REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

Members:

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

Promulgated:
APR 18 2023 4:05 pm

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DECISION

CUI-DAVID, J.:

Before the Court *En Banc* is a *Petition for Review* filed by petitioner Mitsui & Co., Ltd. (Manila Branch)[1] ("**Petitioner**"), under Section 3(b), Rule 8,[2] in relation to Section 2(a)(1), Rule 4[3] of the Revised Rules of the Court of Tax Appeals[4] ("**RRCTA**"),

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[1] Dated 21July 2021, received by the Court on 22 July 2021; *Rollo*, pp. 6 to 31.

[2] *Section 3. Who May Appeal; Period to File Petition.* — (a) x x

(b) A party adversely affected by a decision or resolution of a Division of the Court on a 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.

[3] *Section 2. Cases Within the Jurisdiction of the Court En Banc.* — The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies — Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture.

[4] A.M. No. 05-11-07-CTA.

assailing the *Decision* dated 22 January 2020 [5] ("**assailed Decision**"), and *Resolution* dated 7 June 2021 [6] ("**assailed Resolution**") of this Court's Second Division ("**Court in Division**") in CTA Case No. 9536 entitled *Mitsui & Co., Ltd. (Manila Branch) vs. Commissioner of Internal Revenue.*

THE PARTIES

Petitioner Mitsui & Co., Ltd. (Manila Branch) was a foreign company organized and has existed under the laws of Japan and was licensed by the Securities and Exchange Commission ("**SEC**") under SEC License No. F-000000490. [7] Petitioner primarily engaged in the export, import, and domestic sale of various commodities.[8]

Petitioner was registered with the Bureau of Internal Revenue ("**BIR**") under Certificate of Registration No. OCN 8RC0000017482, with Tax Identification No. 000-166-768-000. Petitioner was a VAT-registered taxpayer. [9]

Respondent is the Commissioner of Internal Revenue ("**CIR**"), with 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.[10] He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

THE FACTS

The following are the undisputed facts, as narrated in the assailed *Decision* of the Court in Division, to wit:[11]

> On February 20, 2015, petitioner filed an Application for Registration Information Update (BIR Form No. 1905) with the Bureau of Internal Revenue (BIR), Revenue District Office (RDO) No. 50-South Makati, for the cessation of petitioner's registration.

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[5] *Rollo*, pp. 37 to 49; penned by Associate Justice Juanito C. Castañeda, with Associate Justice Cielito N. Mindaro-Grulla and Associate Justice Jean Marie A. Bacorro -Villena, concurring.
[6] *Id.*, pp. 51 to 145.
[7] Exhibits "P-1" to "P-3", Division Docket — Vol. III, pp. 1193 to 1214.
[8] Division Docket – Vol. I, p. 77.
[9] Division Docket – Vol. I, p. 115.
[10] Section 4, NIRC, as amended.
[11] Annex "A", Petition for Review, pp. 18 to 27.

Thereafter, on July 26, 2016, petitioner received the Letter of Authority No. eLA201200035889 dated July 21, 2016, authorizing Revenue Officer Moises Besol and Group Supervisor Praxedio Tulio of the said RDO, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from April 1, 2013, to February 20, 2015, pursuant to Sections 6 (A) & 10 (C) of the National Internal Revenue Code of 1997, as amended (1997 NIRC).

On September 23, 2016, petitioner filed an Application for Tax Credits/Refunds (BIR Form No. 1914) with the BIR for VAT refund under Section 112 (B) of the 1997 NIRC, covering the period from April 1, 2008 to March 31, 2015 in the amount of ₱40,645,507.21.

Alleging respondent's inaction on its administrative claim for refund, petitioner filed before this Court the present *Petition for Review* on February 17, 2017.

On April 19, 2017, respondent filed his *Answer*, interposing the following special and affirmative defenses:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

6. Respondent reproduces and repleads all the foregoing allegations insofar as they are relevant to his defenses which are discussed hereunder and incorporates them herein by way of reference and, in addition, most respectfully avers THAT:

7. Petitioner's alleged claim for issuance of tax credit certificate ("**TCC**") is still subject to administrative routinary investigation/examination by the respondent Commissioner of Internal Revenue.

8. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable.

9. Petitioner's claim for refund or issuance of [TCC], if any, in the amount of ₱40,645,507.21, representing alleged excess/unused input VAT due to cancellation of its VAT registration as a result of the closure/cessation of its business operation in the Philippines, covering the period April 1, 2008 to March 31, 2015, were not substantiated by proper documents, such sales invoices, official receipts and others pursuant to Revenue Regulations No. 7-95 in relation to Sections 113 and 237 of the 1997 Tax Code.

10. Petitioner failed to prove that it has no pending internal revenue tax liabilities.

11. Petitioner has no proof of cancellation of VAT registration.

> 12. In an action for refund/credit, the burden of proof is on the petitioner to establish its right to claimed refund and failure to adduce sufficient proof is fatal to the claim for tax refund/credit.
>
> 13. It is incumbent upon petitioner to show that it has complied with the provisions under Section 204 (c) in relation to Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund.
>
> 14. Claims for refund are construed strictly against herein petitioner since the same partakes the nature of exemption from taxation ***(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)*** and as such, they are looked upon with disfavor ***(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)***."

The pre-trial conference was initially set on June 8, 2017. However, upon the respective motion to reset the same filed by the parties, which the Court separately granted, the said pre-trial conference was eventually reset to and held on, August 3, 2017.

The *Pre-Trial Brief (for the Respondent)* was filed on June 16, 2017, while the *Pre-Trial Brief for the Petitioner* was submitted on July 28, 2017.

On August 18, 2017, the parties filed their *Joint Stipulation of Facts and Issues* (JSFI). Thereafter, the Pre-Trial Order dated August 30, 2017 was issued, approving the said JSFI and deeming the termination of the Pre-Trial.

Respondent transmitted the *BIR Records* for the present case on September 19, 2017.

The trial of the case proceeded.

During the trial, petitioner presented the following witnesses: (1) Mr. Masanori Sato, petitioner's former General Manager of the Corporate Planning & Administration Division, and Authorized Representative; (2) Ms. Alona Galang, petitioner's Accounting Staff; and (3) Atty. Adan T. Delamide, the Court-commissioned Independent Certified Public Accountant (ICPA).

On December 5, 2017, the ICPA Report was submitted. On December 7, 2017, the Annexes to the ICPA Report, and four (4) compact discs, containing the scanned copies of the exhibits and schedules attached to the ICPA Report, were submitted.

On March 14, 2018, petitioner filed its *Formal Offer of Evidence*. In the Resolution dated October 4, 2018, the Court admitted petitioner's Exhibits but denied the admission of the following:

> 1. Exhibits "P-5", "P-87", "P-6939" to "P-6947", and "P-7639" to "P-7656", for failure to present their originals for comparison;
>
> 2. Exhibits "P-11", "P-12", "P-13", "P-14", and "P-15", for not being found in the records of the case; and
>
> 3. Exhibit "P-66", for failure of the exhibit formally offered to correspond with the document actually marked.

Consequently, on October 24, 2018, petitioner filed a *Motion for Partial Reconsideration*, praying that the denial of Exhibit "P-66" be reconsidered and the same be admitted as evidence for petitioner. In the Resolution dated December 19, 2018, the Court granted petitioner's *Motion for Partial Reconsideration* and admitted Exhibit "P-66".

On October 25, 2018, respondent filed a *Manifestation*, stating therein that the BIR revenue examiner who handled petitioner's application for refund had no final report; thus, respondent will no longer present any evidence in this case.

Petitioner filed its *Memorandum* on January 24, 2019. Respondent, however, failed to file his memorandum.

In the Resolution dated February 11, 2019, the case was considered submitted for decision.

On 22 January 2020, the Court in Division issued the assailed *Decision*[12] denying the *Petition*. The dispositive portion of which provides:

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

In denying the *Petition for Review*, the Court in Division found that petitioner failed to prove that it has no outstanding internal revenue tax liabilities to be entitled to a tax refund.

[12] Annex "A", Petition for Review, p. 45.

Aggrieved, petitioner filed its *Motion for Reconsideration and/or New Trial* against the assailed *Decision* on 7 February 2020 and its *Manifestation and Motion* on 13 March 2020. Both motions are without respondent's comment.

In a *Resolution* dated 6 November 2020, petitioner's *Motion for New Trial* was granted. Accordingly, the Court in Division admitted the Delinquency Verification dated 6 February 2020 and the Certificate of No Outstanding Liability dated 6 March 2020.

In its *Resolution* dated 7 June 2021, the Court in Division denied petitioner's *Motion for Reconsideration*. The decretal portion reads:

> **WHEREFORE**, premises considered, petitioner's Motion for Reconsideration is **DENIED** for lack of merit.
>
> **SO ORDERED.**

In denying petitioner's *Motion for Reconsideration*, the Court in Division ruled that petitioner fell short in proving its entitlement to the refund claim for failure to establish that it has excess unutilized input taxes as of the fourth quarter of the fiscal year ("**FY**") 2015.

In relation to petitioner's input VAT amortization for the purchase of capital goods, the Court in Division only allowed ₱130,103.40, out of the claimed ₱249,667.71, due to issues in substantiation.

Regarding current purchases, the input VAT of ₱45,961,678.88 was disallowed by the Court in Division for failure to meet the substantiation and invoicing requirements.

PROCEEDINGS BEFORE THE COURT *EN BANC*

On 5 July 2021, petitioner personally filed a *Motion for Extension of Time to File Petition for Review*,[13] which the Court *En Banc* granted in a minute *Resolution* dated 9 July 2021.[14] Accordingly, petitioner was given until 22 July 2021 to file its *Petition for Review*.

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[13] *Rollo*, pp. 1 to 3.
[14] *Id.*, p. 5.

On 22 July 2021, petitioner personally filed its *Petition for Review* before the Court *En Banc.*[15]

On 11 October 2021, a *Resolution* was issued requiring respondent to file a comment on the *Petition for Review* within ten (10) days from receipt of the notice.[16] Per *Records Verification* of the Court's Juridical Records Division dated 4 March 2022, respondent failed to file his comment on petitioner's *Petition for Review.*[17]

Thus, on 22 March 2022, the Court *En Banc* issued a *Resolution* submitting the *Petition* for decision.[18]

Hence, this *Decision.*

ISSUES

Petitioner forwards the sole issue to be resolved by the Court *En Banc* as follows:

> WHETHER OR NOT THE HONORABLE COURT'S SECOND DIVISION ERRED IN RULING THAT PETITIONER HAS NO EXCESS VALID INPUT VAT DUE OR PAID AVAILABLE FOR REFUND AS OF THE FOURTH QUARTER OF THE FISCAL YEAR 2015.

PETITIONER'S ARGUMENTS

Petitioner argues that the Court in Division erred in ruling that it had no excess valid input VAT due or paid available for refund as of the fourth quarter of the FY 2015.

In relation to the Court in Division's disallowance of its input tax from previous periods amounting to ₱31,765,967.81, petitioner avers that its claim for refund arose from input taxes generated from FY 2009 to 2015. As such, petitioner contends that the findings of the Court in Division should be limited only to the period covered by the claim for refund and that there is no need to support prior period excess credits.[19] Petitioner further alleges that it was able to present its quarterly VAT

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[15] *Id.*, pp. 6 to 30.
[16] *Id.*, pp. 150 to 151.
[17] *Rollo*, p. 152.
[18] *Rollo*, pp. 154 to 155.
[19] Petition for Review, par. 39.

returns from 1 April 2008 to 30 June 2008, and such is sufficient proof to substantiate its input tax carryover.[20]

Petitioner further contends that the input tax carryover has not been raised as an issue; thus, the Court in Division has no jurisdiction to tackle such.[21] It likewise argues that the validity of input tax carryover has been subjected to regular investigation by the BIR examiners[22] and that tax returns are presumed correct.[23]

In relation to the computation of the Court in Division, petitioner points out the following errors:

1. The disallowance of input taxes from prior years amounting to ₱17,854,880.31 from the taxable year 2004 is erroneous as the amount did not form part of the input taxes carried over in the taxable year 2009.[24]

2. The disallowance of input taxes amounting to ₱27,209,512.11 is improper for having already been excluded by petitioner in its computation.[25]

3. ₱31,961,907.59 of petitioner's input VAT that was disallowed for failure to comply with invoicing requirements should not have been deducted, considering that these were covered by separate claims for refund not involved in the instant case.[26]

4. The disallowance of input taxes for the taxable year 2005 amounting to ₱2,917,053.81 is likewise improper, for petitioner has shown proof of VAT payment.[27]

5. The disallowance of input taxes amounting to ₱1,131,963.50 is erroneous, for the same was supported by the pertinent BIR Forms No. 1600 and eFPS Payment Details.[28]

[20] *Id.*, pars. 42 to 46.
[21] *Id.*, pars. 57 to 58.
[22] *Id.*, par. 59.
[23] *Id.*, par. 60.
[24] *Id.*, par. 63.
[25] *Id.*, pars. 64 to 70.
[26] *Id.*, pars. 74 to 80.
[27] *Id.*, par. 82.
[28] *Id.*, par. 83.

Accordingly, based on its computation, petitioner claims that it is entitled to a refund in the amount of ₱40,645,507.31.[29]

RULING OF THE COURT *EN BANC*

The instant *Petition* is partly meritorious.

The Court *En Banc* has jurisdiction over the instant Petition.

Before proceeding to the case's merits, a determination must first be made whether the instant *Petition* was timely filed and whether the Court *En Banc* has jurisdiction over this case.

On 22 January 2020, the Court in Division promulgated the assailed *Decision*. The said *Decision* was received by petitioner on 24 January 2020.

On 7 February 2020, petitioner filed a *Motion for Reconsideration and/or New Trial* within the period provided under Section 3(b), Rule 8[30] of RRCTA.

On 7 June 2021, the Court in Division promulgated the assailed *Resolution* denying petitioner's *Motion for Reconsideration*. The said *Resolution* [31] was received by petitioner on 22 June 2021.

As provided under Section 3(b), Rule 8[32] of the RRCTA, petitioner had until 7 July 2021 to file its *Petition for Review* before the CTA *En Banc*.

On 5 July 2021, petitioner filed a *Motion for Extension of Time to File Petition for Review*, which the Court *En Banc* granted in a *Minute Resolution* dated 9 July 2021. Accordingly, petitioner had until 22 July 2021 to file a *Petition for Review*.

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[29] *Id.*, pp. 9 to 13, 29.
[30] *Section 3. Who May Appeal; Period to File Petition.* — (a) x x
(b) A party adversely affected by a decision or resolution of a Division of the Court on a 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.
[31] *Supra* at note 6.
[32] *Supra* at note 30.

The instant *Petition* was filed on 22 July 2021, within the period provided under Section 3(b), Rule 8[33] of the RRCTA, as extended.

Having settled that the *Petition* was timely filed, We likewise rule that the CTA *En Banc* has jurisdiction to take cognizance of this Petition under Section 2(a)(1), Rule 4[34] of the RRCTA.

We now discuss the merits.

The Court in Division erred in declaring that petitioner is not entitled to its claim for refund.

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

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

The above provision was implemented by Section 4.112-1 of Revenue Regulations ("**RR**") No. 16-2005,[35] as amended. Accordingly:

> Section 4.112-1. Claims for Refund/Tax Credit Certificate of Input Tax.
>
> (b) Cancellation of VAT registration
>
> A VAT-registered person whose registration has been cancelled due to retirement from or cessation of business or due to changes in or cessation of status under Sec. 106 (C) of

[33] *Id.*
[34] *Section 2. Cases Within the Jurisdiction of the Court En Banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies — Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;
[35] Consolidated Value-Added Tax Regulations of 2005, 1 September 2005.

> the Tax Code may, within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which he may use in payment of his other internal revenue taxes; **Provided, however, that he shall be entitled to a refund if he has no internal revenue tax liabilities against which the tax credit certificate may be utilized.** [*Emphasis and underscoring supplied.*]

From the provision above, to be entitled to a claim for refund under Section 112(B) of the NIRC of 1997, as amended, we lay down the following requisites for an orderly discussion:

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

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

3. The claimant was a VAT-registered taxpayer;

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

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

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

We discuss each requisite *in seriatim*.

First requisite: The administrative claim for refund has been timely filed by petitioner.

By way of reiteration, Section 4.112-1 of RR No. 16-2005,[36] as amended, provides:

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

> *Section 4.112-1. Claims for Refund/Tax Credit Certificate of Input Tax.*
>
> A VAT-registered person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Sec. 106 (C) of the Tax Code may, **within two (2) years from the date of cancellation**, apply for the issuance of a tax credit certificate for any unused input tax which he may use in payment of his other internal revenue taxes; ... [*Emphasis and underscoring supplied.*]

Records show that petitioner filed an *Application for Registration Information Update* (BIR Form No. 1905) with the BIR RDO No. 50-South Makati to cease its registration on 20 February 2015.[37] Within two years from that date, or on 23 September 2016, petitioner filed an *Application for Tax Credits/Refund* (BIR Form No. 1914).[38]

Thus, We rule that petitioner's administrative claim has been timely filed.

Second requisite: The judicial claim for refund has been timely filed by petitioner.

Section 112(B) of the NIRC of 1997, as amended,[39] provides:

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

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[37] Division Docket, Vol. III, p. 1266.
[38] Division Docket, Vol. III, p. 1282.
[39] Provision quoted is prior to the amendment introduced by Republic Act No. 10963, otherwise known as the Tax Reform for Acceleration and Inclusion ("TRAIN") Act, which is the provision applicable during the time that the judicial claim for refund was filed.

As stated, petitioner filed an *Application for Registration Information Update* (BIR Form No. 1905) to cease its registration on 20 February 2015.[40] Thus, petitioner had two years from such date, or until 20 February 2017, to file its *Petition for Review* before the Court in Division. Petitioner did so on 17 February 2017.[41]

Therefore, We likewise rule that petitioner's judicial claim has been timely filed.

Third requisite: Petitioner is a VAT-registered taxpayer.

In determining whether petitioner is VAT-registered, reference may be made to its *Certificate of Registration* (BIR Form No. 2303).

A perusal of the petitioner's *Certificate of Registration*[42] reveals that it is a VAT-registered taxpayer. As this is undisputed, We rule that the third requisite has been complied with.

Fourth requisite: Petitioner cancelled the claimant's registration due to retirement from or cessation of business, or changes in or cessation of status under Section 106(C) of the NIRC of 1997, as amended.

Section 236(F)(2) of the NIRC of 1997, as amended, enumerates the instances when a VAT-registered person may cancel its registration, to wit:

> *Section 236. Registration Requirements. –*
>
> … …
>
> (F) *Cancellation of Registration. –*
>
> … …

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[40] Division Docket, Vol. III, p. 1266.
[41] *Supra* at note 1.
[42] *Supra* at note 9.

> (2) *Cancellation of Value-Added Tax Registration.* – A VAT-registered person may cancel his registration for VAT if:
>
> (a) ...
>
> (b) **He has ceased to carry on his trade or business and does not expect to recommence any trade or business within the next (12) months**.
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> The cancellation of registration will be effective from the first day of the following month. [*Emphasis and underscoring supplied.*]

On 1 October 2011, petitioner ceased conducting any business and commercial activity in the Philippines. As proof, an *Affidavit of No Operation* dated 26 October 2011, received by the BIR RDO 50, was submitted by petitioner to the Court in Division.[43]

Further, a *Board Resolution* dated 25 December 2014[44] was issued by petitioner's Board of Directors with the following import:

> "**RESOLVED** that the Board authorize Mitsui to abolish its Manila branch effective as of January 19, 2015, and for such purpose, authorize Mitsui to file a petition for its withdrawal of license in the Philippines."

A *Certificate* of the Representative Director, Senior Executive Managing Officer of petitioner was likewise submitted to establish that the Manila Branch ceased business operations effective 19 January 2015.[45]

Finally, as stated, petitioner filed an *Application for Registration Information Update* (BIR Form No. 1905) with the BIR RDO No. 50-South Makati for the cessation of its registration on 20 February 2015.[46]

Resultingly, We hold that petitioner's cancellation of registration as a VAT-registered taxpayer is in order and is compliant with the fourth requisite.

[43] Division Docket, Vol. I., p. 181.
[44] Division Docket, Vol. I., p. 185.
[45] Division Docket, Vol. III., pp. 1262 to 1265.
[46] *Supra* at note 37.

Fifth requisite: Petitioner has no internal revenue tax liabilities against which the tax credit certificate may be utilized.

On 6 February 2020, petitioner secured a *Delinquency Verification* from the BIR Revenue Region No. 8A-Makati City (RR No. 8A) duly signed by OIC-Assistant Chief, Collection Division, Gladys L. Almerido, showing that it has no listed tax liability based on the available records of the region as of the said date.[47]

In addition, on 6 March 2020, Revenue District Officer Thelma D. Mangio of BIR RR No. 8A, Revenue District Office (RDO) No. 50, issued in favor of petitioner a *Certificate of No Outstanding Tax Liability* (BIR Form No. 2320) attesting that it had no outstanding internal revenue tax liability with the BIR on the same date. The certificate further stated that such is "valid for dissolution of the non-individual taxpayer." [48]

With the submission of the *Delinquency Verification* and the *Certificate of No Outstanding Tax Liability,* We hold that petitioner had no internal revenue tax liabilities against which the tax credit certificate may be utilized. Accordingly, it has complied with the fifth requisite.

Sixth requisite: Petitioner has unutilized input VAT.

In the assailed *Resolution,* the Court in Division held that petitioner fell short in proving its entitlement to the refund claim for failure to establish that it has excess unutilized input taxes as of the 4th quarter of FY 2015. Accordingly, out of the ₱132,537,055.80 current input taxes for the period covering FY 2004 to FY 2015, only the amount of ₱86,575,376.92 was duly substantiated by petitioner, as shown below, to wit:

Total current input taxes per VAT Returns FY 2004 to FY 2015	₱132,537,055.80
Less: Disallowances per ICPA findings	1,233,854.53

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[47] Division Docket. Vol. IV, p. 1513.
[48] *Id.*, p. 1521.

Additional disallowances per Court's further verification	44,727,824.35
Valid current input taxes for FY 2004 to FY 2015	**₱86,575,376.92**

The Court in Division further held that while petitioner's valid input VAT of ₱86,705,480.32 is enough to cover the total output taxes due for FY 2004 to FY 2009 amounting to ₱83,622,203.80, the resulting excess input VAT of ₱3,083,276.52 is way lower than the total deductions from input tax for FY 2006 to FY 2012 amounting to ₱27,079,408.71. Consequently, petitioner has no excess valid input VAT available for refund as of the 4th quarter of FY 2015,[49] computed as follows:

Valid amortized input taxes for FY 2007 to FY 2012	₱ 130,103.40
Valid current input taxes for FY 2004 to FY 2015	86,575,376.92
Total valid input taxes for FY 2004 to FY 2015	₱ 86,705,480.32
Less: Total output taxes due for FY 2004 to FY 2009	(83,622,203.80)
Excess valid input taxes, net of output	₱ 3,083,276.52
Less: Total deductions from input tax for FY 2006 to FY 2012	(27,079,408.71)
Net amount as of the 4th quarter of FY 2015	**₱ (23,996,132.19)**

The above computation is a departure from petitioner's computation and claim that it has an excess input VAT of **₱40,645,507.21**. The computation,[50] for comparison, is shown below:

Output VAT			
2009			₱ 47,282,299.40
2010-2015			-
Total output VAT			₱ 47,282,299.40
Less: Input VAT			
2009	₱ 97,808,699.92		
2010	772,612.55		
2011	269,765.47		
2012	153,243.87		
2013	141,357.72		
2014	113,321.95		
2015	86,421.78	₱ 99,345,423.26	
Less: Deductions per VAT returns			
2009	₱ 6,246,455.63		
2010	2,846,660.00		
2011	1,638,375.70		
2012	686,124.52		
2013-2015	-	₱ (11,417,615.85)	(87,927,807.41)
Net refundable amount			**₱ 40,645,508.01**[51]

[49] Division Docket, Vol. IV, p. 1658; Resolution dated 7 June 2021, p. 94.
[50] Petition for Review, pp. 12 to 13.
[51] Claimed amount is P40,645,507.21. The difference of P0.80 is due to computational or typographical errors in petitioner's Petition for Review.

Petitioner's claimed input VAT of ₱99,345,423.26 is broken down as follows:[52]

Year	Input tax from the previous period	Input tax on capital goods exceeding P1,000,000	Transitional input tax	Input tax from current transactions	Total
2009	₱ 16,025,863.70	₱ 607,523.72	₱ 15,740,104.11	₱ 65,435,208.39	₱ 97,808,699.92
2010	-	407,789.00	-	364,823.55	772,612.55
2011	-	208,054.28	-	61,711.19	269,765.47
2012	-	29,126.62	-	124,117.25	153,243.87
2013	-	-	-	141,357.72	141,357.72
2014	-	-	-	113,321.95	113,321.95
2015	-	-	-	86,421.78	86,421.78
Total	₱ 16,025,863.70	₱ 1,252,493.62	₱ 15,740,104.11	₱ 66,326,961.83	₱ 99,345,423.26

Petitioner's claimed deductions per VAT returns of ₱11,417,615.85 are presented[53] as follows:

	Input tax on purchases of capital goods exceeding P1,000,000 deferred for the subsequent period	**VAT refund**	**Total**
FY 2009	₱ 557,581.04	₱ 5,688,874.59	₱ 6,246,455.63
FY 2010	357,855.32	2,488,804.68	2,846,660.00
FY 2011	158,120.60	1,480,255.10	1,638,375.70
FY 2012	8,321.60	677,802.92	686,124.52
FY 2013-15	-	-	-
	₱ 1,081,878.56	₱ 10,335,737.29	₱ 11,417,615.85

Going back to the assailed Resolution, the Court in Division presented how the net refundable amount of **₱40,645,507.21** was derived, *viz.*:

	Exhibit No. (Quarterly VAT Return)		
Input Tax Carried Over from Previous Quarter per 1Q of FY 2004 *(Line 23C)*	"P-66"		₱17,854,880.31
Input Tax on Purchase of Capital Goods Exceeding 1Million amortized from 2Q of FY 2007 to 2Q of FY 2012 *(see Lines 20B, 21D, 23A for FY 2007 to FY 2008 and Lines 20B and 23A for FY 2009 to FY 2012)*	"P-37" to "P-50" "P-79" to "P-85"		
Input Tax on Purchase of Capital Goods Exceeding 1Million per 2Q of FY 2007 *(Line 21D)*	"P-79"	249,667.71	
Less: Input Tax on Purchases of Capital Goods exceeding 1Million deferred for the succeeding period per 2Q of FY 2012 *(Line 23A)*	"P-50"	-	249,667.71

[52] Petition for Review, pp. 9 to 12.
[53] *Id.*, pp. 12 to 13.

Input Taxes incurred from current purchases for the periods:			
FY 2004 *(total of amounts per Lines 23E, 23G, 23I, 23K, 23O)*	"P-66" to "P-69"	₱8,336,830.74	
FY 2005 *(total of amounts per Lines 23E, 23G, 23I, 23K, 23O)*	"P-70" to "P-73"	33,615,929.79	
FY 2006 *(total of amounts per Lines 23E, 23G, 23I, 23O for 1Q and 2Q; total of amounts per Lines 21F, 21H, 21J for 3Q and 4Q)*	"P-74" to "P-77"	7,125,576.05	
FY 2007 *(total of amounts per Lines 21F, 21H, 21J)*	"P-78" to "P-81"	8,531,720.75	
FY 2008 *(total of amounts per Lines 21F, 21H, 21J)*	"P-82" to "P-85"	8,600,036.63	
FY 2009 *(total of amounts per Lines 21F, 21H, 21J)*	"P-37" to "P-40"	65,435,208.37	
FY 2010 *(total of amounts per Line 21J)*	"P-41" to "P-44"	364,823.55	
FY 2011 *(total of amounts per Line 21J)*	"P-45" to "P-48"	61,711.19	
FY 2012 *(total of amounts per Line 21J)*	"P-49" to "P-52"	124,117.28	
FY 2013 *(total of amounts per Line 21J)*	"P-53" to "P-56"	141,357.72	
FY 2014 *(total of amounts per Line 21J)*	"P-57" to "P-60"	113,321.95	
FY 2015 *(total of amounts per Line 21J)*	"P-61" to "P-64"	86,421.78	132,537,055.80
Total Available Input Taxes from FY 2004 to FY 2015			₱150,641,603.82
Less: Output Tax Due for the periods:			
FY 2004 *(total of amounts per Line 19B)*	"P-66" to "P-69"	₱2,278,280.37	
FY 2005 *(total of amounts per Line 19B)*	"P-70" to "P-73"	28,200,021.47	
FY 2006 *(total of amounts per Line 19B)*	"P-74" to "P-77"	1,469,211.64	
FY 2007 *(total of amounts per Line 19B)*	"P-78" to "P-78"	1,649,499.19	
FY 2008 *(total of amounts per Line 19B)*	"P-82" to "P-85"	2,742,899.73	
FY 2009 *(total of amounts per Line 19B)*	"P-37" to "P-39"	₱47,282,291.40	83,622,203.80
Deductions from Input Tax:			
Any VAT Refund/TCC Claimed in 2Q of FY2006 *(Line 25A)*	"P-75"	₱7,149,474.42	
Input Tax on Sale to Gov't. closed to expense in 1Q of FY 2007 *(Line 23B)*	"P-78"	82,824.97	
VAT Refund/TCC claimed in 1Q of FY 2008 *(Line 23D)*	"P-82"	7,450,760.45	
Input Tax allocable to Exempt Sales from 4Q of FY 2006 to 4Q of FY 2008 *(total of amounts per Line 23C)*	"P-77" to "P-85"	2,060,611.58	
VAT Refund/TCC claimed in 4Q of FY 2009 *(Line 23D)*	"P-40"	5,688,874.59	
VAT Refund/TCC claimed in 1Q of FY 2010 *(Line 23D)*	"P-41"	2,488,804.68	
VAT Refund/TCC claimed in 2Q of FY 2011 *(Line 23D)*	"P-46"	1,480,255.10	

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Others per 1Q of FY 2012 [Disallowed input taxes per BIR Audit for FY 2008] *(Line 23E)*	"P-49"	677,802.92	27,079,408.71
Excess Input Taxes as of 4Q of FY 2015			**₱39,939,991.31**
Net of Errors in amounts of input taxes carried over in FYs 2008, 2009 and 2012			705,515.90
Input Tax Carried Over from Previous Period per 4Q of FY 2015			**₱40,645,507.21**

As discussed in the assailed *Resolution* and presented in the above table, the Court in Division found that petitioner had input tax carried over from periods prior to FY 2004 in the amount of ₱17,854,880.31, input tax amortization on capital goods exceeding ₱1million from FY 2007 to FY 2012 in the amount of ₱249,667.71, and current input taxes for FY 2004 to FY 2015 in the amount of ₱132,537,055.80, or a total of ₱150,641,603.82 available input taxes for the period covering FY 2004 to FY 2015.[54]

From the ₱150,641,603.82, the Court in Division deducted the output taxes due for FY 2004 to FY 2009 amounting to ₱83,622,203.80, and the VAT refunds/TCCs claimed and other deductions from input taxes amounting to ₱27,079,408.71 to get the excess input taxes as of the 4th quarter of FY 2015 in the amount of ₱39,939,991.31.

As the Court in Division explained, the excess input taxes is ₱39,939,991.31, but the claimed overpayment (excess input VAT) is ₱40,645,507.21. The resulting difference of ₱705,515.90 refers to errors of input VAT amounts carried over in petitioner's Quarterly VAT Returns for the 2nd and 4th quarters of FY 2008, 3rd quarter of FY 2009, and 2nd quarter of FY 2012.

A cursory perusal of the assailed *Resolution* further reveals the following disallowances from the claimed excess input VAT of ₱40,645,507.21, to wit:

1. Input tax carried over from previous quarter (per 1Q of FY 2004) amounting to ₱17,854,880.31, which was disallowed because petitioner failed to present any document to substantiate the same;[55]

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[54] Division Docket, Vol. IV, p. 1580; Assailed Resolution, p. 16.
[55] *Id.*, p. 19.

2. Input tax on purchases of capital goods amounting to ₱119,564.31, which was disallowed for being supported by documents other than VAT ORs and invoices;[56]

3. Input VAT amounting to ₱1,233,854.53 (₱1,328,680.55 less ₱94,826.02), which was disallowed for failure to meet the substantiation and invoicing requirements based on the findings of the ICPA;[57] and

4. Input VAT in the amount of ₱44,727,824.35, which was likewise disallowed for failure to comply with the substantiation and invoicing requirements.[58]

Given the noted disallowances, the Court in Division concluded that petitioner had no excess unutilized input VAT as of the 4th quarter of FY 2015 available for refund, *viz.*:

Amount Claimed		₱40,645,507.21
Less: Disallowances		
Input tax carried over per 1Q of FY 2004	₱17,854,880.31	
Input tax on purchases of capital goods	119,564.31	
Disallowances per ICPA findings	1,233,854.53	
Additional Disallowances per Court's verification	44,727,824.35	63,936,123.50
		(₱23,290,616.29)
Net of Errors in amounts of input taxes carried over in FYs 2008, 2009 and 2012		(705,515.90)
		(₱23,996,132.19)

The Court *En Banc* shall now determine whether petitioner has unused or unutilized input VAT available for refund as of the 4th quarter of FY 2015.

In assailing the *Resolution* of the Court in Division, petitioner alleges, in its *Petition for Review* before this Court, that:

> 34. Based on the assailed Resolution, the CTA Second Division deducted from the claim the amount of P17,854,880.31, which was shown in the VAT Return for taxable year 2004 as unutilized taxes from periods prior to taxable year 2004.

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[56] *Id.*, pp. 19 to 20.
[57] *Id.*, p. 22.
[58] *Id.*, pp. 22 to 93.

35. In addition, the CTA Second Division denied input taxes on purchases of capital goods from Tasei Philippines Const. Co. amounting to P119,564.31 for lack of supporting documents.

36. The CTA Second Division further disallowed P 44,727,824.35 from input taxes because of lack of supporting documents.

37. WITH ALL DUE RESPECT, the petitioner takes exception to the foregoing ruling of the Honorable CTA Second Division and avers that petitioner has excess valid input VAT due or paid available for refund as of the 4th quarter of FY 2015.

38. It should be emphasized that the claim for refund of the petitioner in the instant case came from the input taxes during the fiscal years 2009 to 2015, as shown below: ...

39. The above computation shows that the claim for refund of petitioner arose from Input Taxes generated from the period Fiscal Years 2009 to 2015. ... **Thus, there is no need to support the prior period excess credits.**

40. In Annex C of the ICPA Report and Annex C-1 (Quarterly Summary of VAT Returns), petitioner carried over to taxable year 2009 certain input taxes from previous periods amounting to P31,765,967.81 ... :

Input tax carryover in 1Q FY 2019 VAT return	₱ 16,025,863.70
Add: Transitional input tax in the nature of input tax carryover	15,740,104.11
Total	₱ 31,765,967.81

41. As explained in the ICPA Report, the transitional input tax of ₱15,740,104.11 came from the accumulated unutilized input taxes as of October 31, 2005 amounting to ₱25,467,529.24, which was required to be presented in the "Transitional Input Tax" section of the VAT Return because of the change of the VAT Return format ... .

42. The input tax carried over from the previous period amounting to P16,025,863.70 is duly supported by the Quarterly VAT Return for the period April 1, 2008 to June 30, 2008.

... ...

45. Considering that the petitioner has presented evidence and has indeed testified as to the validity and existence of the input tax carried over from the previous period, **it becomes the burden of the respondent to prove otherwise, that is, the input tax carried over from the previous period is not valid and non-existent.**

46. **Such documentary and testimonial evidence were never disputed nor testified against by the respondent.**

[initials]

> 47. **Such failure of the respondent to present evidence on the invalidity and absence of the input tax carried over from the previous period should work against the respondent and not against the petitioner.**
>
> ... ...
>
> 49. ...**In the instant case, the petitioner has presented sufficient evidence that it has input tax carried over from the previous period.** The burden of evidence thus shifted to the BIR who has the burden to show that the petitioner's input tax carried over from the previous period does not exist or is invalid.
>
> 54. ...Nevertheless, **the respondent, in the instant case, failed to present any evidence to dispute the presumption that petitioner's input VAT carried over from previous period is valid and existing.**
>
> 57. On another note, it must be emphasized that **the input tax carried over from previous periods is not an issue in the case at bar**. ...
>
> 58. ...To rule on the validity of the input VAT carryover from previous period is outside the jurisdiction of the Honorable CTA Second Division since it was never raised as an issue in the proceedings before it.
>
> 59. More importantly, **the validity of the input VAT carried-over from previous periods is already the subject of the regular investigation by the BIR examiners** of the books of accounts and other accounting records by the petitioner for the periods in question. The corresponding Letter of Authority issued by the BIR ... **carries with them the verification as to the existence and validity of the input VAT carried over for the period for which the said input VAT carried over originated.** [*Emphasis supplied.*]

Despite notice, respondent failed to file his comment on the Petition for Review.[59]

As regards petitioner's contention that the input tax carried over from previous periods has not been raised as an issue and, thus, should not have been tackled by the Court in Division, it has long been settled that the CTA has the authority to rule on any issues not raised by the parties that are necessary for an orderly disposition of the case. Such authority was affirmed in *Commissioner of Internal Revenue vs. Lancaster*

[59] Court *En Banc* Resolution dated March 22, 2022, pp. 154 to 155.

Philippines, Inc.[60] where the Supreme Court, citing Section 1, Rule 14 of the RRCTA,[61] held that:

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

Given the above pronouncement, We rule that the Court in Division is empowered to examine petitioner's input VAT carryover even if not raised as an issue by the parties.

We shall now determine whether the Court in Division's disallowance of petitioner's input VAT carryover in the amount of ₱17,854,880.31 is proper.

We reexamine.

A. <u>The disallowance of the ₱17,854,880.31 input tax carried over from the previous period is improper.</u>

Section 110(A)(1) of the NIRC of 1997, as amended, clearly provides that any **input tax shall be creditable against the output tax <u>only if it is evidenced by a VAT invoice or official receipt</u>**. The relevant portion of the law reads:

[60] G.R. No. 183408, July 12, 2017.
[61] **SEC. 1.** *Rendition of judgment.* —

... ...

In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.

... ...

> Section 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: ... [*Emphasis and underscoring supplied.*]

Indeed, the above provision did not distinguish between input tax from current transactions and input tax carried over from previous quarters. Therefore, the requirement of substantiating with VAT invoices or official receipts applies to creditable input tax in general.

However, in the recent case of *Chevron Holdings, Inc. (formerly Caltex (Asia) Limited) v. Commissioner of Internal Revenue* ("*Chevron* case"),[62] the Supreme Court held that it was improper for this Court to require Chevron to substantiate its excess input tax carryover as it is not a requirement for entitlement to a refund of unused or unutilized input VAT attributable to zero-rated sales, *viz.*:

> All told, it was erroneous for the CTA to charge the validated and substantiated input taxes against Chevron Holdings' output taxes first and use the resultant amount as the basis for computing the allowable amount for refund. **The CTA also erred in requiring Chevron Holdings to substantiate its excess input tax carried over from the previous quarter as it is not a requirement for entitlement to a refund of unused or unutilized input VAT from zero-rated sales.**
>
> We reiterate that although the burden of proof to establish entitlement to a refund is on the taxpayer-claimant, the Court has consistently held that once the minimum statutory requirements have been complied with, the claimant should be considered to have successfully discharged their burden to prove its entitlement to the refund. **After the claimant has successfully established a *prima facie* right to the refund by complying with the requirements laid down by law, the burden is shifted to the opposing party, i.e., the BIR, to disprove such claim.** Otherwise, we would unduly burden the taxpayer-claimant with additional requirements which have no statutory nor jurisprudential basis. In the present case, **Chevron Holdings sufficiently proved compliance with all the requisites for entitlement to a refund or credit of unutilized input tax allocable to zero-rated sales under Section 112 (A) of the Tax Code.** [*Emphasis and underscoring supplied.*]

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

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

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

> SEC. 112. Refunds or Tax Credits of Input Tax. -
>
> (A) Zero-rated or Effectively Zero-rated Sales. - Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, **to the extent that such input tax has not been applied against output tax**: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales. Provided, finally, That for a person making sales that are zero-rated under Section 108(B) (6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales. [*Emphasis and underscoring supplied.*]

On the other hand, Section 112(B) of the same law provides:

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

The input tax refunds or credits under Sections 112(A) and 112(B) pertain to **unutilized or unused input tax**. Section 112(A) allows a refund or credit of input tax attributable to zero-rated or effectively zero-rated sales to the extent that such input tax has not been applied against output tax, while Section 112(B) allows a refund[63] or credit of any unused input tax due to retirement from or cessation of business.

Although based on different refundable transactions or events, the similarities in phraseology constrain this Court to apply the Supreme Court ruling in *Chevron* to the present case.

In the instant case, We note that petitioner's voluminous exhibits extend to VAT returns, invoices, and official receipts as far back as the first quarter of FY 2004. Likewise, We note that its first quarter VAT return for FY 2004 contains the input tax carried over from the previous quarter in the amount of ₱17,854,880.31. [64] The Court in Division ruled that this amount, which affects the accumulated amount of input VAT up to FY 2009, must be proven by VAT official receipts and invoices in accordance with Section 110(A)(1) of the NIRC of 1997, as amended. However, petitioner failed to do so, causing the Court in Division to disallow the same in accordance with the prevailing jurisprudence at that time.

Petitioner contends that there is no need to support prior period excess credits; [65] that it has presented sufficient evidence as to the validity and existence of the input tax carried over from the previous period;[66] that the burden of evidence shifted to respondent to prove otherwise, that is, that the input tax carried over from the previous period is invalid and non-existent;[67] that such documentary and testimonial evidence were never disputed nor testified against by respondent;[68] that the failure of respondent to present evidence on the invalidity and absence of the input tax carried over from the previous period should work against respondent and not against petitioner.[69]

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[63] Sec. 4.112-1 (b), Revenue Regulation No. 16-2005, issued on September 1, 2005, implementing Section 112 (B) of the NIRC of 1997, as amended.
[64] Exhibit No. P-66; Division Docket Vol. III, p. 1345.
[65] Petition for Review, par. 39.
[66] *Id.*, pars. 40 to 45.
[67] *Id.*, pars. 45 and 49.
[68] *Id.*, par. 46.
[69] *Id.*, par. 47.

Petitioner further argues that the input tax carried over from the previous quarter need not be substantiated because its validity "has been subjected to regular investigation by the BIR examiners" and the "tax returns are presumed correct."[70]

Petitioner submits that the disallowance of ₱17,854,880.31 is erroneous since this was already utilized to pay output taxes in prior years and did not form part of the input taxes carried over in FY 2009.

To recall, the Court in Division disallowed the amount of ₱17,854,880.31 input tax carried over from the previous quarter (per 1Q of FY 2004) for the failure of petitioner to substantiate the same with VAT official receipts and invoices in accordance with Section 110(A)(1) of the NIRC of 1997, as amended.

However, records reveal that petitioner sufficiently proved, through the presentation and admission by the Court in Division of its 1st Quarterly VAT Return for FY 2004,[71] that it had unused input taxes amounting to ₱19,331,915.12 which includes the said ₱17,854,880.31 input tax carried over from the previous period in line item 23C of the Return. The validity and existence of the unused input taxes were never disputed by respondent, who did not interpose any objection to the admission of petitioner's Exhibit P-66 and who failed to present any evidence, testimonial, or documentary that would controvert petitioner's entitlement to a refund.

Following the ruling of the Supreme Court in the *Chevron* case, the Court *En Banc* finds the disallowance of the ₱17,854,880.31 input tax carried over from the previous period improper.

B. The disallowance of the ₱119,564.31 input tax on capital goods exceeding ₱1,000,000 is proper.

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[70] *Id.*, pars. 59 to 60.
[71] Exhibit No. P-66; Division Docket Vol. III, p. 1345; Formal Offer of Evidence, I, p. 1177; Second Division Resolution in CTA Case No. 9536 dated December 19, 2018, admitting Exhibit No. P-66., p. 1430.

The assailed *Resolution* provides that petitioner's total input tax on capital goods exceeding ₱1 Million amounted to ₱249,667.71.[72]

The amount was broken down as follows:[73]

OR/Inv. No.	Supplier Name	Input VAT	
7878/3453	Nesic Philippines, Inc.	₱ 7,541.70	
3485/7906	Nesic Philippines, Inc.	2,520.00	
3493/7911	Nesic Philippines, Inc.	7,541.70	₱ 17,603.40
1627/2410	Taisei Philippines Const. Co.	₱ 112,500.00	
No OR/Inv	Taisei Philippines Const. Co.	105,305.10	
No OR/Inv	Taisei Philippines Const. Co.	14,259.21	232,064.31
Total			₱ 249,667.71

As the Court in Division found, only the input VAT on purchases from Nesic Philippines, Inc. amounting to ₱17,603.40 and Taisei Philippines Const. Co. amounting to ₱112,500.00, or a total of ₱130,103.40, were duly substantiated. Thus, the Court in Division disallowed ₱119,564.31, *viz*:

OR/Inv. No.	Supplier Name	Input VAT
No OR/Inv	Taisei Philippines Const. Co.	₱ 105,305.10
No OR/Inv	Taisei Philippines Const. Co.	14,259.21
Total		₱ 119,564.31

The Court *En Banc* affirms this disallowance.

C. The disallowance of ₱1,233,854.53 input tax on current purchases based on the ICPA findings is proper.

The ICPA noted exceptions amounting to ₱1,328,680.55.[74] The Court in Division noted that ₱94,826.02 of the amount disallowed by the ICPA was already disallowed due to the amount already being considered as input tax amortization. Thus, the adjusted ICPA disallowances amount to ₱1,233,854.53 as shown below:

[72] Exhibit P-41253.
[73] Assailed Resolution, p. 19.
[74] Division Docket, Vol. III, p. 1109; ICPA Report, p. 16.

ICPA disallowances	₱ 1,328,680.55
Less: Input tax amortization erroneously included	(94,826.02)
Adjusted ICPA disallowances	₱ 1,233,854.53

The Court *En Banc* likewise affirms the disallowances made by the ICPA as adjusted by the Court in Division in the amount of ₱1,233,854.53.

D. Input tax on current purchases partially disallowed based on the Court in Division's findings.

The Court in Division disallowed the total amount of ₱44,727,824.35 input VAT for failure to comply with the substantiation and invoicing requirements.

A perusal of the records shows that the disallowed input VAT of ₱31,961,907.59[75] was taken from petitioner's quarterly VAT returns for FY 2004, FY 2005, and FY 2006, while the disallowed input VAT of ₱12,765,916.76 (₱44,727,824.35 *less* ₱31,961,907.59) was based on petitioner's exhibits consisting of VAT official receipts, invoices, schedules, and others that the Court in Division found to be non-compliant with the substantiation and invoicing requirements.

The ₱31,961,907.59 is broken down below:

2Q to 4Q of FY 2004 (total of amounts per Lines 23E, 23G, 23I, 23K, 23O)	₱6,755,248.35
1Q and 4Q of FY 2005 (total of amounts per Lines 23E, 25G, 23I, 23K, 23O)	18,081,083.19
1Q to 4Q of FY 2006 (total of amounts per Lines 23E, 23G, 23I, 23O for 1Q and 2Q; total of amounts per Lines 21F, 21H, 21J for 3Q and 4Q)	7,125,576.05
Input VAT on current purchases and importations (per VAT Return) FY 2004-08	**₱31,961,907.59**

After due examination and considering the ruling in *Chevron,* the Court *En Banc* finds that petitioner has sufficiently proved the validity and existence of the said ₱31,961,907.59 input taxes, which also form part of petitioner's input taxes carried over to the succeeding periods, through the presentation and admission of the VAT returns[76] evidencing the same. It must be stressed that petitioner's

[75] Exhibits P-67 to P-77, Division Docket Vol. III, pp. 1364 to 1367.
[76] *Id.*

documentary and testimonial evidence, offered to prove its unused or unutilized input VAT, was never disputed nor disproved by respondent. Hence, its disallowance is improper.

On the other hand, the Court in Division correctly disallowed the ₱12,765,916.70 input VAT from FY 2004 to 2015, the details of which were provided in the assailed *Resolution*,[77] for petitioner's failure to strictly comply with the invoicing and accounting requirements under Section 113 of the NIRC of 1997, as amended.[78] The Court *En Banc* notes that the Court in Division made these disallowances after a meticulous review of petitioner's exhibits identified by its witnesses, particularly the ICPA.

Failure to comply with the invoicing requirements is sufficient ground to deny the claim for refund or tax credit. The reason for this is simple - only a VAT invoice or official receipt can give rise to input tax; without input tax, there is nothing to refund.[79]

Therefore, considering that input taxes in the total amount of ₱12,765,916.76 (sum of ₱11,511,762.77 from FY 2004 to 2008 and ₱1,254,153.99 from FY 2009 to 2015) refer to purchases supported by documents other than a VAT official receipt or invoice, with VAT official receipt or invoice but contains no BIR Authority to Print, with a non-VAT official receipt or invoice, with VAT official receipt issued not under petitioner's name, among others, these cannot be considered

[77] Computed as ₱44,727,824.35 as seen in p. 93 of the assailed Resolution less ₱31,961,907.59 at note 75.
[78] **SEC. 113.** ***Invoicing and Accounting Requirements for VAT registered Person.*** —
(A) *Invoicing Requirements.*— A VAT-registered person shall issue:
(1) A VAT invoice for every sale, barter or exchange of goods or properties; and
(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.
(B) *Information Contained in the VAT Invoice or VAT Official Receipt.*— The following information shall be indicated in the VAT invoice or VAT official receipt:
(1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);
(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;
(b) If the sale is exempt from value-added tax, the term 'VAT-exempt sale' shall be written or printed prominently on the invoice or receipt;
(c) If the sale is subject to zero percent (0%) value-added tax, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt;
(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: *Provided*, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.
(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and
(4) In the case of sales in the amount of One thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client."
[79] *Supra at note 62.*

valid input taxes that may be refunded or credited in favor of petitioner.

In addition, We have noted an error in the amount carried over on the VAT return for the 4th quarter of FY 2008. Instead of carrying over only ₱28,919,128.95 as provided in the 3rd quarter VAT return for FY 2008, ₱29,695,445.28 was carried over. Accordingly, a further reduction of ₱776,316.33 in the input tax carryover is in order.

<u>Computation of the Court *En Banc* of petitioner's refundable amount</u>

The Court in Division ruled in the assailed Resolution that petitioner is not entitled to a refund of unused input VAT under Section 112(B) of the NIRC of 1997, as amended, considering that it has excess output VAT after deducting the allowable input VAT, net of the noted disallowances.

Considering the application of the *Chevron* case to refunds under Section 112(B) of the NIRC of 1997, as discussed, We recompute the amount refundable to petitioner, if any.

Thus, after a judicious examination of the invoices and receipts and the computation of both parties, We rule that petitioner is entitled to a partial grant of its claim for refund of unused input VAT upon cancellation of registration under Section 112(B) of the NIRC of 1997, as amended.

Petitioner claims that it is entitled to refund the unused or unutilized input VAT in the amount of ₱40,645,507.21. We recompute:

Amount of claim for VAT refund	₱ 40,645,507.21
Less: Input VAT disallowed from FY 2004 to 2008 for failure to comply with substantiation requirements under Section 113 of the NIRC	(11,511,762.77)
Less: Error in carrying over in 4Q FY 2008 VAT return	(776,313.33)
Less: Disallowed input VAT on the purchase of capital goods, 1Q FY 2009	(119,564.31)
Less: Disallowances by the ICPA on Input VAT from FY 2009 to 2015	(1,233,854.53)

Less: Disallowances by the Court on Input VAT from FY 2009 to 2015	(1,254,153.99)
Refundable amount	**₱ 25,749,858.28**

Alternatively presented, in line with the presentation of the Court in Division for ease of comparison is the table/matrix showing refundable amount to petitioner as computed by the Court in Division and the Court *En Banc*, to wit:

			Petitioner's claim of refund	Adjustments made by the Court in Division and the ICPA	Balances per the assailed Resolution	Adjustments made by the Court En Banc	Court En Banc's recomputation of petition[er's] refundable amount
INPUT TAXES							
	Input Tax carried over per 1Q of FY 2004		17,854,880.31	-17,854,880.31	-	17,854,880.31	17,854,880
	Input Tax on purchases of capital goods		249,667.71	-119,564.31	130,103.40		130,103
	Disallowances based on the ICPA findings			-1,233,854.53	-1,233,854.53		-1,233,854
	Disallowances made by the Court in Division			-44,727,824.35	-44,727,824.35	31,961,907.59	-12,765,916
	Discrepacny in the amount of input tax carry over for the 3rd quarter of FY 2008				-	776,316.33	-776,316
	2004	8,336,830.74			8,336,830.74		8,336,830
	2005	33,615,929.79			33,615,929.79		33,615,929
	2006	7,125,576.05			7,125,576.05		7,125,576
	2007	8,531,720.75			8,531,720.75		8,531,720
	2008	8,600,036.63			8,600,036.63		8,600,036
	2009	65,435,208.37			65,435,208.37		65,435,208
	2010	364,823.55			364,823.55		364,823
	2011	61,711.19			61,711.19		61,711
	2012	124,117.28			124,117.28		124,117
	2013	141,357.72			141,357.72		141,357
	2014	113,321.95			113,321.95		113,321
	2015	86,421.78			86,421.78		86,421
		132,537,055.80	132,537,055.80				
Total Input Taxes			150,641,603.82	-63,936,123.50	86,705,480.32	49,040,471.57	135,745,951
OUTPUT TAX DUE							
	2004	2,278,280.37					
	2005	28,200,021.47					
	2006	1,469,211.64					
	2007	1,649,499.19					
	2008	2,742,899.73					
	2009	47,282,291.40					
Total Output Taxes		83,622,203.80	83,622,203.80		83,622,203.80		83,622,203
Excess input (Output) Taxes			67,019,400.02		3,083,276.52		52,123,748
DEDUCTIONS FROM INPUT TAX							
	VAT REFUND /TCC Claim 2Q of FY 2006	7,149,474.42					
	Input tax on sale to Gov't	82,824.97					
	VAT REFUND /TCC Claim 1Q of FY 2008	7,450,760.45					
	Input tax on EXEMPT SALES	2,060,611.58					
	VAT REFUND /TCC Claim 4Q of FY 2009	5,688,874.59					
	VAT REFUND /TCC Claim 1Q of FY 2010	2,488,804.68					
	VAT REFUND /TCC Claim 2Q of FY 2011	1,480,255.10					
	Disallowed	677,802.92					
		27,079,408.71	27,079,408.71		27,079,408.71	-	27,079,408
			39,939,991.31		-23,996,132.19		25,044,339
	Errors in amount carried over		705,515.90		705,515.90		705,515
REFUNDABLE AMOUNT			40,645,507.21	-	-23,290,616.29		25,749,855

The presentation above belies petitioner's contention that the Court in Division erroneously made double deductions on petitioner's input VAT allocable to exempt sales and government sales and VAT refunds in the amount of ₱27,079,408.71.

It bears stressing that a claimant has the burden of proof to establish the factual basis of his or her claim for a tax credit or refund.[80] Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[81] The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[82]

Conversely, although the burden of proof to establish entitlement to a refund is on the taxpayer-claimant, the Court has consistently held that once the minimum statutory requirements have been complied with, the claimant should be considered to have successfully discharged their burden to prove its entitlement to the refund. After the claimant has successfully established a *prima facie* right to the refund by complying with the requirements laid down by law, the burden is shifted to the opposing party, *i.e.*, the BIR, to disprove such claim. Otherwise, we would unduly burden the taxpayer-claimant with additional requirements which have no statutory nor jurisprudential basis.[83]

As in ordinary civil cases, a refund or tax credit claim necessitates only the preponderance-of-evidence threshold.[84] Petitioner proved its partial entitlement by preponderant evidence.

WHEREFORE, in light of the foregoing, the instant *Petition for Review* is **PARTIALLY GRANTED**.

Accordingly, the Assailed *Decision* dated 22 January 2020 and the Assailed *Resolution* dated 7 June 2021 of the Court's Second Division in CTA Case No. 9536 are **REVERSED** and **SET ASIDE**.

Respondent Commissioner of Internal Revenue is **ORDERED** to refund[85] in favor of Mitsui & Co., Ltd. (Manila

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[80] *Citibank, N.A. vs. Court of Appeals*, G.R. No. 107434, 10 October 1997, 345 SCRA 695-713.
[81] *Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc.*, G.R. No. 127105, 25 June 1999, 368 SCRA 388-411.
[82] *Kepco Philippines Corp. vs. Commissioner of Internal Revenue*, G.R. No. 179961, 31 January 2011, 656 SCRA 68-86.
[83] *Chevron Holdings, Inc. v. Commissioner of Internal Revenue*, G.R. No. 215159, 5 July 2022.
[84] *Id.*
[85] Section of 4.112-1 of Revenue Regulations No. 16-2005, as amended, provides:
(b) Cancellation of VAT registration
A VAT-registered person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Sec. 106 (C) of the Tax Code may, within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which he may use in payment of his other internal revenue taxes: Provided, however, **that he shall be entitled to a refund if he has no internal revenue tax liabilities against which the tax credit certificate may be utilized**. [*Emphasis and underscoring supplied.*]

Branch) the total amount of Twenty Five Million Seven Hundred Forty-Nine Thousand Eight Hundred Fifty-Eight Pesos and 28/100 (₱25,749,858.28), representing unutilized input tax of petitioner.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

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

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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

CORAZON G. FERRER-FLORES
Associate Justice

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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

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

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

Present:

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

Promulgated:
APR 18 2023
4:05pm

x - x

DISSENTING OPINION

BACORRO-VILLENA, J.:

With all due respect to my esteemed colleague, Hon. Associate Justice Lanee S. Cui-David, I register my dissent to the *ponencia* as it (1) partially grants the present Petition for Review[1] filed by petitioner Mitsui & Co., Ltd. (Manila Branch) (**petitioner/Mitsui**) against respondent Commissioner of Internal Revenue (**respondent/CIR**); (2) reverses and sets aside the Second Division's Decision dated 22 January 2020[2] (**Assailed Decision**) and Resolution dated 07 June 2021[3] (**Assailed Resolution**) in CTA Case No. 9536; and thereby, (3) orders the refund in favor of petitioner the total amount of

1 *Rollo*, pp. 6-148, with annexes.
2 Division Docket, Volume IV, pp. 1472-1484.
3 Id., pp. 1565-1659.

₱25,820,655.71, representing excess and unutilized input Value-Added Tax (VAT).

To recall, in the Assailed Decision[4], the Court's Second Division denied petitioner's original Petition for Review, after finding that **petitioner failed to prove that it has no outstanding internal revenue tax liabilities** to be entitled to a tax refund of its **excess and unutilized input taxes** covering the period **01 April 2008 to 31 March 2015** in the amount of **₱40,645,507.21** due to the **cancellation of its VAT registration** under **Section 112(B)**[5] **of the NIRC of 1997, as amended.**

Later, in the Resolution dated 06 November 2020[6], the Court's Second Division granted petitioner's Motion for New Trial[7] (**MNT**) and admitted the **Delinquency Verification dated 06 February 2020**[8] and the **Certificate of No Outstanding Liability dated 06 March 2020**[9]. Nonetheless, in the Assailed Resolution[10], the Second Division still denied petitioner's Motion for Reconsideration[11] (**MR**) of the Assailed Decision[12] for lack of merit, after finding that petitioner fell short in proving its entitlement to the refund claim as it **failed to establish that it has excess and unutilized input taxes as of the 4th quarter of FY 2015 [the *6th* and *last* requisite for the successful claim of input VAT refund under Section 112(B)**[13] **of the NIRC of 1997, as amended]**, as shown below:

Amount Claimed		**₱40,645,507.21**
Less: Disallowances		
Unsubstantiated Input VAT on Current Purchases and Importations (Carried Over to the Succeeding Periods) *per* Quarterly VAT Returns for FYs 2004-2006	₱31,961,907.59	
Unsubstantiated Input VAT Carried Over in the 1st Quarter of FY 2004	17,854,880.31	
Unsubstantiated Input VAT from FYs 2004-2008	11,511,762.77	
Unsubstantiated Input VAT from FYs 2009-2015	1,254,153.99	
Disallowances *per* ICPA findings, as adjusted	1,233,854.53	

4 Supra at note 2.
5 **SEC. 112.** *Refunds or Tax Credits of Input Tax.* —
...
(B) *Cancellation of VAT Registration.* — ...
6 Division Docket, Volume IV, pp. 1529-1538.
7 Included in petitioner's "Motion for Reconsideration and/or New Trial", id., pp. 1485-1513, with annexes.
8 Exhibit **"P-56211"**, id., p. 1546.
9 Exhibit **"P-56212"**, id., p. 1547.
10 Supra at note 3.
11 Included in petitioner's "Motion for Reconsideration and/or New Trial", supra at note 7.
12 Supra at note 2.
13 Supra at note 5.

Unsubstantiated Input VAT on Purchases of Capital Goods	119,564.31	63,936,123.50
		(₱23,290,616.29)
Less: Errors in Amounts of Input Taxes Carried Over in FYs 2008, 2009 and 2012 (Overstatement of Input Tax Carryover)		₱705,515.90
Net Amount as of the 4th Quarter of FY 2015		**(₱23,996,132.19)**

In the *ponencia*, however, the Court *En Banc* reverses and sets aside the Assailed Decision[14] and Resolution[15] after finding that **petitioner had excess and unutilized input VAT as of the 4th Quarter (from 01 January 2015 to 31 March 2015) of the fiscal year (FY) 2015** as a result of applying **by analogy** the Supreme Court's ruling in the recent case of *Chevron Holdings, Inc. v. Commissioner of Internal Revenue*[16] (**Chevron**).

In *Chevron*, the Supreme Court declared that a taxpayer-claimant should not be required to substantiate its excess input tax carryover as it is *not* a requirement for entitlement to a refund of unused or unutilized input VAT attributable to zero-rated sales pursuant to Section 112(A)[17] of the National Internal Revenue Code (**NIRC**) of 1997, as amended. Due to the **similarities in phraseology** between **Section 112(A)** and **Section 112(B)**[18] of the NIRC of 1997, as amended, the *ponencia* deemed improper the following disallowances:

(1) **Input VAT carried over from a prior period** of **₱17,854,880.31** for petitioner's failure to substantiate the same; and,

(2) **Input VAT on current purchases and importations for FYs 2004-2006** of **₱31,961,907.59** **(out of the total ₱44,727,824.35)** for petitioner's failure to comply with the substantiation and invoicing requirements (considering that such amount already forms part of petitioner's input taxes carried over to the succeeding periods).

I, respectfully, beg to differ.

14 Supra at note 2.
15 Supra at note 3.
16 G.R. No. 215159, 05 July 2022.
17 **SEC. 112.** *Refunds or Tax Credits of Input Tax.* —
(A) *Zero-rated or Effectively Zero-rated Sales.* — ...
18 Supra at note 5.

For the reasons essayed below, I submit that *Chevron* cannot be applied to the present case and thus, the Court *En Banc* should affirm the Assailed Decision[19] and Resolution.[20]

CHEVRON IS NOT ON ALL FOURS WITH THE PRESENT CASE AND DOES NOT APPLY TO THE PRESENT CASE

The principle established in *Chevron* that a taxpayer-claimant should no longer be required to substantiate its excess input tax carryover from a prior period cannot be applied since there are significant differences between *Chevron* and the present case besides the fact that the refund claim under the former is based on **Section 112(A)**[21] of the NIRC of 1997, as amended, and the latter on **Section 112(B)**[22] of the same law.

Firstly, in terms of the nature of the excess and unutilized input VAT sought to be refunded, *Chevron* deals with that **attributable to zero-rated or effectively zero-rated sales** under Section 112(A). In contrast, herein petitioner's claim pertains to **any unused input VAT** as it is anchored on Section 112(B), which governs the refund of excess and unutilized input VAT due to **cancellation of VAT registration.**

Secondly, as to the period covered by the refund claim, the taxpayer-claimant in *Chevron* seeks the refund of excess and unutilized input VAT for a **specific taxable period when the zero-rated or effectively zero-rated sales were made**. Herein petitioner's claim, on the other hand, covers **not only those incurred on transactions from 01 April 2008 to 31 March 2015 (*i.e.*, FYs 2009-2015), the alleged period of claim, but also those incurred prior thereto** as the subject matter of a refund claim under Section 112(B) refers to any unused input VAT accumulated as of the filing of its application for cessation of registration or permanent closure of business in the Philippines.

Thirdly, the mandatory requirements for refund under Section 112(A) and Section 112(B) are different and such requirements under the latter provision were not discussed or touched upon in *Chevron*. As to the substantiation requirement in particular, the Supreme Court ruled in *Chevron* that **the taxpayer-claimant is not required to substantiate its excess input tax carryover from a prior period** precisely because the refund claim

19 Supra at note 2.
20 Supra at note 3.
21 Supra at note 17.
22 Supra at note 5.

under Section 112(A) only covers the specific taxable period when the zero-rated or effectively zero-rated sales were made. To be clear, the same does not hold true in a refund claim under Section 112(B) since, as aforesaid, the coverage thereof necessarily includes unused input taxes from prior periods. It thus follows that **herein petitioner must substantiate its excess input tax carryover from prior periods** because it is one of the requisites for such portion of the claim to be refundable.

Thus, notwithstanding the similarities in phraseology as highlighted in the *ponencia*, the Court *En Banc* is precluded from applying the ruling in *Chevron* to the herein case.

APPLYING *CHEVRON* TO THE PRESENT CASE SETS A DANGEROUS PRECEDENT

Applying *Chevron* to the present case also sets a dangerous precedent because to resolve it in the light of the said case would, in effect, unwittingly create an avenue for taxpayers to recover excess and unutilized input VAT without having to comply with the substantiation requirement.

At the outset, it is well-settled that in order for input taxes to be available as tax credits, the same must be substantiated and reflected in the VAT return of the taxpayer as required under Section 4.110-8(a) of Revenue Regulations (**RR**) No. 16-2005[23], *viz*:

> ...
> SECTION 4.110-8. *Substantiation of Input Tax Credits.* —
>
> (a) **Input taxes** for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, **must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau**:
>
> (1) For the importation of goods – **import entry or other equivalent document** showing actual payment of VAT on the imported goods.
>
> (2) For the domestic purchase of goods and properties – **invoice** showing the information required under Secs. 113 and 237 of the [NIRC of 1997, as amended].

23 Consolidated Value-Added Tax Regulations of 2005.

> (3) For the purchase of real property - **public instrument** *i.e.*, deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with VAT invoice issued by the seller.
>
> (4) For the purchase of services - **official receipt** showing the information required under Secs. 113 and 237 of the [NIRC of 1997, as amended].[24]
>
> ...

Clearly from the foregoing, input tax credits must be evidenced by VAT invoices (for domestic purchases of goods or properties) or official receipts (**ORs**) (for domestic purchases of services) issued in accordance with Sections 113[25] and 237[26] of the NIRC of 1997, as amended.

Thus, in order for a judicial claim for refund to prosper, the taxpayer-claimant must not only prove that it is a VAT-registered entity and that it filed its claims within the prescriptive period, it must also substantiate the input VAT paid by purchase invoices or ORs. This would mean that the application for tax refund must be accompanied not only by copies of the taxpayer-claimant's VAT returns for the taxable period concerned but also of the purchase invoices or ORs evidencing that input taxes were incurred or paid.

As held in *Commissioner of Internal Revenue v. Manila Mining Corporation*[27], "[w]hile the CTA is not governed strictly by technical rules of evidence, as rules of procedure are not ends in themselves but are primarily intended as tools in the administration of justice, the presentation of the purchase receipts and/or invoices is not mere procedural technicality which may be disregarded considering that it is the only means by which the CTA may ascertain and verify the truth of [the taxpayer's claim for refund]." It is thus incumbent upon the taxpayer-claimant to substantiate each and every component of its claim for refund of creditable input tax, including those carried over from prior periods.

Ergo, if the Court *En Banc* were to grant herein petitioner a refund arising from unsubstantiated excess input tax carryover from prior periods as the Supreme Court did in *Chevron*, it would then be giving similarly situated taxpayers an option to accumulate and carry over creditable input taxes and later recover the same under Section 112(B)[28] of the NIRC of 1997, as amended, because, in doing so, they will not be required to comply with the

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[24] Emphasis supplied.
[25] **SEC. 113.** *Invoicing and Accounting Requirements for VAT-Registered Persons.* —
[26] **SEC. 237.** *Issuance of Receipts or Sales or Commercial Invoices.* —
[27] G.R. NO. 153204, 31 August 2005.
[28] Supra at note 5.

substantiation requirement. Indeed, such an interpretation would be contrary to law and jurisprudence, and must be avoided.

Having established the inapplicability of *Chevron* to the present case, the Court *En Banc* must uphold the Second Division's finding that petitioner fell short in proving its entitlement to the refund claim for failure to establish that it has excess unutilized input taxes as of the 4th quarter of FY 2015. Accordingly, the denial of the present claim for refund stands.

On another note, I also wish to clarify that the two (2)-year prescriptive period under Section 112(B)[29] of the NIRC of 1997, as amended, should be reckoned **from 01 March 2015, the first day of the following month** from the time petitioner filed its written application for cancellation of registration with the Revenue District Office where it is registered, in accordance with Section 236(F)(1) and (2)(b)[30] of the NIRC of 1997, as amended (and *not* from 20 February 2015, the date when petitioner filed its Application for Registration Information Update [BIR Form No. 1905][31] as stated in the *ponencia*).

With the above disquisitions, I vote to **DENY** the instant Petition for Review[32] and **AFFIRM** the Assailed Decision[33] and Resolution[34] of the Second Division in CTA Case No. 9536, entitled *Mitsui & Co., Ltd. (Manila Branch) v. Commissioner of Internal Revenue.*

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

---

29 Supra at note 5.

30 **SEC. 236.** *Registration Requirements.* —

...

(F) *Cancellation of Registration.* —

(1) *General Rule.* — **The registration of any person who ceases to be liable to a tax type shall be cancelled upon filing with the Revenue District Office where he is registered, an application for registration information update in a form prescribed therefor;**

(2) *Cancellation of Value-Added Tax Registration.* — A VAT-registered person may cancel his registration for VAT if:

...

(b) **He has ceased to carry on his trade or business, and does not expect to recommence any trade or business within the next twelve (12) months.**

The cancellation of registration will be effective from the first day of the following month. (Emphasis supplied.)

31 Exhibit **"P-31"**, Division Docket, Volume III, p. 1266.

32 Supra at note 1.

33 Supra at note 2.

34 Supra at note 3.