REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

CBK POWER COMPANY LIMITED,
Respondent.

CTA EB No. 1791
(CTA Case No. 7887)

Present:

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, JJ.

Promulgated:

MAY 14 2019
3:41 p.m.

x - x

DECISION

UY, J.:

Before the Court *En Banc* is a *Petition for Review* filed by the Commissioner of Internal Revenue against CBK Power Company Limited on March 8, 2018,[1] praying for the reversal and setting aside of the Amended Decision dated October 10, 2017[2] and Resolution dated February 2, 2018[3], both rendered by the Third Division of this Court (Court in Division) in CTA Case No. 7887, entitled "*CBK Power Company Limited, Petitioner, versus Commissioner of Internal Revenue, Respondent*", the dispositive portions of which respectively read as follows:

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[1] EB Docket, pp. 6 to 18.

[2] This was penned by Associate Justice Ma. Belen M. Ringpis-Liban, and concurred by Associate Justice Lovell R. Bautista and Associate Justice Esperanza R. Fabon-Victorino, EB Docket, pp. 20 to 38.

[3] EB Docket, pp. 39 to 43.

<u>Amended Decision dated October 10, 2017</u>:

> "Consequently, Petitioner's 'Motion for Reconsideration' is **GRANTED**.
>
> Accordingly, the dispositive portion of our Decision dated June 06, 2017 is **AMENDED** to read, as follows:
>
> > **WHEREFORE**, premises considered, the Petition for Review is **GRANTED**. Accordingly, Respondent Commissioner of Internal Revenue is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of Petitioner **<u>in the amount of ₱41,131,185.33</u>,** representing its unutilized input value-added taxes on its local purchases and/or importation of goods and services, capital goods and payments for services rendered by non-residents, attributable to its zero-rated sales for the period January 1, 2007 to December 31, 2007.
> >
> > **SO ORDERED.**"

<u>Resolution dated February 2, 2018</u>:

> "**WHEREFORE**, premises considered, Respondent's 'Motion for Partial Reconsideration (Re: Amended Decision Promulgated on 10 October 2017)' filed on November 3, 2017 is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

Petitioner (or CIR) is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

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On the other hand, respondent CBK Power Company Limited (or CBK) is a partnership duly organized and existing under and by virtue of the laws of the Philippines, with principal office at the NPC Compound, Kalayaan, Laguna. It is a special purpose entity, the sole purpose of which is to engage in all aspects of (a) the design, financing, construction, testing, commissioning, operation, maintenance, management and ownership of Kalayaan II pumped-storage hydroelectric power plant, the new Caliraya Spillway, and other assets located in the Province of Laguna, and (b) the rehabilitation, upgrade, expansion, testing, commissioning, operation, maintenance and management of the Caliraya, Botocan and Kalayaan I hydroelectric power plants and their related facilities located in the Province of Laguna.

CBK is registered as a value-added tax (VAT) entity with the BIR with Taxpayer Identification Number (TIN) VAT No. 205-760-474-000. It was issued BIR Certificate of Registration No. OCN 1RC0000050243 dated April 10, 2000 by the BIR Revenue District Office (RDO) No. 55-San Pablo City, Laguna, which was updated on May 11, 2005 and was issued Certificate of Registration No. OCN 1RC0000195405.

On September 20, 2000, CBK entered into a Second Accession Undertaking with the National Power Corporation (NPC), Industrias Metalurgicas Pescarmona S.A. (IMPSA), and CBK Power Corporation, wherein CBK became a party to the Build-Rehabilitate-Operate-Transfer (BROT) Agreement dated November 6, 1998. By virtue of the Second Accession Undertaking, respondent shall assume and undertake the responsibility to rehabilitate, construct, operate, and maintain the Caliraya, Botocan, and Kalayaan hydroelectric power plants and other civil structures for the purpose of generating electricity for NPC. In consideration thereof, NPC shall pay respondent Capital Recovery Fees, Operation and Maintenance Fees and other amounts specified in the BROT Agreement.

Consequently, CBK entered into an Agreement with IMPSA Construction Corporation designated as Turnkey Contract dated August 18, 2000, whereby IMPSA Construction Corporation as Contractor represented itself to be technically and financially capable of undertaking the design, engineering, procurement, supply of all plant and materials, rehabilitation, construction, commissioning, testing, completion, and handover of such power plants, together with the civil structures, access roads, and other works as specified in the BROT Agreement, on a fixed price, turnkey basis.

On March 26, 2009, CBK filed with the BIR RDO No. 55 an administrative claim for the issuance of tax credit and certificate (TCC) in the amount of ₱58,802,851.18, allegedly representing its unutilized input taxes on its local purchases and/ or importation of goods and services, capital goods and payments for services rendered by non-residents; which were all attributable to its zero-rated sales for taxable year 2007, pursuant to Section 112(A) of the NIRC of 1997, as amended.

Due to the CIR's inaction, CBK filed a *Petition for Review* on March 27, 2009 , entitled *"CBK Power Company Limited, Petitioner, versus Commissioner of Internal Revenue, Respondent".* The case was docketed as CTA Case No. 7887.

On May 4, 2009, petitioner filed his *Answer* in CTA Case No. 7887, interposing Special and Affirmative defenses, which include, among others, the following: CBK's claim for tax refund is subject to administrative investigation and/or examination by petitioner; and to support its claim, it is imperative for CBK to prove compliance with pertinent laws, rules and regulations; that taxes paid and collected by the BIR are presumed to have been made in accordance with law, rules and regulations as the burden to prove otherwise is upon the claimant, Allegedly, CBK's *Petition* was filed prematurely, as both the administrative claim and judicial claim was filed on the same day, and hence, CBK's *Petition for Review* should be dismissed for lack of jurisdiction. The resort to judicial review is premised on a full or partial denial of the administrative claim for refund; while the filing of the administrative claim seems to be a mere afterthought as a precursor to the filing of CBK's *Petition for Review.* However, CBK's claim for tax refund and/ or credit allegedly has no basis in fact and in law, hence the instant petition should be dismissed for absence of cause of action.

CTA Case No. 7887 was set for Pre-Trial Conference on June 4, 2009. Thereafter, the parties filed their *Joint Stipulation of Facts and Issues* on July 27, 2009, which was approved on July 30, 2009 by the Court in Division in the Resolution dated July 30, 2009.

During trial, CBK presented the following witnesses: (1) Chief Financial Officer, Fernando J. Dela Paz; (2) Accounting Manager, Joey L. Polintan; and (3) Independent Certified Public Accountant (ICPA), Myra Celeste O. Dabalos to support its claim.

Thereafter, CBK filed its *Formal Offer of Evidence* on June 17, 2010; while the CIR filed his *Comment (Re: Petitioner's Formal Offer of Evidence)* on July 2, 2010. In the Resolution dated August 10, 2010, the Court partially admitted CBK's *Formal Offer of Evidence*.

Hence, CBK filed a *Manifestation and Motion for Partial Reconsideration* on August 26, 2010; while the CIR filed a *Comment (Re: Petitioner's Manifestation and Motion for Partial Reconsideration*) on September 13, 2010.

CBK also filed its *Reply (On Respondent's Comment on Respondent's Manifestation and Motion for Partial Reconsideration)* on September 21, 2010.

In the Resolution dated November 17, 2010, the Court granted CBK's *Manifestation and Motion for Partial Reconsideration*.

Meanwhile, the CIR filed a *Motion to Dismiss* on December 6, 2010 and CBK filed its *Comment On/Opposition to Respondent's Motion to Dismiss* on December 17, 2010 without Reply from the CIR.

In the Resolution dated January 28, 2011, the Court granted the CIR's motion and dismissed the *Petition for Review* in CTA Case No. 7887 for having been prematurely filed, as follows:

> "**WHEREFORE**, premises considered, respondent's **'Motion to Dismiss'** is hereby **GRANTED**. Accordingly, the ***Petition for Review*** filed in the above-captioned case is hereby **DISMISSED** for having been prematurely filed.
>
> **SO ORDERED**."

Aggrieved, CBK flied its *Motion for Reconsideration* on February 14, 2011; while the CIR filed his *Comment* on February 23, 2011. The Court in Division, however, denied the motion for lack of merit in the Resolution dated April 5, 2011.

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On May 6, 2011, CBK filed its *Petition for Review* with the Court *En Banc* docketed as CTA EB No. 760 entitled "CBK Power Company Limited, Petitioner, vs. Commissioner of Internal Revenue, Respondent. The CIR filed his *Comment* to said *Petition* on June 9, 2011. Thereafter, CBK filed its *Memorandum* on July 14, 2011; while the CIR merely adopted the arguments in his *Comment* as his *Memorandum*.

In the Decision dated February 1, 2012, this Court *En Banc* dismissed CTA EB No. 760 and affirmed the Resolutions dated January 28, 2011 and April 5, 2011, as follows:

> "**WHEREFORE**, on the basis of the foregoing considerations, the Petition for Review *En Banc* is **DISMISSED**.
>
> Accordingly, the Resolutions of CTA Third Division dated January 28, 2011 and April 5, 2011 are hereby **AFFIRMED**.
>
> **SO ORDERED**."

CBK filed its *Motion for Reconsideration* in CTA EB No. 760 on February 22, 2012; while the CIR flied his *Comment* thereto on March 27, 2012. In the Resolution dated May 24, 2012, the Court *En Banc* denied the motion for lack of merit.

On July 16, 2012, CBK filed its *Petition for Review on Certiorari* under Rule 45 of the Revised Rules of Court with the Supreme Court entitled "CBK Power Company Limited, Petitioner, vs. Commissioner of Internal Revenue, Respondent" docketed as G.R. No. 202066.

In the Decision dated September 30, 2014, the Supreme Court granted CBK's *Petition for Review on Certiorari* and accordingly remanded the same to this Court for the determination and computation of the amounts valid for refund or issuance of TCC, to wit:

> "**WHEREFORE**, the petitions docketed as G.R. Nos. 202066 and 205353 are **GRANTED**. Accordingly, the Court of Tax Appeals En Banc's February 1, 2012 decision and May 24,2012 resolution assailed in the

> petition docketed as G.R. No. 202066, and the Court of Tax Appeals En Banc's October 4, 2012 decision and January 15,2013 resolution assailed in the petition docketed as G.R. No. 205353, are **REVERSED** and **SET ASIDE**.
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> The consolidated cases are **REMANDED** to the Court of Tax Appeals for the determination and computation of the amounts valid for refund or the issuance of a tax credit certificate.
>
> **SO ORDERED**."

In the Resolution dated January 25, 2016, the Court in Division set CTA Case No.7887 for the initial presentation of evidence of the CIR. However, the CIR manifested, through counsel, however, that he has no evidence to present since there was no report of investigation. Thus, both parties were given thirty (30) days within which to file their respective memoranda. CBK filed its *Memorandum* on May 5, 2016; while the CIR flied his *Memorandum* on May 20, 2016. On June 22, 2016, CTA Case No. 7887 was submitted for decision by the Court in Division.

The Court in Division denied CBK's *Petition for Review* for lack of merit, in the Decision dated June 6, 2017,[4] the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the Petition for Review is **DENIED** for lack of merit.
>
> **SO ORDERED**."

CBK then filed its *Motion for Reconsideration* on June 27, 2017.[5] On July 21, 2017, the CIR filed his *Opposition (To Petitioner's Motion for Reconsideration dated 27 June 2017)*.[6]

On October 10, 2017, the Court in Division granted CBK's *Motion for Reconsideration,* and issued the assailed Amended

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[4] Division Docket – Vol. 3 (CTA Case No. 7887), pp. 1311 to 1335.
[5] Division Docket – Vol. 3 (CTA Case No. 7887), pp. 1336 to 1377.
[6] Division Docket – Vol. 3 (CTA Case No. 7887), pp. 1385 to 1389.

Decision,[7] granting the *Petition for Review* in CTA Case No. 7887 and ordering the CIR to issue a TCC in favor of CBK in the amount of ₱41,131,185.33, representing its unutilized input value-added taxes on its local purchases and/or importation of goods and services, capital goods and payments for services rendered by non-residents, attributable to its zero-rated sales for the period January 1, 2007 to December 31, 2007.

The CIR then filed its *Motion for Partial Reconsideration (Re: Amended Decision Promulgated on 10 October 2017)* on November 3, 2017,[8] assailing the Court in Division's Amended Decision promulgated on October 10, 2017.

CBK filed its *Comment On/Opposition to Respondent's Motion for Partial Reconsideration (Re: Amended Decision promulgated on 10 October 2017)* on December 1, 2017.[9]

In the assailed Resolution dated February 2, 2018,[10] the Court in Division denied the CIR's *Motion for Partial Reconsideration* for lack of merit.

On February 22, 2018, the CIR filed a *Motion for Extension of Time to File Petition for Review*,[11] praying for an extension of fifteen (15) days from February 22, 2018, to file his *Petition for Review*.

In the Minute Resolution dated February 27, 2018,[12] the Court *En Banc* granted the CIR a final and non-extendible period of fifteen (15) days from February 22, 2018, or until March 9, 2018, within which to file his *Petition for Review*. On March 8, 2017, the instant *Petition for Review* with the Court *En Banc*.[13]

In the Resolution dated March 21, 2018,[14] CBK was directed by the Court *En Banc* to file its comment on the instant *Petition for*

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[7] EB Docket, pp. 20 to 38; Division Docket – Vol. 3 (CTA Case No. 7887), pp. 1392 to 1410.
[8] Division Docket – Vol. 3 (CTA Case No. 7887), pp. 1411 to 1421.
[9] Division Docket – Vol. 3 (CTA Case No. 7887), pp. 1425 to 1434.
[10] EB Docket, pp. 39 to 43; Division Docket – Vol. 3 (CTA Case No. 7887), pp. 1436 to 1440.
[11] EB Docket, pp. 1 to 3.
[12] EB Docket, p. 5.
[13] EB Docket, pp. 6 to 16.
[14] EB Docket, pp. 48 to 49.

Review within ten (10) days from receipt thereof. On April 17, 2018, CBK filed its *Comment on Petitioner's Petition for Review dated March 5, 2018.*[15]

In the Resolution dated May 15, 2018,[16] the instant case was submitted for decision.

Hence, this Decision.

ASSIGNMENT OF ERRORS

The CIR raises the following errors supposedly committed by the Court in Division, to wit:

> "GROUNDS FOR THE PETITION
>
> I.
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> THE HONORABLE COURT THIRD DIVISION ERRED IN RULING THAT RESPONDENT IS ENTITLED TO REFUND OF THE ALLEGED INPUT TAX ATTRIBUTABLE TO ITS ZERO-RATED SALES FOR THE [PERIOD] JANUARY 1, 2007 TO DECEMBER 31, 2007. RESPONDENT FAILED TO PROVE THAT THE SAME REMAINED UNUTILIZED AND WERE NOT CARRIED OVER TO THE [SUCCEEDING] PERIODS.
>
> II.
>
> THE HONORABLE COURT THIRD DIVISION ERRED IN RULING THAT RESPONDENT IS ENTITLED TO REFUND OF THE ALLEGED INPUT TAX ATTRIBUTABLE TO ITS ZERO-RATED SALES FOR THE [PERIOD] JANUARY 1, 2007 TO DECEMBER 31, 2007. RESPONDENT FAILED TO PROVE THAT ITS INPUT TAX IN THE AMOUNT OF ₱58,802,851.18 IS CREDITABLE AND DIRECTLY ATTRIBUTABLE TO ITS ZERO-RATED SALES."[17]

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[15] EB Docket, pp. 50 to 58.
[16] EB Docket, pp. 61 to 62.
[17] *Petition for Review*, EB Docket, p. 9.

Petitioner's arguments:

Petitioner CIR argues that the Court in Division erred in ruling that CBK is entitled to refund of the alleged input tax attributable to its zero-rated sales for the period January 1, 2007 to December 31, 2007. According to the CIR, CBK failed to prove that its input tax remained unutilized and were not carried over to the succeeding period.

Allegedly, the VAT returns evaluated by the Court in Division were those pertaining only to taxable year 2007 and that CBK failed to present the VAT returns for taxable year 2008 to prove that the subject input tax was not utilized for the said year.

Furthermore, the determination on whether or not the input VAT paid are attributable to the CBK's zero-rated sales or effectively zero-rated sales is indispensable. In this case, CBK allegedly failed to prove that its input tax in the amount of ₱58,802,851.18 is creditable and directly attributable to its zero-rated sales.

Finally, considering that tax refund is in the nature of a tax exemption, the same must be construed *strictissimi juris* against the taxpayer; and that the taxpayer must present convincing evidence to substantiate a claim for refund.

Respondent's counter-arguments:

Respondent CBK counter-argues that the CIR's assertions in his *Petition for Review* are devoid of merit as the Court in Division correctly ruled and wisely ordered the CIR to issue a TCC in the amount of ₱41,131,185.33, representing its unutilized input VAT on its local purchases and/or importation of goods and services, capital goods and payments for services rendered by nonresidents, attributable to its zero-rated sales for the period January 1, 2007 to December 31, 2007.

Contrary to the CIR's arguments, CBK asserts that since its reported sales were all zero-rated, the claimed input VAT of ₱58,802,851.18 is entirely attributable thereto; and that the same was not applied against any output tax.

THE COURT *EN BANC'S* RULING

We find no merit in the instant *Petition for Review.*

The claimed unutilized input VAT was not carried over to the succeeding taxable quarters.

The CIR argues that CBK failed to prove that the subject input VAT being claimed remained unutilized or have not been applied against any output tax for the current and succeeding quarters of the following taxable year 2007. Specifically, the CIR insists that CBK failed to present the VAT Returns for taxable year 2008 to prove that the subject claim input tax was not utilized for the taxable year 2008.

We disagree.

Undoubtedly, one of the requisites for a successful claim for refund of input VAT under Section 112 of the NIRC of 1997, as amended, is that the *"input tax has not been applied against* [the] *output tax".* Thus, CBK must have presented the succeeding Quarterly VAT Returns to show that the subject of the claim was not carried over to succeeding periods.

In this case, contrary to the stance of the CIR, CBK presented its Quarterly VAT Returns for taxable year 2008,[18] and upon an evaluation thereof, it appears that the subject amount of ₱58,802,851.18 was not carried over to the periods in the said taxable year.

Furthermore, based on the *Amended Final Report* of the Independent Certified Public Account (ICPA),[19] it was ascertained that CBK did not utilize in subsequent periods the amount of input VAT being claimed for refund by obtaining copies of the latter's Amended Quarterly VAT Returns from the first to the fourth quarters of 2008 and from the first to the third quarters of 2009, which were

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[18] Refer to Exhibits "BB-10/BB-100001 to BB-100009", "BB-12/BB-120001 to BB-120003", "BB-14/BB-140001 to BB-140003", and "BB-16/BB-160001 to BB-160006". These are the latest amended Quarterly VAT Returns for the year 2008.

[19] *Amended Final Report,* Exhibits "OO" and OO-1", ICPA Folder dated February 17, 2010, p. 6.

marked as Exhibits "BB-10" to "BB-19" and were admitted as evidence in the Resolution dated August 10, 2010.[20]

Accordingly, We find no cogent reason to deviate or reverse the findings of the Court in Division that the claimed unutilized input VAT was not carried over to the succeeding taxable quarters.

We likewise see no reversible error on the finding that the subject input VAT of respondent is creditable and attributable to its zero-rated sales.

The CIR further contends that the Court in Division erred in ruling that CBK is entitled to refund the alleged input tax attributable to its zero-rated sales for the period January 1, 2007 to December 31, 2007. According to the CIR, CBK failed to prove that its input tax in the amount of ₱58,802,851.18 is creditable and directly attributable to its zero-rated sales. Quoted herewith is the CIR's arguments on the matter, for easy reference, to wit:

> "As can be seen above[21] – the law provides that for input taxes on purchase of goods – they must be a factor in the chain of production to be 'creditable'. xxx.
>
> Thus, the law provides that they are either: re-sold as the finished product; converted or forms part of the finished products; used as supplies in the business; materials utilized for a service provided; and capital equipment to produce goods/ service.
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> To reiterate, from the definitions provided by law, it is [petitioner]'s position that to be creditable, the input tax must come from purchases of goods that form part of the finished product of the taxpayer or it must be directly used in the chain of production. A mere random sampling of respondent' receipts show payments to hotels and resorts. Surely, these do not factor in the production of electricity.
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> After determining which input taxes are 'creditable',

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[20] Division Docket – Vol. 1 (CTA Case No. 7887), pp. 462 to 465.
[21] Referring to Section 110(A)(1)(a) of the NIRC of 1997, as amended.

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the law requires a second evaluation to determine which 'creditable' input taxes are 'attributable'. This means that the connection between the purchases and finished product is 'concrete' and not 'imaginary' or 'remote'. There is nothing in the decision of the Honorable Court showing the direct attributability of the purchases or input tax to the finished product whose sale is zero-rated."[22]

We disagree.

Section 110 of the NIRC of 1997, as amended by Republic Act No. 9337, provides, in part, as follows:

"SEC. 110. *Tax Credits.* –

(A) *Creditable Input Tax.* –

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions **shall be creditable against the output tax**:

(a) Purchase or importation of goods:

(i) For sale; or

(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or

(iii) For use as supplies in the course of business; or

(iv) For use as materials supplied in the sale of service; or

(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.

(b) Purchase of services on which a value-added tax has been actually paid.

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[22] EB Docket, p. 13.

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> **The term 'input tax' means <u>the value-added tax due from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person</u>.** It shall also include the transitional input tax determined in accordance with Section 111 of this Code." *(Emphases and underscoring supplied)*

Based on the foregoing, an input VAT evidenced by a VAT invoice or official receipt is creditable against the output VAT not only on the purchase or importation of goods "(f)*or conversion into or intended to form part of a finished product for sale including packaging materials"*, but also those for sale, for use as supplies in the course of business, and for use in trade or business for which deduction for depreciation or amortization is allowed under the NIRC. Additionally, based on the above-quoted Section 110, it is clear that an input VAT shall be creditable against the output tax on the "(p)*urchase of services on which a value-added tax has actually been paid"*

It is a rule in statutory construction that every part of the statute must be interpreted with reference to the context, *i.e.*, that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment. Because the law must not be read in truncated parts, its provisions must be read in relation to the whole law. The statute's clauses and phrases must not, consequently, be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole. Consistent with the fundamentals of statutory construction, all the words in the statute must be taken into consideration in order to ascertain its meaning.[23]

The CIR's argument that *"to be creditable, the input tax must come from purchases of goods that form part of the finished product of the taxpayer or it must be directly used in the chain of production"* is not entirely consistent with the above-quoted Section 110. This is so because the said provision, as clearly stated, did not limit itself to

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[23] *Philippine International Trading Corporation vs. Commission on Audit*, G.R. No. 183517, June 22, 2010.

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purchases or importation of goods which are to be converted into or intended to form part of a finished product for sale, or to be used in the chain of production; but also includes purchases or importation of goods for use as supplies in the course of business, or for use in trade or business for which deduction for depreciation or amortization is allowed.

Furthermore, as already emphasized, the input VAT on the "(p)*urchase of services on which a value-added has actually been paid*" is likewise creditable against the output tax.

Thus, just as in the instant case, so long as the input VAT being claimed are evidenced by the pertinent documents, *i.e.*, VAT sales invoices or official receipts, as the case may be, the same input VAT is creditable against the output VAT. Such being the case, even when the VAT official receipts of respondent show payment to hotels and resorts, the input VAT paid thereon, is creditable against its output VAT.

As a corollary, We likewise do not subscribe to the CIR's stance that the input VAT must be "attributable" to the zero-rated sales, in that *"the connection between the purchases and finished product is 'concrete' and not 'imaginary' or 'remote'."*

The word *"attribute"*, the adjective form of which is *"attributable"*, is defined as *"to explain as to cause or origin"*, or simply, to *"ascribe"*.[24] Thus, when Section 112(A) of the NIRC of 1997, as amended, states that the input VAT must be attributable to the zero-rated or effectively zero-rated sales, it simply means that the input VAT must be regarded as being caused by such sales.

Relative thereto, We quote with approval the findings of the Court in Division, to wit:

> "Since petitioner's reported sales were all zero-rated, the claimed input VAT of Php58,802,851.18 is entirely attributable thereto and the same was not applied against any output VAT."[25]

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[24] The Merriam-Webster Dictionary © 2005, p. 31.
[25] EB Docket, p. 25.

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In other words, We find no compelling reason to disturb the findings of the Court in Division.

It is fundamental that the findings of fact by the Court in Division are **not** to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties.[26]

In this case, apart from the general averment that CBK failed to prove that its claimed input VAT were directly attributable to zero-rated sales, the CIR failed to make any specific discussion to support his stance, or to particularly pinpoint which of the findings of the Court in Division, as regards the attributability of the refundable input VAT, is erroneous. The mere general averment of petitioner failed to convince this Court *En Banc* that a reversible error was committed by the Court in Division.

Accordingly, We sustain the conclusion of the Court in Division that the substantiated input VAT of CBK in the amount of ₱41,131,185.33 should be refunded to the latter through the issuance of a tax credit certificate in its favor.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit. Accordingly, the Amended Decision dated October 10, 2017 and the Resolution dated February 2, 2018, both rendered by the Court in Division in CTA Case No. 7887, are **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[26] *Republic of the Philippines, represented by the Commissioner of Internal Revenue* v. *Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*, G.R. No. 188016, January 14, 2015 citing *Sea-Land Service, Inc.* v. *Court of Appeals*, G.R. No. 122605, April 30, 2001, 357 SCRA 441, 445-446. Refer also to *Rhombus Energy, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 206362, August 1, 2018.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(On Leave)

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice