REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PACIFIC PLAZA CONDOMINIUM CORPORATION, *Petitioner,*	**CTA *EB* No. 2769** (CTA Case No. 10199)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	
	Promulgated: OCT 01 2025 3:28 pm

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RESOLUTION

MANAHAN, *J.*:

Before the Court is petitioner's *Motion for Reconsideration (Re: En Banc Decision dated March 18, 2025)* filed through registered mail on April 10, 2025 and received by the Court on April 21, 2025 ("***Motion for Reconsideration***"),[1] with respondent's comment filed though registered mail on May 26, 2025 and received by the Court on May 29, 2025.[2]

Petitioner seeks that the Court set aside its *Decision* dated March 18, 2025 ("**assailed *Decision***"),[3] and order respondent to refund petitioner the amount of at least P1,666,589.79 representing its erroneously paid value-added tax ("**VAT**") for the 3rd and 4th quarters of calendar year ("**CY**") 2017.

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[1] *EB* Docket, pp. 146-158.
[2] *Comment/Opposition [To Petitioner's Motion for Reconsideration (Re: En Banc Decision dated March 18, 2025)], id.* at pp. 163-171.
[3] *EB* Docket, pp. 83-99.

In its *Motion for Reconsideration*, petitioner argues as follows: *first*, considering that petitioner is not liable to pay VAT on condominium association dues, it need only show that it paid VAT thereon in order to claim refund under Section 229 of the Tax Code; and *second*, to require petitioner to substantiate the input VAT it utilized to pay its output VAT constitutes indirect judicial assessment, which is proscribed in *Chevron Holdings, Inc. v. Commissioner of Internal Revenue* ("***Chevron***").[4]

In his comment, respondent counterargues that Section 229 of the Tax Code requires actual payment or remittance of the amount claimed for refund, and only the amount of P745,270.37 was proven to have been remitted by petitioner to the Bureau of Internal Revenue ("**BIR**"). For respondent, the Court correctly disregarded petitioner's input VAT credits in determining its entitlement to refund due to petitioner's failure to substantiate the same. Respondent also maintains that petitioner violated the doctrine of exhaustion of administrative remedies by not submitting any document in support of its administrative claim before the BIR.

We resolve.

The Court finds that the arguments raised have already been directly addressed and passed upon in the assailed *Decision*. Nonetheless, for the sake of clarity, the Court shall discuss why the present *Motion for Reconsideration* lacks merit.

Of petitioner's total declared output VAT liability of **P3,155,297.13** for CY 2017, **P2,410,026.76** was settled *using input VAT credits*, while only **P745,270.37** was *actually paid*. Meanwhile, of said total declared output VAT liability, only **P1,666,089.79** was established to have been collected from condominium association dues for the 3rd and 4th quarters of CY 2017. This leaves petitioner with a remaining output VAT of **P1,489,207.34**.

In the assailed *Decision*, the Court declared that the amount of P2,410,026.76, representing petitioner's input VAT credits, cannot be refunded under Section 229 of the Tax Code because they do not constitute "erroneous payments" made by

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[4] G.R. No. 215159. July 05, 2022 [Per J. Lopez, M., *en banc*].

petitioner. Citing *Manila Peninsula Hotel, Inc. v. Commissioner of Internal Revenue*,[5] the Court emphasized that:

> (1)The taxpayer who applies the input VAT as credit against its own output VAT (*i.e.* petitioner) is not the same taxpayer who paid such input VAT. The input VAT is paid by another VAT-registered person (*e.g.* petitioner's supplier or seller), who is in fact the one legally liable for the VAT.
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> (2)At the time the input VAT was collected from the supplier or seller, payment thereof was correct and proper. Although passed on to the next taxpayer, VAT is legally imposed on the sale; hence, it cannot be considered as "erroneously" or "excessively" paid under Section 229 of the Tax Code.
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> (3)Even assuming *arguendo* that input VAT can be considered as erroneously paid tax, it is the supplier or seller—*not* the taxpayer who applied the input VAT credits—who can seek refund under Section 229 of the Tax Code. This is because it is the former who paid the VAT, not the latter.

In the more recent case of *Melco Resorts Leisure (PHP) Corporation v. Commissioner of Internal Revenue*,[6] Melco similarly sought refund of its passed-on input VAT. In denying the refund claim, the Supreme Court held:

> We emphasize that Melco presently seeks its erroneous payment of passed-on input VAT on purchases attributable to gaming revenues for the 1st quarter of taxable year 2016. It follows, therefore, that the applicable provision is Section 229 of the NIRC, as amended, considering that the issue involves the recovery of taxes erroneously paid.
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> ...
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> We have defined an "erroneous or illegal tax" as one levied without statutory authority, or upon property not subject to taxation or by some officer having no authority to levy the tax, or one which in some other similar respect is illegal...
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> ...

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[5] G.R. No. 229338, April 17, 2024 [Per J. Caguioa, Third Division].
[6] G.R. No. 271261, April 2, 2025 [Per J. Hernando, First Division].

> Applying the applicable law and jurisprudence, We affirm the ruling of the CTA that Melco was not entitled to the refund or the issuance of tax credit certificate in the total amount of PHP 81,119,005.84. **Melco's payment of the said amount was not erroneous nor illegal; hence, not refundable. Instead, such payment represented and formed part of the purchase price it paid to its suppliers.**

Notably, there are only two instances where the Tax Code permits the refund of input VAT to the taxpayer entitled to apply it as credit: (1) where the input VAT is attributable to zero-rated or effectively zero-rated sales; and (2) where the taxpayer cancels its VAT registration due to cessation of business or change in status. In both instances, the refund mechanism is governed by Section 112, not Section 229, of the Tax Code. As settled in the assailed *Decision*, Section 112 does not apply in the instant case, and the Court cannot permit petitioner to refund its input VAT credits as erroneously paid tax under Section 229 when it did not even pay the same.

Having settled that the amount of P2,410,026.76 cannot be treated as erroneously or excessively paid tax, petitioner's claim is narrowed down to its actual payment of **P745,270.37**.

In order to successfully claim the amount of P745,270.37, petitioner must show that its payment exceeded its output VAT liability—for if the tax payment is just sufficient or is less than enough to cover the tax payable, then there would be no "erroneously" or "excessively" paid or collected tax.

As established, out of petitioner's output VAT payable of P3,155,297.13, only P1,666,089.79 was proven to be collected from condominium association dues (therefore VAT-exempt), leaving a balance of **P1,489,207.34**.

At this point, it might be clear to point out that although the amount of P2,410,026.76 was denied *as refund*, such amount may be *creditable* against petitioner's output VAT—*subject to Section 110 of the Tax Code*. Hence, petitioner's remaining output VAT liability of P1,489,207.34 may still decrease and result in its excess or erroneous payment. Section 110 of the Tax Code provides:

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:

(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.

...

(3) A VAT-registered person who is **also engaged in transactions not subject to the value-added tax** shall be allowed tax credit as follows:

(a) Total input tax which can be **directly attributed** to transactions subject to value-added tax; and

(b) A **ratable portion** of any input tax which cannot be directly attributed to either activity.

...

(B) *Excess Output or Input Tax.* - If at the end of any taxable quarter the output tax exceeds the input tax, **the excess shall be paid by the VAT-registered person.** If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. Provided, however, That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.

Applying the afore-cited provision, petitioner's creditable input VAT is therefore limited to: (1) input VAT evidenced by VAT invoice or official receipt; and (2) the ratable portion of the total input VAT of P2,410,026.76. As found in the assailed *Decision*, however, petitioner did not present any VAT invoice or official receipt to substantiate its input VAT. Hence, the Court concluded:

> Since petitioner did not adduce evidence to prove the existence of such input VAT, the Court cannot ascertain the fact and actual amount of erroneous payment, if any.

Petitioner cannot invoke *Chevron* to insist, despite the plain tenor of Section 110 of the Tax Code, that it is not required by law to substantiate its creditable input VAT. *Chevron* applies to the refund or credit of *input VAT attributable to zero-rated sales* under Section 112 of the Tax Code, not to the utilization of ordinary input VAT credits. As already explained in the assailed *Decision*, *Chevron* laid down the rule that the Court cannot deduct the allowable input VAT attributable to zero-rated sales from the output VAT, and use only the resultant amount as the basis of the refund, because *taxpayers engaged in zero-rated sales have the option to refund* or apply as credit their input VAT. No such option exists in this case. Petitioner, as a taxpayer *not* engaged in zero-rated sales, can only utilize its input VAT as credit against its output VAT provided that it is evidenced by a VAT invoice or official receipt and is directly attributed or ratably allocated to transactions subject to VAT.

In view of the foregoing, the Court affirms its finding that petitioner's actual payment of P745,270.37 is not erroneous or excessive—and is therefore not refundable—because petitioner still has an output VAT of P1,489,207.34. As explicitly required by Section 110(B) of the Tax Code, "[i]f at the end of any taxable quarter the output tax exceeds the input tax, the excess *shall be paid* by the VAT-registered person."[7] Thus, the payment of P745,270.37 is pursuant to law and proper.

The Court reiterates that distinction should be made between a "judicial assessment," which is prohibited,[8] and a

[7] Emphasis supplied.
[8] *SMI-ED Philippines Technology, Inc. v. Commissioner of Internal Revenue*, G.R. No. 175410, November 12, 2014 [Per J. Leonen, Second Division]. The Court of Tax Appeals

judicial determination of the amount due for refund. While both necessarily demand that the Court look into the correct amount of tax liabilities, the latter is limited to what the taxpayer has already voluntarily paid. To sweepingly construe all disallowances made by the Court in a tax refund case as a "judicial assessment" negates the Court's very appellate jurisdiction to decide the merits of a refund claim through the proper interpretation and application of tax laws. It defeats the Court's duty to ensure, before granting a tax refund, that the taxpayer has complied with the legal requisites for entitlement thereto.

As held in the assailed *Decision*:

> ...the Court's denial of the present claim for refund is simply an inescapable consequence of its finding that under pertinent law and jurisprudence, the taxpayer-claimant fell short of proving its claim. After all, the long-standing doctrine still stands that the burden of proof rests on the taxpayer to establish its right to deductions, refunds, or exemptions. In actions for tax refund, not only is the law construed strictly against the taxpayer; the pieces of evidence entitling it thereto are also strictly scrutinized and must be duly proven.[9]

ACCORDINGLY, petitioner's *Motion for Reconsideration (Re: En Banc Decision dated March 18, 2025)* filed through registered mail on April 10, 2025 is **DENIED** for lack of merit.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

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has no power to make an assessment at the first instance. On matters such as tax collection, tax refund, and others related to the national internal revenue taxes, the Court of Tax Appeals' jurisdiction is appellate in nature.

[9] Citations omitted.

WE CONCUR:

(I reiterate the position I have taken on the assailed Decision)
ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(I reiterate my Concurring and Dissenting Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(I reiterate my joining of Justice Ferrer-Flores' Concurring and Dissenting Opinion)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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

LANEE S. CUI-DAVID
Associate Justice

(I reiterate my Concurring and Dissenting Opinion)
CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice