoring supplied.*]

In an earlier case,[26] the Court in Division disallowed Carmen Copper's reported sales to Mitsui & Co. Ltd. amounting to Php633,054,504.77 or US$14,036,685.25, for its failure to show proof of the *foreign currency inward remittance.* The Court *En Banc* sustained such findings of the Court in Division.

In a much earlier case also involving *Carmen Copper,*[27] We declared that:

> As for Petitioner's assertion that its export sales amounting to Php6,066,322,11.21 were supported by its Certificate of Inward Remittance, We are one with the Court in Division in the following ruling, to wit:
>
> xxx xxx xxx
>
> This notwithstanding, petitioner still failed to present evidence to support the Customer's Charges which were deducted from the invoice price before arriving at the net remittance. The Certificates of Inward Remittance do not even show the details of these Customer's Charges. It merely enumerated the net remittances on various dates during 2013 thus preventing this Court to verify the veracity of such deductions. As such, we uphold our ruling on this particular disallowance on the ground that the proceeds from zero-rated sales cannot be traced with certainty to the Certificates of Inward Remittance.

[26] *Carmen Copper Corp. v. Commissioner of Internal Revenue*, CTA *EB* Case No. 2161 (CTA Case No. 9457), 25 November 2020.
[27] *Carmen Copper Corp. v. Commissioner of Internal Revenue*, CTA *EB* Case No. 2018 (CTA Case Nos. 9124 & 9200), 9 March 2020.

Indeed, the foregoing circumstances clearly show that petitioner is aware of the fact that even if it is a BOI-registered enterprise, it is still required to prove that its direct export sales to foreign entities are paid for in acceptable foreign currency and accounted for in accordance with the BSP rules and regulations, to qualify for zero-rating under Section 106(A)(2)(a)(1) and (5) and Section 112 (A) of the NIRC of 1997, as amended.

Frustratingly for petitioner, the denial of its refund claims in the past involves the same grounds which could have been addressed in subsequent cases, including in the instant petition. Instead, petitioner appears to have obstinately clung to its arguments and legal theories, seemingly disregarding this Court's contrary pronouncement and ruling in its earlier cases.

A claim for refund of unutilized input value-added tax is in the nature of a tax exemption. Thus, strict adherence to the conditions prescribed by law is required of the taxpayer. Refunds need to be proven and their application raised in the right manner as required by law.[28]

Tax refunds or tax credits are strictly construed against the taxpayer, just like tax exemptions. A claim for a tax refund is a statutory privilege, and rules and procedures in claiming a tax refund should be faithfully complied with.[29] It is evident in this case that respondent failed to discharge this burden and has failed to strictly comply with the conditions for the grant of the tax refund.

Thus, while We commiserate with petitioner, We cannot grant its claim for the refund of unutilized input VAT in the amount of Php32,155,471.50 for the third (3rd) quarter of taxable year 2014 for failure to prove its entitlement.

WHEREFORE, respondent's *Motion for Reconsideration (Re: Decision promulgated 22 June 2022)* is **GRANTED**, while petitioner's *Motion for Reconsideration (Decision dated June 22, 2022)* is **DENIED**.

Accordingly, the dispositive portion of the *Decision* of the Court *En Banc*, dated 22 June 2022, is **MODIFIED** to read as follows:

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[28] *Chevron Holdings, Inc. v. Commissioner of Internal Revenue*, G.R. No. 215159, 5 July 2022.
[29] *Commissioner of Internal Revenue v. CE Casecnan Water and Energy Co., Inc.*, G.R. No. 212727, 1 February 2023.

WHEREFORE, in view of the foregoing discussion, the Petition for Review filed by Carmen Copper Corporation is **DENIED**, for lack of merit. The assailed Decision dated June 25, 2020 and Resolution dated January 8, 2021 rendered by the Court's Third Division in CTA Case No. 9543 are **AFFIRMED**.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

(See Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

(With due respect, I join PJ Del Rosario's Concurring and Dissenting Opinion)
ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

ON LEAVE
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(With due respect, I join PJ Del Rosario's Concurring and Dissenting Opinion)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Amended 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

mv

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CARMEN COPPER CORPORATION, Petitioner,	**CTA EB NO. 2428** (CTA Case No. 9543)
	Present:
- versus -	DEL ROSARIO, *P.J.*, UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, *and,* FERRER-FLORES, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: APR 05 2023 10:20a.m.

x- -x

CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

I concur in the denial of petitioner's Motion for Reconsideration (Decision dated June 22, 2022) for lack of merit. I am constrained, however, to withhold my assent to the Amended Decision's grant of respondent's Motion for Partial Reconsideration (Re: Decision promulgated 22 June 2022) which modifies the Decision dated June 22, 2022 essentially denying petitioner's Petition for Review filed on February 22, 2021.

I maintain the position I have taken in the assailed Decision that petitioner's direct export sale is a transaction within the ambit of Section 106(A)(2)(a)(5) of the National Internal Revenue Code of 1997, as amended (Tax Code) being a transaction considered as **<u>export sale</u> under Article 23 of the Omnibus Investments Code (OIC or Executive Order No. 266 [EO 226])**. Consequently, pursuant to Section 112 (A) of the Tax Code, petitioner need not present proof of payment of export sale in acceptable foreign currency duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP).

The Amended Decision adopts the view that while the subject export sales of petitioner fall under Section 106(A)(2)(a)(5) [export sales by a BOI-registered export enterprise], they nonetheless fall under Section 106(A)(2)(a)(1) [ordinary export sales]. Therefore, petitioner must also comply with the requirements set forth under Section 106(A)(2)(a)(1) of the Tax Code. The Amended Decision cites the Dissenting Opinion of Associate Justice Ma. Belen M. Ringpis-Liban on the assailed Decision stating that:

> 1. It is inaccurate to say that the condition found in Section 112 of the Tax Code anent the proceeds of the export sales are made in acceptable foreign currency duly accounted for in accordance with BSP rules and regulations does not apply to export sales by a Board of Investments (BOI)-registered export enterprise, like petitioner's export sales.
>
> 2. The BSP rules on foreign currency exchange are not required for constructive export sales under the OIC but not those which constitute direct export sales.
>
> 3. To say that direct export sales by BOI-registered export enterprise are exempt from BSP rules on foreign currency exchange, will contradict Section 106(A)(2)(a)(1) of the Tax Code on ordinary export sales. Hence, such interpretation must be frowned upon.[1]

With utmost respect, I disagree.

It is elementary rule in statutory construction that when the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.[2]

Section 106(A)(2)(a) of the Tax Code, reads:

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[1] Id. at 127.
[2] *Commissioner of Internal Revenue vs. Philex Mining Corp.*, G.R. No. 230016, November 23, 2020.

"Section 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 properties, a value-added tax equivalent to twelve percent (12%) 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: 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 or raw materials or packaging materials to a non-resident 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 of 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;

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

On the other hand, Section 112 of the Tax Code which provides the requisites for refund or issuance of tax credit certificate of creditable input tax pertinently provides:

"Section 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 <u>Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2)</u>, 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); xxx." *(Boldfacing and underscoring supplied)*

These Tax Code provisions are clear and unambiguous. Section 106(A)(2)(a) plainly shows that the requirement that 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)" is only required for ordinary export sales and constructive export sales under Section 106(A)(2)(a)(1), (2) and (b). It is not required for export sales by a BOI-registered export enterprise under Section 106(A)(2)(a)(5).

Had the intention was to treat export sales by a BOI-registered export enterprise under Section 106(A)(2)(a)(5) similar to ordinary export sales under Section 106(A)(2)(a)(1), by requiring payment of acceptable foreign currency duly accounted for in accordance with the BSP rules and regulations, the *proviso* in Section 112(A) could have simply specifically mentioned Section 106(A)(2)(a)(5). But, it did not. Thus, the only conclusion is that they should be treated differently.

It must be emphasized that Section 106(A)(2)(a)(1) and (5) of the Tax Code specify two (2) different categories of "export sales". **When an exporter that is not registered with the BOI** sells and actually ships goods from the Philippines to a foreign country, such export sale falls under Section 106(A)(2)(a)(1) as this is the provision that applies to any and all kinds of exportations. However, **if the exporter is BOI-registered**, the actual exportation of goods from the Philippines to a foreign country falls under the definition of "export sale" under Article 23 of the OIC, for which Section 106(A)(2)(a)(5) Tax Code, becomes applicable.

The Tax Code itself provided the distinction between exports by BOI-registered exporter and a non-BOI exporter. Reasonable classification is permitted by the Constitution, as one class may be

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treated differently from another where the groupings are based on reasonable and real distinctions.[3]

Clearly, there is nothing in Section 106(A)(2)(a) or Section 112 (A) which requires the refund claimant under Section 106(A)(2)(a)(5) to prove that its export sale was 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 BSP, as such requirement is only **specifically provided and imposed on export sale under Section 106(A)(2)(a) paragraphs (1) and (2)**. Likewise, it also does not require that when a transaction is considered an export sale under the OIC pursuant to Section 106(A)(2)(a)(5) but at the same time qualifies as a transaction under Section 106(A)(2)(a)(1), the taxpayer must also comply with the conditions imposed thereunder. To do so would render nugatory the different meanings of export sales enumerated under Section 106(A)(2)(a).

Article 23 of the OIC states that:

> "ART. 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 export 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

[3] *Zomer Development Company, Inc. vs. Special Twentieth Division of the Court of Appeals, Cebu City and Union Bank of the Philippines*, G.R. No. 194461, January 7, 2020.

> 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." *(Boldfacing supplied)*

Similarly, there is nothing in Article 23 of the OIC that requires payment of acceptable foreign currency duly accounted for in accordance with BSP rules and regulations for direct export sales to be considered as export sales.

Considering the foregoing, **direct export sales of BOI-registered enterprises, like petitioner, which fall under Section 106(A)(2)(a)(5) of the Tax Code need not be substantiated with payment of acceptable foreign currency duly accounted for in accordance with the BSP rules and regulations**. To insist on a contrary application would be to require compliance with something that is **not written in the law**. It also discriminates against BOI-registered enterprises claiming refund under Section 112 relative to Section 106(A)(2)(a)(5) of the Tax Code by making it more difficult for them to substantiate their refund claims compared to non-BOI enterprises with sales to BOI-registered enterprises claiming under the same provisions of the Tax Code.

In fine, there is no cogent reason for the Court *En Banc* to depart from its conclusions in the assailed Decision.

All told, I **VOTE** to 1) **DENY** respondent's Motion for Reconsideration (Re: Decision promulgated 22 June 2022) and petitioner's Motion for Reconsideration (Decision dated June 22, 2022) for lack of merit, and 2) **REMAND** the case to the Court in Division for determination of the refund due to petitioner, if any, in accordance with the foregoing discussion and the Decision dated June 22, 2022.

ROMAN G. DEL ROSARIO
Presiding Justice