REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MAERSK GLOBAL SERVICES CENTRES (PHILIPPINES) LTD., Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE, Respondent.

CTA EB NO. 2541
(CTA Case No. 9537)

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,

- versus -

MAERSK GLOBAL SERVICES CENTRES (PHILIPPINES) LTD., Respondent.

CTA EB NO. 2547
(CTA Case No. 9537)

Present:

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

Promulgated:

APR 2 7 2023 3:30 pm

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DECISION

DEL ROSARIO, P.J.:

The consolidated **Petitions for Review** separately filed by Maersk Global Services Centres (Philippines) Ltd. on December 3, 2021 docketed as CTA EB No. 2541, and the Commissioner of Internal

Revenue on December 20, 2021, docketed as CTA EB No. 2547, challenge the Amended Decision dated January 13, 2021[1] and Resolution dated September 16, 2021[2] rendered by the Third Division of the Court of Tax Appeals (Court in Division). The dispositive portions of the assailed Decision and Resolution respectively state:

Amended Decision dated January 13, 2021

> "**WHEREFORE**, in light of the foregoing considerations, petitioner's *Motion for Partial Reconsideration* is **PARTLY GRANTED**, while, respondent's *Motion for Partial Reconsideration* is **DENIED** for lack of merit. Accordingly, the assailed Decision dated June 30, 2020 is hereby amended to read as follows:
>
> > '**WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the total amount of **₱34,487,090.72** representing its excess and unutilized input VAT attributable to its zero-rated sales for the four quarters of taxable year 2015.
> >
> > **SO ORDERED**.'
>
> **SO ORDERED.**"[3]

Resolution dated September 16, 2021

> "**WHEREFORE**, in light of the foregoing considerations, petitioner's *Motion for Partial Reconsideration (of Amended Decision promulgated on January 13, 2021)* and respondent's *Motion for Partial Reconsideration to the Amended Decision dated January 13, 2021* are **DENIED** for lack of merit.
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> **SO ORDERED.**"[4]

THE PARTIES

Maersk Global Services Centres (Philippines) Ltd. (Maersk) is a foreign corporation, duly organized and existing under the laws of Hong Kong and licensed to do business in the Philippines as a regional

[1] Penned by Associate Justice Erlinda P. Uy, with Associate Justices Ma. Belen M. Ringpis-Liban and Maria Rowena Modesto-San Pedro concurring.
[2] *Id.*
[3] Docket (CTA Case No. 9537), Vol. 3, p.1088.
[4] *Id.* at 1174.

operating headquarters (ROHQ), with principal office at Levels 5-8, North Wing, Estancia Offices Capitol Commons, Meralco Avenue, Barangay Oranbo, Pasig City 1600.[5]

The Commissioner of Internal Revenue (CIR)[6] is the government official charged with the administration and enforcement of national internal revenue laws and vested with authority to decide claims for refund.[7]

THE FACTS

Below are the undisputed facts of the consolidated Petitions, as narrated by the Court in Division in its Decision dated June 30, 2020.

For taxable year (TY) 2015, Maersk filed its quarterly Value-Added Tax (VAT) Returns on the following dates:

Quarterly VAT Return Period	Tax Return	Date Filed
1st Quarter	Amended Quarterly VAT Return	August 18, 2016
2nd Quarter	Amended Quarterly VAT Return	August 17, 2016
3rd Quarter	Amended Quarterly VAT Return	January 23, 2016
4th Quarter	Amended Quarterly VAT Return	August 18, 2016[8]

On September 26, 2016, Maersk filed with the Bureau of Internal Revenue (BIR) Revenue District Office No. 043, an Application for Tax Credits/Refunds (BIR Form No. 1914) of its unutilized and excess creditable input taxes attributable to its zero-rated sales for the four (4) quarters of TY 2015 amounting to ₱48,087,076.37. On even date, Maersk likewise submitted supporting documents through a transmittal letter indicating a checklist of documents as part of the requirements of Revenue Memorandum Circular No. 54-2014.[9]

On November 11, 2016, Maersk received Letter of Authority No. 43A-2016-00000319, authorizing Revenue Officer Gerard Christopher Tamayo and Group Supervisor Dahlia Nitura of Revenue District Office

[5] Docket (CTA EB No. 2541), p.10.
[6] The incumbent CIR is Hon. Romeo D. Lumagui, Jr.
[7] Docket (CTA EB No. 2547), p. 8.
[8] Docket (CTA Case No. 9537), Vol. 2, pp. 955.
[9] *Id.*

No. 43A – East Pasig, to examine its books of accounts and other accounting records for VAT for the period January 1, 2015 to December 31, 2015 pursuant to a mandatory audit for claim of VAT credit certificate.[10]

There being no action taken by the CIR on Maersk's application for tax credits/refund, Maersk filed a Petition for Review[11] on February 21, 2017 with the Court in Division.

Proceedings in the Court of Tax Appeals

Summonses were served upon the CIR and the Office of the Solicitor General on March 7, 2017 and March 10, 2017, respectively.[12]

The CIR filed an Answer[13] within the extended period on April 20, 2017, interposing the following as special and affirmative defenses: (1) Maersk's claim for refund was pre-maturely filed as it failed to submit complete documents in support of the application filed, thus, the 120-day period has yet to commence; (2) Its alleged claim for refund is still under administrative routine investigation; (3) It is imperative for Maersk to prove its compliance with the pertinent provisions of the National Internal Revenue Code (NIRC) of 1997, as amended; and, (4) Maersk failed to sufficiently prove and demonstrate that the subject tax was erroneously or illegally collected. Hence, Maersk is not entitled to refund.

The CIR filed Respondent's Pre-Trial Brief[14] on July 6, 2017 while Maersk filed a Pre-Trial Brief[15] on July 7, 2017. The Pre-Trial Conference proceeded as scheduled on July 11, 2017.[16] On July 26, 2017, the parties filed their Joint Stipulation of Facts and Issues.[17] On August 15, 2017, the Pre-Trial Order[18] was issued terminating the Pre-Trial.

Trial ensued. Maersk presented two (2) witnesses, namely Ms. Rochelle V. Duclay, [19] its Finance Accountant, and Mr. Edward L.

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[10] *Id.* at 955-956.
[11] Docket (CTA Case No. 9537), Vol. 1, pp. 10-36.
[12] *Id.* at 37-38.
[13] *Id.* at 43-48.
[14] *Id.* at 60-62.
[15] *Id.* at 177-187.
[16] *Id.* at 204-205.
[17] *Id.* at 207-212.
[18] *Id.* at 215-221.
[19] *Id.* at 66-172 (Judicial Affidavit executed on July 6, 2017), 268-307 (Supplemental Judicial Affidavit dated November 10, 2017), and 419.

Roguel,[20] the Court-commissioned Independent Certified Public Accountant (ICPA).

On March 5, 2018, the "Formal Offer of Evidence for Petitioner Maersk Global Services Centres (Philippines), Ltd."[21] was filed. In a Resolution dated June 19, 2018,[22] the Court in Division admitted in evidence Maersk's offered exhibits, except for Exhibit "P-133" for not being found in the records of the case.

In the March 12, 2019 Hearing,[23] the CIR's counsel manifested that no evidence will be presented for the CIR; thus, the Court in Division gave the parties thirty (30) days therefrom to file their respective memoranda.

On April 17, 2019, the "Memorandum for Petitioner Maersk Global Services Centres (Philippines), Ltd."[24] was filed. The CIR, on the other hand, did not file a memorandum.[25]

On May 14, 2019, the Court in Division submitted for decision CTA Case No. 9537 without the CIR's memorandum.[26]

On June 30, 2020, the Court in Division rendered a Decision.[27] The dispositive portion thereof reads:

> "WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the total amount of **₱34,446,355.43**, representing its excess and unutilized input VAT attributable to its zero-rated sales for the four quarters of taxable year 2015."
>
> **SO ORDERED**."[28]

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[20] Docket (CTA Case No. 9537), Vol. 2, pp. 528-538 (Judicial Affidavit dated November 29, 2017), 543-544.
[21] *Id.* at 583-597.
[22] *Id.* at 907-909.
[23] *Id.* at 918.
[24] *Id.* at 927-947.
[25] *Id.* at 949.
[26] *Id.* at 951.
[27] *Id.* at 954-977.
[28] *Id.* at 977.

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Maersk and the CIR challenged the Decision dated June 30, 2020 in their separate Motions for Partial Reconsideration[29] filed on July 30, 2020 and August 20, 2020, respectively.

The Court in Division denied the CIR's Motion for Partial Reconsideration while it partly granted Maersk's Motion for Partial Reconsideration, increasing its refund to **₱34,487,090.72** in the assailed Amended Decision dated January 13, 2021.

Despite the favorable action on Maersk's Motion for Partial Reconsideration, both parties filed their respective Motions for Partial Reconsideration of the Amended Decision[30] on February 4, 2021 and February 9, 2021 which the Court in Division found to be unmeritorious in the equally assailed Resolution dated September 16, 2021.

Both unsatisfied by the ruling of the Court in Division, Maersk and the CIR separately filed their appeals with the Court *En Banc* on December 3, 2021 and December 20, 2021, respectively.

Their Petitions for Review were consolidated by the Court *En Banc* in the Minute Resolution dated February 22, 2022,[31] being appeals from the same Amended Decision dated January 13, 2021 and Resolution dated September 16, 2021 rendered in CTA Case No. 9537.

In the Resolution dated March 30, 2022,[32] the Court *En Banc* directed the parties to file their respective comments on the Petitions for Review within ten (10) days from receipt thereof, and the CIR to submit a compliant Verification and Certification Against Forum Shopping within five (5) days from receipt thereof.

In compliance with the Resolution dated March 30, 2022, the CIR filed a Compliance, with attached Verification and Certification Against Forum Shopping signed by Regional Director Edgar B. Tolentino of Revenue Region No. 7B – East NCR,[33] on April 12, 2022. The CIR, however, opted not to comment on Maersk's Petition for Review.[34]

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[29] Docket (CTA Case No. 9537), Vol. 3, pp. 987-1041 and 979-986.
[30] *Id.* at 1090-1120 and 1122-1127.
[31] Docket (CTA EB No. 2541), p. 102
[32] *Id.* at 104-106.
[33] *Id.* at 119-121.
[34] *Id.* at 118.

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Meanwhile, Maersk filed its "Comment (On the Petition for Review of the Commissioner of Internal Revenue dated 12 December 2021)"[35] on April 18, 2022.

On June 7, 2022, the consolidated Petitions for Review were submitted for decision.[36]

THE ISSUE

Maersk alleges that the Court in Division committed reversible error in disallowing its input tax in the amount of ₱1,707,633.17 for supposed non-compliance with the substantiation requirements and the VAT zero-rating of its sales of service that were indisputably made to and paid for by A.P. Moller Maersk A.S. (APMM) and Maersk Line A/S (ML), entities engaged in international shipping; and in maintaining the downward adjustment of its refund claim.[37]

On the other hand, the CIR's petition is anchored on the sole ground that the Court in Division erred in ruling that Maersk's input tax amounting to ₱34,487,090.72 is attributable to its alleged zero-rated sales.[38]

In fine, the Court *En Banc* is called upon to resolve the issue of **whether the Court in Division erred in partially granting Maersk's refund claim in the amount of ₱34,487,090.72.**

THE PARTIES' ARGUMENTS

In support of its Petition, Maersk contends that:

1. The technical clerical errors in the invoices/official receipts (ORs) issued for Maersk's disallowed purchases should not preclude the Court from considering undisputed facts to arrive at a just determination of its entitlement to the refund of its unutilized excess input VAT from the said purchases. Further, the ICPA found that the input tax claimed by Maersk on the said purchases are accurate. As an "officer of the Court", the ICPA's finding may be relied upon to guide the Court;

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[35] *Id.* at 107-117.
[36] *Id.* at 124-126.
[37] *Id.* at 14.
[38] Docket (CTA EB No. 2547), p. 11.

2. The technical clerical errors in the three (3) ORs issued by Maersk for its sales to APMM and ML do not negate the undisputed fact that such sales are VAT zero-rated. The sales recorded under OR Nos. 144, 154 and 155 can be further verified from the certificates of inward remittances of the payments for such sales;

3. The ICPA's verification that the ₱999,525.00 discrepancy in Maersk's VAT Returns does not affect its refund claim was not considered by the Court in Division in the downward adjustment of Maersk's refund claim on the ground that it failed to substantiate the ₱999,525.00 discrepancy between the amount of its refund claim and the amount declared in its Quarterly VAT Returns for the first quarter of 2016, and that said amount was not carried over to the succeeding periods.[39]

Meanwhile, the CIR's only argument in questioning the partial refund to Maersk is that the direct attributability of Maersk's input tax to its zero-rated sales was not established. Hence, Maersk is not entitled to refund.[40]

In response to the CIR's Petition for Review, Maersk counters that a simple comparison of the CIR's petition and his Motion for Partial Reconsideration of the Amended Decision filed with the Court in Division reveals that the arguments in the petition are an identical repetition of the arguments therein. Thus, the CIR's Petition must likewise be denied for raising no cogent reason to disturb the findings and conclusions made in the Amended Decision.[41]

THE COURT *EN BANC*'S RULING

After a judicious review of the parties' respective Petitions for Review *vis-à-vis* the applicable laws, rules and jurisprudence, the Court *En Banc* finds Maersk's Petition for Review partly meritorious while the CIR's Petition for Review bereft of merit.

Timeliness of the Petitions for Review

It must be emphasized that an appeal is neither a natural nor a constitutional right, but is merely statutory. The implication of its statutory character is that the party who intends to appeal must always

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[39] Docket (CTA EB No. 2541), pp. 14-27.
[40] Docket (CTA EB No. 2547), pp. 11-14.
[41] *Id.* at 108-112.

comply with the procedures and rules governing appeals; or else, the right of appeal may be lost or squandered. Neither is the right to appeal a component of due process. It is a mere statutory privilege and may be exercised only in the manner prescribed by, and in accordance with, the provisions of law.[42] The failure to timely perfect an appeal cannot simply be dismissed as a mere technicality, for it is jurisdictional.[43]

The rules, particularly on the statutory requirement for perfecting an appeal within the reglementary period provided, must be strictly followed. If an appeal is not taken within the period prescribed therefor, the judgment becomes final and the court loses all jurisdiction over the case.[44]

Thus, appeals from the decisions of the Court in Division to the Court *En Banc* must be in accordance with the applicable laws and the rules.

The right to appeal to the Court *En Banc* from the Court in Division is by virtue of Section 18 of Republic Act No. 1125, as amended, which provides:

> SEC. 18. *Appeal to the Court of Tax Appeals En Banc.* – No civil proceeding involving matter arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.
>
> **A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration** or new trial, **may file a petition for review with the CTA *en banc*.**" *(Boldfacing added)*

Meanwhile, the Revised Rules of the Court of Tax Appeals (RRCTA), as amended, pertinently reads, *viz.*:

> RULE 8
> PROCEDURE IN CIVIL CASES
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> Sec. 1. Review in cases in the Court *en banc*. – In cases falling under the exclusive appellate jurisdiction of the Court *en banc*, **the petition for review of a decision or resolution of the Court in**

[42] *Duty Free Philippines vs. Bureau of Internal Revenue*, G.R. No. 197228, October 8, 2014.
[43] *Commissioner of Internal Revenue vs. Fort Bonifacio Development Corp.*, G.R. No. 167606, August 11, 2010.
[44] *Id.*

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Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.

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Sec. 3. Who may appeal; period to file petition. –

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"(b) A party adversely affected by a decision or resolution of a Division of the Court on motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within **fifteen days** from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review." *(Boldfacing added)*

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RULE 15
MOTION FOR RECONSIDERATION OR NEW TRIAL

Section 1. Who may and when to file motion. — Any aggrieved party may seek a reconsideration or new trial of any decision, resolution or order of the Court by filing a motion for reconsideration or new trial within **fifteen days** from the date of receipt of notice of the decision, resolution or order of the Court in question.

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Sec. 4. Effect of Filing the Motion. — The filing of a motion for reconsideration or new trial shall suspend the running of the period within which an appeal may be perfected.

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Sec. 7. **No Second Motion for Reconsideration or for New Trial. — No party shall be allowed to file a second motion for reconsideration of a decision, final resolution or order; or for new trial.** " (*Boldfacing added*)

From the foregoing, appeals from the decision or resolution of the Court in Division must be **preceded** by the filing of a timely motion for reconsideration or new trial with the Division. However, the filing of a second motion for reconsideration or for new trial is prohibited and will not toll the running of the fifteen (15)-day period to appeal to the Court *En Banc*.

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In *Asiatrust Development Bank, Inc. vs. Commissioner of Internal Revenue,*[45] the Supreme Court declared that an amended decision is a proper subject of a motion for reconsideration, *viz.*:

> "Section 1, Rule 8 of the Revised Rules of the CTA states:
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> xxx xxx xxx
>
> Thus, in order for the CTA *En Banc* to take cognizance of an appeal *via* a petition for review, a timely motion for reconsideration or new trial must first be filed with the CTA Division that issued the assailed decision or resolution. Failure to do so is a ground for the dismissal of the appeal as the word "must" indicates that the filing of a prior motion is mandatory, and not merely directory.
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> The same is true in the case of an amended decision. Section 3, Rule 14 of the same rules defines an amended decision as "[a]ny action modifying or reversing a decision of the Court en banc or in Division." As explained in *CE Luzon Geothermal Power Company, Inc. v. Commissioner of Internal Revenue*, **an amended decision is a different decision, and thus, is a proper subject of a motion for reconsideration**.
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> In this case, **the CIR's failure to move for a reconsideration of the Amended Decision of the CTA Division is a ground for the dismissal of its Petition for Review before the CTA *En Banc***. Thus, the CTA *En Banc* did not err in denying the CIR's appeal on procedural grounds.
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> Due to this procedural lapse, the Amended Decision has attained finality insofar as the CIR is concerned. The CIR, therefore, may no longer question the merits of the. Case before this Court. Accordingly, there is no reason for the Court to discuss the other issues raised by the CIR
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> As the Court has often held, procedural rules exist to be followed, not to be trifled with, and thus, may be relaxed only for the most persuasive reasons." (*Boldfacing added*)

CTA EB No. 2541

In CTA EB No. 2541, Maersk received the Decision dated June 30, 2020 partially granting its refund amounting to **₱34,446,355.43,** on July 15, 2020. On July 30, 2020, it timely filed its Motion for Partial Reconsideration thereof, alleging that the Court in Division committed reversible error in disallowing the VAT zero-rating of its sales of services that were indisputably made to and paid for by APMM and ML, entities engaged in international shipping and the input VAT

[45] G.R. Nos. 201530 and 201680-81, April 19, 2017.

amounting to ₱1,736,310.49 for supposed non-compliance with the substantiation requirements and in maintaining the downward adjustment of its refund claim.

On January 20, 2021, Maersk received the Amended Decision dated January 13, 2021 partially granting its Motion for Reconsideration, increasing its partial refund to **₱34,487,090.72**. On February 4, 2021, it filed its Motion for Partial Reconsideration (of Amended Decision promulgated on January 13, 2021) alleging again that the Court in Division committed reversible error in disallowing the input VAT amounting to ₱1,707,633.17 for supposed non-compliance with the substantiation requirements and the VAT zero-rating of the sales of services of Maersk that were indisputably made to and paid for by APMM and ML, entities engaged in international shipping and in maintaining the downward adjustment to its refund claim.

The Court in Division understandably denied its Motion for Partial Reconsideration of the Amended Decision ruling that Maersk raised no new issues in its motion but merely presented a rehash of its arguments that have already been addressed in the Amended Decision dated January 13, 2021 and the Decision dated June 30, 2020. The Court in Division also restated its reasons for the disallowance of the purchases of goods and services made by Maersk as well as the basis of the disallowance of its zero-rated sales covered by OR No. 155 (Exhibit "P-31.6") which it insisted that the Court in Division consider in computing its refund claim.

Under these circumstances, Maersk's Motion for Partial Reconsideration of the Amended Decision filed on February 4, 2021 may be deemed a second motion for reconsideration of the Decision dated June 30, 2020 which is a prohibited motion under Section 7, Rule 15 of the RRCTA. Consequently, considering that Maersk filed a Motion for Partial Reconsideration of the Amended Decision with the Court in Division instead of a Petition for Review with the Court *En Banc* on February 4, 2021, its present Petition for Review filed on December 3, 2021[46] should be deemed filed beyond the prescribed period to file such appeal. Nonetheless, while the undersigned *ponente* has consistently taken the view that a party whose motion for reconsideration of an original decision has been partially granted through an amended decision may not file another motion for reconsideration to assail the amended decision since the Court in

[46] Maersk received the Resolution dated September 16, 2021 denying its Motion for Partial Reconsideration) on November 3, 2021. On November 18, 2021, Maersk timely filed a Motion for Extension of Time (To File Petition for Review), which the Court *En Banc* granted in the Minute Resolution dated November 22, 2021, giving Maersk until December 3, 2021 to file its Petition for Review. Docket (CTA EB No. 2541), pp. 1-7.

Division already made a favorable action on its motion for reconsideration, he acknowledges that Maersk in this case may have probably relied on the previous decisions of the Court *En Banc* ruling that an appeal of an amended decision must always be preceded by the filing of a timely motion for reconsideration with the Court in Division, regardless of whether its previous motion for reconsideration has already been favorably decided. Thus, to better serve the interest of justice, the Court *En Banc* will exercise jurisdiction over Maersk's appeal and decide the same on the merits.

CTA EB No. 2547

Meanwhile, the CIR received the Decision dated June 30, 2020 on July 30, 2020. On August 14, 2020 it timely filed a Motion for Partial Reconsideration.

On January 25, 2021, the CIR received the Amended Decision dated January 13, 2021. On February 9, 2021, the CIR timely filed a Motion for Partial Reconsideration to the Amended Decision Dated 13 January 2021.

As aforementioned, the Amended Decision dated January 13, 2021 modified and increased Maersk's entitlement to a refund or tax credit certificate in the amount of **₱34,487,090.72 from ₱34,446,355.43**. The Amended Decision is therefore a different decision and, hence, the proper subject of a motion for reconsideration anew on the part of the CIR.

The CIR received the resolution on his Motion for Partial Reconsideration to the Amended Decision Dated 13 January 2021 on November 18, 2021. As such, he had until December 3, 2021 to file a Petition for Review with the Court *En Banc*. On December 2, 2021, the CIR filed a Motion for Extension of Time to File Petition for Review,[47] which the Court *En Banc* granted in its Minute Resolution dated December 9, 2021,[48] granting the CIR until December 18, 2021 within which to file his Petition for Review. Therefore, the filing of his Petition for Review on December 20, 2021 (December 18, 2021 was a Saturday) was timely.

Perusal of Maersk and the CIR's Petition for Review reveals that the arguments therein are a mere rehash of their respective Motions

[47] Docket (CTA EB No. 2457), pp. 1-3.
[48] *Id.* at 6.

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for Partial Reconsideration of the Decision dated June 30, 2020 and Amended Decision dated January 13, 2021. Nonetheless, the Court *En Banc* shall address the parties' arguments to finally settle these consolidated appeals.

Disallowance of Maersk's input VAT in the amount of ₱1,707,633.17 for non-compliance with substantiation requirements

In its Decision, the Court in Division disallowed input VAT amounting to ₱1,835,095.07 due to non-compliance with the substantiation requirements under Sections 110(A), 113(A) and (B), 237 and 238 of the NIRC of 1997, as amended, in relation to Sections 4.110-1, 4.110-3, 4.110-8 and 4.113-1 of Revenue Regulations (RR) No. 16-2005, as amended.

Maersk contended in its Motion for Partial Reconsideration of the Decision that it is entitled to the refund of ₱1,736,310.49 representing the input VAT from its disallowed purchases.[49] By seeking the reconsideration of the disallowed purchases amounting only to ₱1,736,310.49, Maersk effectively accepted the disallowance of input VAT amounting to ₱98,784.58, broken down below:

Payee	Input VAT	Exhibit	Reason for Disallowance (per Decision)
Advance Paper Corp	₱ 511.07		Without Supporting Invoice
Adventure International Tours	7,203.24	"P-115"	Date of the OR not clear
Adventure International Tours	809.52	"P-128"	Incorrect VAT amount
Adventure International Tours	664.08	"P-147"	Date of the OR not clear
Biotech Environmental Services	14,777.62	"P-177"	Incorrect VAT amount
Daja Food Services	2,250.00	"P-214"	VAT not separately indicated
Flash Media	3,489.83	"P-300"	VAT not separately indicated
Globe Telecom	1,281.38	"P-321"	Incorrect VAT amount
Globe Telecom	400.26	"P-338"	Incorrect VAT amount
Herbon Beverages	2,035.71	"P-366"	Supported by Non-VAT Invoice
JR Lims Trading	3,522.32	"P-457"	OR without authorized signature
JR Lims Trading	3,522.32	"P-458"	OR without authorized signature
Kishus Plastics	3,653.57	"P-459"	Supported by OR with pre-printed "This Document is not Valid for Claiming Input Tax"
Newton Integrated Solutions	1,200.00	"P-503"	OR not Readable
Ortigas and Company	2,965.68	"P-522"	OR not Readable

[49] Docket (CTA Case No. 9537), Vol. 3, p. 1002.

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DHL Express	13,497.98	"P-830"	Incorrect VAT amount
Punta de Fabian	37,000.00	"P-864"	Incorrect VAT amount
Total	**₱ 98,784.58**		

In the assailed Amended Decision, however, the Court in Division reconsidered the disallowance of input VAT amounting to ₱28,677.32, broken down below, out of the requested input VAT amounting to ₱1,736,310.49.[50]

Payee	Input VAT	Exhibit	Reason
Biotech Environmental Services	₱ 2,015.13	"P-177"	VAT amount is indicated in the OR
DHL Express	15,634.82	"P-260"	The purchase was made in the year covered by the refund claim
Globe Telecom	1,281.38	"P-321"	VAT amount is indicated in the OR
Globe Telecom	3,703.13	"P-338"	VAT amount is indicated in the OR
Icon Interiors	6,042.86	"P-384"	Customer name can be found in the latter part of the OR
Total Reconsidered Valid Input VAT	**₱ 28,677.32**		

In both the assailed Amended Decision[51] and Resolution,[52] the Court in Division maintained the disallowance of input VAT amounting to a total of ₱1,707,633.17, detailed as follows:

Payee	Input VAT	Exhibit	Reason for Disallowance (per Amended Decision)
Globe Telecom Inc.	₱ 9,751.76	"P-331"	Petitioner failed to substantiate the discrepancy between the amount of input VAT being claimed and the amount of VAT indicated in the OR
Integrated Computer Systems	1,296.43	"P-390"	Sales Invoice without indication of receipt by authorized signatory
Integrated Computer Systems	9,531.43	"P-392"	Sales Invoice without indication of receipt by authorized signatory
Integrated Computer Systems	31,055.90	"P-397"	VAT was not separately indicated
Integrated Computer Systems	32,128.93	"P-412"	VAT was not separately indicated
Integrated Computer Systems	20,310.00	"P-416"	VAT was not separately indicated

[50] *Id.* at 1077.
[51] *Id.* at 1077-1078.
[52] *Id.* at 1168-1171.

Jeon Software Info. Solutions	4,200.00	"P-439"	The correct amount of VAT cannot be deducted with certainty from the document because of the alteration and the same was not counter-signed by an authorized signatory.
Soliman Security Services	7,259.21	"P-705"	The entries in the OR are doubtful, the VAT amount cannot be determined with certainty.
Soliman Security Services	6,241.91	"P-706"	The entries in the OR are doubtful, the VAT amount cannot be determined with certainty.
Soliman Security Services	8,736.65	"P-707"	The entries in the OR are doubtful, the VAT amount cannot be determined with certainty.
Soliman Security Services	8,347.61	"P-708"	The entries in the OR are doubtful, the VAT amount cannot be determined with certainty.
Soliman Security Services	4,025.32	"P-713"	The entries in the OR are doubtful, the VAT amount cannot be determined with certainty.
Punta De Fabian Inc.	4,062.50	"P-864"	VAT amount is incorrect
Ragojos Heritage Construction	1,491,428.57	"P-1026"	Description of goods is lacking
Ragojos Heritage Construction	41,625.00	"P-1027"	Description of goods is lacking
Schneider Electric IT Philippines	18,000.00	"P-1028"	Description of goods cannot be ascertained
Discovery Suites	9,631.95	"P-1117"	Description of goods cannot be ascertained
Total Disallowed Input VAT	**₱1,707,633.17**		

As shown in the above table, the reasons for the upheld disallowance all point to Maersk's failure to comply with the substantiation requirements under Section 113(A) and (B) of the NIRC of 1997, as amended,[53] and as implemented by Section 4.113-1 of RR

[53] "**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:

xxx

(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 shown as a separate item in the invoice or receipt;**

xxx

on

No. 16-2005, as amended.[54]

With respect to **Exhibit "P-331"** representing Maersk's purchase of service from Globe Telecom with input VAT amounting to ₱9,751.76, the Court in Division disallowed the same due to its failure to substantiate the discrepancy between the amount of input VAT being claimed and the amount of VAT indicated in the OR.

It is a well-settled rule that for income tax purposes, a taxpayer is free to deduct from its gross income a lesser amount, or not to claim any deduction at all. What is prohibited by the income tax law is to claim a deduction beyond the amount authorized therein.[55] The said rule, although pertaining to income tax, can be logically applied to input VAT refund or credit. By analogy, therefore, a taxpayer should likewise be free to deduct from output VAT an input VAT which is lower than the actual amount of input VAT stated in the VAT invoice or VAT OR. Thus, it is proper to allow the input VAT amounting to ₱9,751.76.

With respect to **Exhibits "P-390" and "P-392"** representing purchase of goods from Integrated Computer Systems with input VAT amounting to ₱1,296.43 and ₱9,531.43, respectively, it should be emphasized that the same were disallowed because Maersk's representative failed to sign the portion of the sales invoice that bears the notation "RECEIVED THE ABOVE GOODS IN GOOD ORDER & CONDITION."

The Court *En Banc* finds these disallowances improper.

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(3) The date of transaction, quantity, unit cost and description of the goods or properties or **nature of the service**; xxx *(Boldfacing supplied)*

[54] **SECTION 4.113-1. Invoicing Requirements. —**
(A) 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.
xxx
(B) Information contained in VAT invoice or VAT official receipt. — The following information shall be indicated in VAT invoice or VAT official receipt:
xxx
(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; Provided, That:

(a) The amount of tax shall be shown as a separate item in the invoice or receipt; xxx *(Boldfacing supplied)*

[55] *Commissioner of Internal Revenue vs. Phoenix Assurance Co. Ltd., et seq.*, G.R. Nos. L-19727 and L-19903, May 20, 1965.

First, it is not mandatory for a buyer to sign a sales invoice. Neither Section 113 of the NIRC of 1997, as amended, nor Section 4.113-1 of RR No. 16-2005 requires the buyer or its representative to sign a sales invoice.

Second, it is clear that the purpose of the signature is for the buyer to acknowledge the receipt of the goods delivered by the seller. In relation thereto, it is noted that one of the terms and conditions imprinted on the sales invoice states that "the person signing hereon is unconditionally deemed duly authorized by the buyer; otherwise, notice must be given to the seller not less than 24 hours from receipt/delivery of good(s)." Evidently, the purpose of requiring the signature of the buyer's representative is to protect the seller from the possibility that the buyer may eventually either deny the receipt of the goods or deny that the goods received were in good order and condition. In other words, the information which include the "signature and printed name" and the "date received" of the buyer's representative were required only for the seller's protection or convenience.

The Court *En Banc* reiterates *Miramar Fish Company, Inc. vs. Commissioner of Internal Revenue*,[56] cited in the assailed Amended Decision, where the Supreme Court ruled that the invoicing requirements must be shown in order to qualify as duly-registered receipts or sales invoices, *viz.*:

> "xxx The provisions of Sections 113 and 237 of the NIRC of 1997,as amended, and Section 4.108-1 of RR No. 7-95, are clear in enumerating the invoicing requirements necessary to be shown in order to qualify as duly registered receipts or sales or commercial invoices issued by VAT-registered entities, such as petitioner herein, for the purpose of claiming for refund of creditable input tax due or paid attributable to any zero-rated or effectively zero-rated sales. Absent compliance, the unavoidable result is immediate denial of the claim."

It must be stressed that compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.[57] It should be clarified, however, that while the substantiation requirements under Section 113 of the NIRC of 1997, as amended, as implemented by Section 4.113-1 of RR No. 16-2005, should be mandatorily complied with, the Courts cannot impose any additional requirement that is not provided for by law or merely required by any of the parties to the transaction for the latter's convenience.

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[56] G.R. No. 185432, June 4, 2014.

[57] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

Consequently, the reconsideration of the input VAT amounting to ₱10,827.86 is in order.

With respect to Exhibits **"P-397", "P-412", and "P-416"** representing purchases of goods from Integrated Computer Systems with input VAT amounting to ₱31,055.90, ₱32,128.93, and ₱20,310.00, respectively, which were all disallowed on the ground that the VAT amount were not separately indicated, Maersk submitted the complete pages of the VAT invoices. Considering, however, that the submitted pages did not form part of those evidence formally offered, the same cannot be considered at this stage. It bears stressing that evidence not formally offered during trial cannot be used for, or against a party litigant by the trial court in deciding the merits of the case.[58] Thus, the disallowance of input VAT amounting to ₱31,055.90, ₱32,128.93, and ₱20,310.00 is sustained.

As regards Exhibits **"P-705", "P-706", "P-707", "P-708" and "P-713"** representing purchase of services from Soliman Security Services, a re-examination of the ORs revealed that Exhibits "P-705" and "P-708" with input VAT amounting to ₱7,259.21 and ₱8,347.61, respectively, are compliant with the requirement that "the amount of tax shall be shown as a separate item in the invoice or receipt." Hence, the reconsideration of the disallowance of the input VAT amounting to ₱15,606.82 is warranted.

With regard to **Exhibit "P-864"** representing purchase of service from Punta De Fabian Resort Inc., the OR clearly indicates the input VAT amount of ₱4,062.50. It is noted that Maersk initially claimed input VAT amounting to ₱41,062.50. Upon realizing that it committed a typographical error on the amount, Maersk corrected the input VAT and reduced it by ₱37,000.00 which represents the difference between the erroneous figure (₱41,062.50) and the correct figure (₱4,062.50). This is evident from the fact that when Maersk filed its Motion for Partial Reconsideration, it only requested the reconsideration of ₱1,736,310.49 which included the input VAT of ₱4,062.50 from its purchase from Punta De Fabian Resort Inc.

As the excess claim of ₱37,000.00 has been previously disallowed, and that the supporting OR clearly indicates that the input VAT is ₱4,062.50, it is proper to allow the latter amount to be claimed.

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[58] *Pilipinas Shell Petroleum Corporation vs. Commissioner of Customs*, G.R. No. 195876, December 5, 2016.

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Anent **Exhibit "P-439"**, which was disallowed because of the alteration without authorized countersignature, that is - - without the proper countersignature on the correction made to indicate the correct VAT amount therein, the Court *En Banc* cannot consider the same.

With respect to Exhibits "**P-1026", "P-1027", "P-1028" and "P-1117"**, Maersk correctly pointed out that Exhibits "P-1026", "P-1027", "P-1028" and "P-1117" involve purchase of services; hence, OR is the valid supporting document. Nonetheless, the input VAT therein shall still be disallowed for failure of the ORs to state the nature of services as required under Section 113(B)(3) of the NIRC of 1997, as amended.

Section 113(B) of the NIRC of 1997, as amended, is categorical in requiring that the nature of the service rendered be indicated in the VAT OR. There is nothing in Section 113(B) that suggests even remotely that such information may be indicated in any document other than the VAT OR. Thus, it is proper to sustain the disallowance of input VAT amounting to ₱1,491,428.57, ₱41,625.00, ₱18,000.00 and ₱9,631.95.

In sum, after a careful re-examination of the supporting documents, the Court *En Banc* reconsiders Maersk's input VAT amounting to a total of ₱40,248.94, broken down below:

Payee	Input VAT	Exhibit
Globe Telecom	₱ 9,751.76	"P-331"
Integrated Computer Systems	1,296.43	"P-390"
Integrated Computer Systems	9,531.43	"P-392"
Soliman Security Services	7,259.21	"P-705"
Soliman Security Services	8,347.61	"P-708"
Punta de Fabian	4,062.50	"P-864"
Total Additional Reconsidered Valid Input VAT	**₱ 40,248.94**	

Considering the foregoing disquisition, the total adjusted disallowances of input VAT as determined by the Court *En Banc* amount to ₱1,766,168.81, computed as follows:

Disallowed input VAT not requested by petitioner to be reconsidered	₱ 98,784.58
Upheld disallowed input VAT (₱1,707,633.17 less ₱40,248.94)	1,667,384.23
Total Adjusted Disallowed Input VAT	**₱ 1,766,168.81**

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Adding the adjusted input VAT disallowed by the Court *En Banc* with the input VAT disallowed by the ICPA, the total disallowed input VAT is now ₱8,664,161.66. Deducting this amount from the input VAT claim of Maersk, the valid input VAT attributable to zero-rated sales is now ₱39,422,914.71, as shown below:

Input VAT per claim		₱ 48,087,076.37
Less: Disallowances		
Per ICPA	₱ 6,897,992.85	
Per Court, as adjusted	**1,766,168.81**	**8,664,161.66**
Adjusted Valid Input VAT attributable to zero-rated sales		**₱ 39,422,914.71**

Disallowance of VAT zero-rating on Maersk's sales of service that were indisputably made to and paid for by APMM and ML, entities engaged in international shipping

The Court in Division disallowed Maersk's VAT zero-rated sales of services to APMM and ML amounting to ₱213,635,665.07, as detailed below:

OR No.	OR Date	Customer	Amount (in USD)	Amount (in PHP)	Exhibit	Grounds for Disallowance
144	7/1/16	A.P. Moller Maersk A/S	3,053,628.94	137,156,797.47	"P-31"	Not indicated as zero-sales
154	18/03/2015	Maersk Line A/S	193,630.31	8,639,203.54	"P-31.5"	Without Supporting OR
155	18/03/2015	Maersk Line A/S	1,537,198.95	67,839,664.06	"P-31.6"	Zero-rated sales amount not the same
Total			**4,784,458.20**	**213,635,665.07**		

Upon re-examination of the foregoing exhibits, the Court *En Banc* finds no reason to disturb the disallowance.

The OR marked as Exhibit "P-31" did not indicate that the sale amounting to $3,053,628.94 (with peso equivalent of ₱137,156,797.47) was a zero-rated sale. On the other hand, the OR marked as Exhibit "P-31.5" does not pertain to OR No. 154 which should support the sale to ML for $193,630.31 (with peso equivalent of ₱8,639,203.54). Thus, it is only proper to uphold the disallowance of the sales pertaining to Exhibits "P-31" and "P-31.5".

With respect to the document marked as Exhibit "P-31.6", the Court *En Banc* shall likewise disallow the zero-rated sale corresponding to it.

In the assailed Resolution, the Court in Division stated that "[w]ith regard to OR No. 155, We maintain the disallowance of the same. It bears noting that the Court disallowed the said zero-rated [sale] as the amount of [sale] per Maersk's schedule ($1,537,198.95) is inconsistent with the amount in OR No. 155 ($1,507,198.95)."[59] Hence, said sale was not considered VAT zero-rated.

Maersk explains that the discrepancy in the zero-rated sale amount noted by the Court in Division in OR No. 155 is due to a simple clerical error in the writing of the numbers in the upper portion of the OR. Maersk points out that the amount of the sum received as spelled out in words and as written in numbers in the upper portion of OR No. 155 (Exhibit "P-31.6") is correct and matches the amount of zero-rated sale.

The Court *En Banc* notes, however, that Exhibits "P-31.5" and "P-31.6" both pertain to OR No. 155. Exhibit "P-31.5", which would supposedly show OR No. 154, shows OR No. 155, the very same OR number presented as Exhibit "P-31.6". Strangely enough, despite showing the same OR number, Exhibit "P-31.5" indicates the zero-rated sales of $1,537,198.95 while Exhibit "P-31.6" indicates the zero-rated sales of $1,507,198.95. In other words, there are two documents both bearing the same OR number but indicating different amounts of zero-rated sales. Without explanation for the existence of Exhibit "P-31.5", the Court *En Banc* cannot give credence to Exhibit "P-31.6" which Maersk claims as the supporting document for its claim of zero-rated sales.

Under these circumstances, the Court *En Banc* affirms the disallowance of the VAT zero-rating of Maersk's sales of services to APMM and ML amounting to $4,784,458.20 (with peso equivalent of ₱213,635,665.07).

Downward adjustment of Maersk's refund claim

The total amount claimed by Maersk as unutilized input VAT for TY 2015 amounts to ₱48,087,076.37. However, as noted by the Court

[59] Docket (CTA Case No. 9537), Vol. 3, p. 1172.

in Division, only the amount of ₱47,087,551.37 was declared as "VAT Refund/TCC claimed" in Maersk's Quarterly VAT Return for the 1st quarter of TY 2016.[60]

For TY 2016, Maersk only submitted the Quarterly VAT Return for the 1st quarter and the Monthly VAT Return for January 2016. Considering that the Quarterly VAT Return for the 1st quarter of TY 2016 was certainly filed later than the Monthly VAT Return for January 2016, then the former which presented the amount of ₱47,087,076.37 as "VAT Refund/TCC claimed" should prevail. Thus, the Court *En Banc* cannot ascertain whether the discrepancy of ₱999,525.00 remained unutilized in the succeeding taxable periods.

In view of the foregoing, the Court *En Banc* sustains the downward adjustment on Maersk's unutilized input VAT in the amount of ₱999,525.00.

Re-computation of the refundable amount is in order

As discussed above, the input VAT per claim amounting to ₱48,087,076.37 shall be reduced by disallowances per ICPA and per the Court's evaluation amounting to a total of ₱8,664,161.66 as well as the variance noted by the Court amounting to ₱999,525.00. Applying the said formula, the valid input VAT attributable to zero-rated sales amounted to ₱38,423,389.71, as computed below:

Input VAT per claim	₱ 48,087,076.37
Less: Disallowances	
Per ICPA	6,897,992.85
Per Court, as adjusted	1,766,168.81
Variance in the total amount claimed for refund	999,525.00
Valid input VAT attributable to zero-rated sales	₱ 38,423,389.71

Since Maersk's valid input VAT of ₱38,423,389.71 already pertains to input taxes attributable to zero-rated sales, the same shall be allocated proportionately on the basis of Maersk's total zero-rated sales, as follows:

Valid zero-rated sales[61]	₱ 1,937,639,452.89
Divided by **total reported zero-rated sales**	2,151,275,117.96
Multiplied by valid input taxes attributable to zero-rated sales	38,423,389.71
Input tax attributable to zero-rated sales	₱ 34,607,696.24

[60] Docket (CTA Case No. 9537), Vol. 2, p. 976.
[61] Total zero-rated sales of ₱2,151,275,117.96 less disallowed zero-rated sales of ₱213,635,665.07.

In fine, Maersk has sufficiently proven its entitlement to a refund or issuance of TCC in the amount of ₱34,607,696.24, representing Maersk's unutilized input VAT attributable to its valid zero-rated sales for the four quarters of TY 2015.

Attributability of Maersk's input VAT to its zero-rated sales

The Court *En Banc*[62] has consistently ruled that Section 112(c) of the NIRC of 1997, as amended, does not require that the input tax claimed must be directly attributable to the taxpayer's zero-rated sales.

As correctly stated by the Court in Division "nowhere is it stated in Section 112(A) that the refundable creditable input tax should be 'directly attributable' to such sales. It must be remembered that where the law does not distinguish, none must be made."[63]

Hence, the Court *En Banc* affirms the Court in Division's findings that Maersk's input tax is attributable to its zero-rated sales and that there is no legal basis for the CIR's insistence that Maersk's claimed input tax must be directly attributable to its zero-rated sales. Perforce, the CIR's Petition for Review must fail.

WHEREFORE, premises considered, Maersk Global Services Centres (Philippines) Ltd.'s Petition for Review is **PARTIALLY GRANTED** while the Commissioner of Internal Revenue's Petition for Review is **DENIED** for lack of merit.

The Amended Decision dated January 13, 2021 rendered by the Court in Division is hereby **AFFIRMED** with **MODIFICATION** as to the computation of the refund. The Commissioner of Internal Revenue is

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[62] *Commissioner of Internal Revenue vs. AIG Shared Services Corporation (Philippines) [formerly: Chartis Technology and Operations Management Corporation (Philippines)]*, CTA EB Nos. 2383 and 2408, October 17, 2022; *Commissioner of Internal Revenue vs. Trans-Asia Renewable Energy Corporation (now known as "Guimaras Wind Corporation")*, CTA EB No. 2347, May 17, 2022; *Commissioner of Internal Revenue vs. S & Woo Construction Philippines, Inc.*, CTA EB No. 2420, March 22, 2022; *Commissioner of Internal Revenue vs. Pilipinas Kyohritsu Inc.*, CTA EB Nos. 2382 and 2395, February 22, 2022; *Commissioner of Internal Revenue vs. S&Woo Construction Philippines, Inc.*, CTA EB No. 2340, December 10, 2021; *Rio Tuba Nickel Mining Corporation vs. Commissioner of Internal Revenue*, CTA EB Nos. 2180 and 2182, June 10, 2021; *Commissioner of Internal Revenue vs. Lepanto Consolidated Mining Company*, CTA EB No. 2230, June 14, 2021; *Commissioner of Internal Revenue vs. Maersk Global Service Centres (Philippines) Ltd.*, CTA EB No. 2260, July 29, 2021; *Commissioner of Internal Revenue vs. Lepanto Consolidated Mining Company*, CTA EB No. 2051, September 30, 2020, *Commissioner of Internal Revenue vs. Toledo Power Company*, CTA EB Nos.1990 and 2000, July 23, 2020; *Commissioner of Internal Revenue vs. Deutsche Knowledge Services, Pte. Ltd.*, CTA EB No. 2082, July 21, 2020; *Commissioner of Internal Revenue vs. Foseco Philippines, Inc.*, CTA EB No. 1842, August 13, 2019.
[63] Docket (EB No. 2547), p. 58.

OM

ORDERED to refund or issue a tax credit certificate in favor of Maersk Global Services Centres (Philippines) Ltd. in the amount of **₱34,607,696.24**, representing its unutilized input VAT attributable to valid zero-rated sales for the four quarters of TY 2015.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

ON LEAVE
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

With Separate Opinion
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
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 Decision were reached in consultation before the consolidated cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MAERSK GLOBAL SERVICES CENTRES (PHILIPPINES) LTD.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 2541
(CTA Case No. 9537)

x--x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

MAERSK GLOBAL SERVICES CENTRES (PHILIPPINES) LTD.,
Respondent.

CTA EB No. 2547
(CTA Case No. 9537)

Present:

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

Promulgated:
APR 2 7 2023 3:30 pm

x--x

SEPARATE OPINION

BACORRO-VILLENA, J.:

I concur with the *ponencia* of our esteemed Presiding Justice, Hon. Roman G. Del Rosario, as to the: (1) reconsideration of the total amount of ₱40,248.94 of input tax disallowed by the Third Division; and, (2) affirmation of the disallowed zero-rated sales of ₱213,635,665.07. In addition, I further submit that Maersk Global Services Centres (Philippines) Ltd. **(Maersk)** correctly filed a Motion for Partial Reconsideration (**MPR**) on the assailed Amended Decision, in line with ruling in *CE Luzon Geothermal Power Company, Inc. v. Commissioner of Internal Revenue*[1] (where the Supreme Court acknowledged that an amended decision which modified and increased the taxpayer's entitlement is a different decision and thus a proper subject of a motion for reconsideration [**MR**]).

As regards the valid input Value-Added Tax (**VAT**) attributable to zero-rated sales, the *ponencia* computed the same in the following manner:

Input VAT per claim	₱48,087,076.37
Less: Disallowances	
Per ICPA	₱6,897,992.85
Per Court, as adjusted	1,766,168.81
Variance between the total amount claimed as excess	999,525.00
Valid input VAT attributable to zero-rated sales	₱38,423,389.71

Resultantly, the refundable amount was then computed to be:

Valid zero-rated sales	₱1,937,639,452.89
Divided by total reported zero-rated sales	2,151,275,117.96
Multiplied by valid input tax attributable to zero-rated sales	38,423,389.71
Refundable input tax attributable to zero-rated sales	₱34,607,696.24

Anent the re-computation of the refundable amount due to Maersk, I humbly submit that: (1) the total available input VAT should be the starting point in determining the valid input VAT and *not* input VAT *per* claim; (2) a portion of input VAT which was applied to output VAT shall still be deducted from the resulting input VAT attributable to valid zero-rated sales; and, (3) the amount of ₱999,525.00 which the Court *En Banc* could not ascertain whether the same remained unutilized in the succeeding taxable periods should likewise be deducted *after* determining the resulting input VAT attributable to valid zero-rated sales and *not* before.

[1] G.R. No. 200841-42, 26 August 2015.

The reasons for my above submissions are discussed below, in *seriatim*.

NO OUTPUT VAT SHOULD BE DEDUCTED FROM THE VALID/SUBSTANTIATED INPUT VAT

The *ponencia* used "[i]nput VAT *per* claim" of ₱48,087,076.37 as the starting point of the computation of the refundable amount. Effectively, the output VAT for the period amounting to ₱151,101.42 was deducted from the "Total Available Input VAT" (before further reducing the amount for the exceptions noted by the ICPA and the Court). The deduction of the entire ₱151,101.42 was also noted in the ICPA Report[2], as follows:

	Total	Input VAT allocation	
		VATable	Zero-rated
Total Available Input VAT	₱48,238,177.70	₱28,218.12	₱48,209,959.58
Less: Output VAT	151,101.42	(28,218.12)	(122,883.3[0])
Input VAT Claimed for Refund per petition	**₱48,087,076.28**[3]		**₱48,087,076.28**

However, the Supreme Court held in *Chevron Holdings, Inc. (formerly Caltex Asia Limited) v. Commissioner of Internal Revenue*[4] (**Chevron**) that the output VAT should *not* be deducted from the input VAT attributable to zero-rated sales, *viz*:

> ...
> ... It goes without saying that **the CTA**, and even the [Supreme] Court, **may not, on its own, deduct the input tax attributable to zero-rated sales from the output tax derived from the regular twelve percent (12%) VAT-able sales first and use the resultant amount as the basis in computing the allowable amount for refund**. The courts cannot condition the refund of input taxes allocable to zero-rated sales on the existence of "excess" creditable input taxes, which includes the input taxes carried over from the previous periods, from the output taxes. These procedures find no basis in law and jurisprudence.
> ...

2 Exhibit "P-30-B", Division Docket, Volume II, p. 796.

3 The immaterial variance of ₱0.09 between the "Total Excess Input VAT" and "Total Input VAT claimed per petition" was also noted by the ICPA.

4 G.R. No. 215159, 05 July 2022.

> 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. ...[5]
>
> ...

Considering that the *ponencia*'s starting point in computing the refundable amount is the "[i]nput VAT *per* claim" in the amount of ₱48,087,076.28, the output VAT was already effectively deducted therefrom and thus appearing to be inconsistent with the ruling in *Chevron* that no output VAT should be deducted from the substantiated input tax attributable to valid zero-rated sales.

A PORTION OF INPUT VAT WHICH WAS APPLIED TO OUTPUT VAT SHALL STILL BE DEDUCTED FROM THE RESULTING INPUT VAT ATTRIBUTABLE TO VALID ZERO-RATED SALES

From the table above, it also appears that output VAT in the amount of ₱122,883.30 was already charged by the taxpayer against a portion of input VAT allocated to zero-rated sales. Thus, even if no output VAT should be deducted from the input VAT attributable to zero-rated sales (based on the previous discussion), I nevertheless submit that a portion thereof, which was applied to output VAT, shall still be deducted.

It must be highlighted that this deduction is *not* determinative of the "excess" input VAT (which, according to *Chevron*, has no basis in law and jurisprudence) but only because the same was already utilized and applied to output VAT.

Likewise, in *Chevron*, the Supreme Court emphasized that one of the requisites for the refund or issuance of tax credit certificate is that input tax should not be applied against output tax, to wit:

> ...
>
> Thus, to be refunded or issued a tax credit certificate, the following must be complied with: (1) the input tax is a creditable input tax due or paid; (2) the input tax is attributable to the zero-rated sales; (3) the input tax is not transitional; (4) **the input tax was not applied against the output**

[5] Citation omitted and emphasis supplied.

> **tax**; and (5) in case the taxpayer is engaged in mixed transactions, *i.e.*, VAT-able, exempt, and zero-rated sales and the input taxes cannot be directly and entirely attributable to any of these transactions, only the input taxes proportionately allocated to zero-rated sales based on sales volume may be refunded or issued a tax credit certificate.[6]
>
> ...

As such, the amount of ₱122,883.30 should be deducted from the resulting amount of substantiated input VAT attributable to valid zero-rated sales (or after applying the ratio of valid zero-rated sales over the total sales) as the same was already applied by Maersk against its output VAT. In this way, the computation would be compliant with the following disquisition in *Chevron*:

> ...
>
> *First*, Section 112 (A) of the Tax Code merely requires that the input tax claimed for refund or the issuance of tax credit certificate "**has not been applied against [the] output tax[.]**" Section 4.112-1 (a) of RR No. 16-2005 states that "[t]**he input tax that may be subject of the claim shall exclude the portion of input tax that has been applied against the output tax.**"...[7]
>
> ...

Notably, I submit that the instant computation and the *ponencia*'s would ultimately arrive at the same amount if only there were no exceptions noted as to both the zero-rated sales and the input VAT claimed. However, since such is not the case here, the manner of computation laid down in Revenue Regulations (**RR**) No. 16-2005[8], as amended, should be the primary guiding principle in determining the refundable amount.

Following Section 4.110-4 of RR No. 16-2005, as amended, which was also cited in *Chevron*, the multiplier of the ratio (valid zero-rated sales over total reported sales) must be the total available input VAT or the valid or substantiated input VAT *not* attributable to any specific activity *before* deducting the output VAT, to wit:

> ...
>
> **SEC. 4.110-4. *Apportionment of Input Tax on Mixed Transactions.*** — ...
>
> ...
>
> **Illustration:** ERA Corporation has the following sales during the month:

6 Citation omitted and emphasis supplied.
7 Citation omitted, emphasis and italics in the original text.
8 Consolidated Value-Added Tax Regulations of 2005.

Sale to private entities subject to 12%	₱100,000.00
Sale to private entities subject to 0%	100,000.00
Sale of exempt goods	100,000.00
Sale to gov't. subjected to 5% final VAT Withholding	100,000.00
Total Sales for the month	₱400,000.00

The following input taxes were passed on by its VAT suppliers:

Input tax on taxable goods 12%	₱5,000.00
Input tax on zero-rated sales	3,000.00
Input tax on sale of exempt goods	2,000.00
Input tax on sale to government	4,000.00
Input tax on depreciable capital good **not attributable** to any specific activity (monthly amortization for 60 months)	**₱20,000.00**

...

B. *The input tax attributable to zero-rated sales for the month shall be computed as follows*:

Input tax directly attributable to zero-rated sale				₱3,000.00
Ratable portion of the input tax not directly attributable to any activity:				
Taxable sales (0%) / Total Sales	X	Amount of **input tax not directly attributable to any activity**		
P100,000.00 / 400,000.00	X	P20,000.00 =		₱5,000.00
Total Input tax attributable to zero-rated sales for the month				₱8,000.00[9]

Based on the foregoing illustration, the multiplier of the ratio of zero-rated sales over total sales is the amount of input VAT not directly attributable to any activity *before* the deduction of output VAT amounting to ₱12,000.[10] Here, it was established that the total available input VAT of ₱48,238,177.70 is not directly attributable to any activity and, therefore, must be apportioned based on sales volume. Deducting output VAT before apportionment would suggest that the output VAT is the amount of input VAT *directly* attributable to sales subject to 12% VAT when that is not the case here.

9 Emphasis supplied.

10 *Computed as follows:* Sale to private entities subject to 12% (100,000) x 12% VAT = ₱12,000

THE AMOUNT OF ₱999,525.00 SHOULD BE DEDUCTED NOT FROM THE ADJUSTED INPUT VAT (AFTER THE DISALLOWANCES OF THE ICPA AND THE COURT) BUT FROM THE RESULTING AMOUNT OF SUBSTANTIATED INPUT VAT ATTRIBUTABLE TO VALID ZERO-RATED SALES

Similar to the input VAT attributable to zero-rated sales applied to output VAT in the immediately preceding discussion, the variance between the total amount claimed as excess input VAT of ₱48,087,076.37 and the amount of VAT Refund/Tax Credit Certificate (**TCC**) Claimed *per* Quarterly VAT Return for the first (1st) quarter of taxable year (**TY**) 2016 of ₱47,087,176.37, or the difference of ₱999,525.00, shall also be deducted from the substantiated input VAT attributable to valid zero-rated sales and *not* from the adjusted input VAT (or *prior* to applying the ratio of valid zero-rated sales over the total sales).

The reason for the above treatment is because the amount of ₱48,087,076.37 is already the input VAT allocated to zero-rated sales. Thus, to deduct the amount of ₱999,525.00 prior to apportionment of the total valid input VAT to valid zero-rated sales and total sales would be inaccurate, and would lead to disruption of the computation since a portion thereof would in effect be allocated to sales subject to 12% VAT.

In other words, since the amount of ₱999,525.00 came from the input VAT allocated to zero-rated sales of ₱48,087,076.37, it is only proper to deduct such amount *after* determining the substantiated input VAT attributable to zero-rated sales (*i.e.*, computed by multiplying the total valid input VAT by the ratio of valid zero-rated sales over total zero-rated sales).

THE PROPER DENOMINATOR IN DETERMINING THE RATIO TO BE APPLIED SHOULD BE TOTAL SALES AND NOT JUST TOTAL ZERO-RATED SALES

Section 4.110-4 of RR No. 16-2005, as amended, clearly shows that the denominator for the apportionment of input VAT not directly attributable to any activity is the amount of "Total Sales" (₱400,000.00 in the illustration above) and not just the total zero-rated sales. This complements my earlier disquisition that the multiplier is the total available input VAT or valid/substantiated input VAT not attributable to any activity *before* deduction of output VAT.

In sum, I humbly submit that the proper steps in computing the amount of refundable input VAT (in line with the recent Supreme Court's declarations in *Chevron*) are as follows:

1. Determine the amount of substantiated or valid input VAT;

2. Deduct from the substantiated or valid input VAT any input VAT directly attributable to a specific activity to arrive at the substantiated or valid input VAT not attributable to any activity;

3. Multiply the substantiated or valid input VAT not attributable to any activity by the ratio of Valid Zero-Rated Sales over Total Sales to determine the amount of substantiated or valid input VAT attributable to zero-rated sales;

4. Add to the amount computed in no. 3 any substantiated or valid input VAT directly attributable to zero-rated sales to arrive at the total substantiated or valid input VAT attributable to zero-rated sales; and,

5. Deduct from the total substantiated or valid input VAT attributable to zero-rated sales any input VAT already charged by the taxpayer-claimant against its output VAT liability and any input VAT carried-over instead.

Applying the foregoing steps, Maersk's refundable input VAT should be computed as follows:

Total available input VAT *per* returns		₱48,238,177.70
Less: Disallowances		
Per ICPA	₱6,897,992.85	
Per Court, as adjusted	1,766,168.81	8,664,161.66
Adjusted input VAT not directly attributable to any activity		₱39,574,016.04

Valid zero-rated sales		₱1,937,639,452.89
Divided by total reported sales		2,152,534,296.42
Multiplied by Adjusted input VAT not directly attributable to any activity		39,574,016.04
Input VAT attributable to valid zero-rated sales		35,623,206.99
Less: Portion of input VAT applied to output VAT	₱122,883.30	

Difference between total amount claimed as excess input VAT and the amount of VAT Refund/TCC Claimed per Quarterly VAT Return	999,525.00	1,122,408.30
Refundable input VAT attributable to zero-rated sales		**₱34,500,798.69**

From the disquisitions above, I vote to partially **GRANT** Maersk's Petition for Review and **ORDER** the Commissioner of Internal Revenue (CIR) to refund the recomputed amount of **₱34,500,798.69** and **DENY** the CIR's own Petition for Review for lack of merit.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice