REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NIPPON EXPRESS PHILIPPINES CORPORATION,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 3053
(CTA CASE No. 10489)

Present:

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

Promulgated:
MAR 24 2026

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DECISION

RINGPIS-LIBAN, *P.J.*:

Before the Court *En Banc* is a *Petition for Review* filed on January 15, 2025[1] by petitioner Nippon Express Philippines Corporation, seeking to vacate the assailed Decision[2] dated July 5, 2024 and the assailed Resolution[3] dated December 13, 2024, of the Court of Tax Appeals (CTA) Third (3rd) Division.

For easy reference, the dispositive portion of the July 5, 2024 Decision reads:

> **WHEREFORE**, the present Petition for Review filed by Nippon Express Philippines Corporation is **DENIED**, for lack of merit.

[1] Court En Banc Docket, pp. 8-20.
[2] Penned by Associate Justice Marian Ivy F. Reyes-Fajardo, with Retired Associate Justice Catherine T. Manahan and Associate Justice Henry S. Angeles concurring, EB Docket, pp. 25-91.
[3] EB Docket, pp. 93-96.

SO ORDERED.

On the other hand, the dispositive portion of the December 13, 2024 Resolution reads:

> **WHEREFORE**, petitioner's Motion for Reconsideration. filed on July 26, 2024 is **DENIED**, for lack of merit.
>
> **SO ORDERED.**

FACTS

The following are the facts as found by the Court in Division:

> Petitioner Nippon Express Philippines Corporation is a corporation duly organized and existing under the laws of the Philippines. Its primary purpose is "[t]o engage in the business of forwarder for the combined transportation by air, sea or land from one point of receipt to a point of destination; to operate container depot, warehousing storage, hauling and packing facilities; to engage in the business of international air and sea freight and cargo forwarders, hauling, carrying, handling, distributing, loading and unloading of general cargoes and all classes of goods, wares and merchandise and to receive and collect fees for such services." It is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer, with Taxpayer Identification Number (TIN) 004-669-434-00000, and with registered address at Lot 85A & B, Avocado Road, FTI Complex, East Service Road, Western Bicutan 1630, Taguig City.
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> Respondent is the Commissioner of Internal Revenue empowered to perform the duties of his office, including, among others, the power to decide claims for refund or tax credit as provided by law and implementing regulations. He can be served with notices at Litigation Division, Room 703, BIR National Office Building, Diliman, Quezon City.
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> On September 30, 2020, petitioner filed with the BIR VAT Credit Audit Division, an administrative claim for refund of its alleged unutilized input [Value-Added Tax] (VAT) in the amount of ₱20,899,347.46, for the 3rd quarter of [taxable year] (TY) 2018 or the period from July 1, 2018 to September 30, 2018.
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> On October 30, 2020, Amelita A. Escober, Chief, VCAD issued to petitioner a Tax Verification Notice No. TVN201800142995, authorizing Revenue Officers (ROs) Dexter C. Bustillos and Denise R. Dayanan to

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verify the supporting documents and/or pertinent records relative to petitioner's claim for VAT refund.

On February 18, 2021, petitioner received the BIR's letter dated December 28, 2020, denying petitioner's claim for refund in its entirety.

On March 19, 2021, petitioner filed its Petition for Review, docketed as CTA Case No. 10480. The case was initially raffled to this Court's First Division.

On October 26, 2021, respondent filed his Answer.

On February 10, 2022, the Pre-Trial Conference was held.

On March 7, 2022, petitioner filed a Manifestation, stating that the parties will no longer file their Joint Stipulation of Facts and Issues, which was noted by the Court through Resolution dated March 21, 2022.

On April 7, 2022, the Court issued a Pre-Trial Order.

Trial ensued. Petitioner presented: (1) Elizabeth D. Quingquing, petitioner's Finance Manager; and (2) Atty. Conrado M. Briones, the Court-commissioned independent certified public accountant (ICPA Briones).

On August 5, 2022, petitioner filed its Formal Offer of Evidence, to which respondent filed his Comment (Re: Formal Offer of Evidence) on August 9, 2022.

By Resolution dated October 25, 2022, the Court admitted petitioner's offered exhibits, xxx

xxx xxx xxx

On November 18, 2022, petitioner filed a Motion for Reconsideration to the Resolution dated October 25, 2022, *sans* respondent's comment thereon.

Under Resolution dated February 27, 2023, petitioner's Motion for Reconsideration to the Resolution dated October 25, 2022 was partially granted.

xxx xxx xxx

Respondent presented RO Dexter C. Bustillos, as his witness.

On March 22, 2023, respondent filed his Formal Offer of Evidence, to which petitioner filed its Comment/Opposition (to the Respondent's Formal Offer of Evidence) on March 28, 2023.

In the Resolution dated May 26, 2023, the Court admitted all of respondent's offered exhibits.

By Resolution dated May 30, 2023, CTA Case No. 10489 was transferred from the First Division to the Third Division of the Court.

In the Resolution dated July 7, 2023, this case was submitted for decision, considering respondent's Memorandum filed on April 28, 2023, and June 15, 2023, and petitioner's Memorandum filed on June 29, 2023.[4]

On July 5, 2024,[5] the Court in Division denied the Petition for lack of merit.

On July 26, 2024, petitioner filed its Motion for Reconsideration.[6] On December 13, 2024,[7] the Court in Division issued a Resolution denying petitioner's Motion for Reconsideration for lack of merit.

On June 10, 2024,[8] petitioner filed the present Petition for Review.

On February 27, 2025,[9] the Court *En Banc* issued a Minute Resolution directing respondent to file his Comment to the Petition for Review. On March 4, 2025, respondent filed his Comment (Re: Petition for Review).[10]

On April 3, 2025,[11] the Court *En Banc* issued a Resolution submitting the case for decision. Hence, this Decision.

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[4] See Note 2, pp. 25-29.
[5] See Note 2.
[6] Division Docket, Vol. III, pp. 1241-1250.
[7] See Note 3.
[8] See Note 1.
[9] EB Docket, p. 100.
[10] EB Docket, pp. 101-105.
[11] EB Docket, p. 109.

ISSUE

The issue to be resolved in this case is whether the CTA in Division erred in ruling that petitioner is not entitled to its refund claim because it has no unutilized input VAT attributable to its zero-rated sales for the 3rd quarter of taxable year (TY) 2018.

RULING

The Court *En Banc* finds the instant Petition is bereft of merit.

Petitioner pertinently assails the Court in Division's conclusion, as follows:

> 33. In the case of *Chevron Holdings, Inc. (formerly Caltex (Asia) Limited) v. Commissioner of Internal Revenue* ("Chevron case"), the Supreme Court 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 xxx
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> xxx xxx xxx
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> 35. According to the Chevron case, to be refunded or issued a tax credit certificate, the following must be complied with: (1) the input tax is a creditable input tax due or paid; (2) the input tax is attributable to the zero-rated sales; (3) the input tax is not transitional; (4) the input tax was not applied against the output tax; and (5) in case the taxpayer is engaged in mixed transactions i.e., VAT-able, exempt, and zero-rated sales and the input taxes cannot be directly and entirely attributable to any of these transactions, only the input taxes proportionately allocated to zero-rated sales based on sales volume may be refunded or issued a tax credit certificate.
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> 36. In the instant case, the petitioner complied with the requisites for the claim for refund under Section 112(A) of the NIRC of 1997, as amended xxx
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> xxx xxx xxx
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> 37. Thus, since the petitioner has complied with the minimum statutory requirements of the law, it should be considered to have successfully discharged the burden to prove its entitlement to the refund. After the petitioner has successfully

established a *prima facie* right to the refund, the burden is shifted to the Commissioner of Internal Revenue to disprove such claim.[12]

In ruling against petitioner, the Court in Division found that:

> Alleging that the input VAT of ₱107,798,471.06 is common to both its VATable and zero-rated sales transactions, petitioner allocated said amount between its VATable and zero-rated sales using the proportion of VATable sales subject to 12% VAT to total sales for the period and zero-rated sales to total sales for the period, citing as basis therefor, Section 4.110-4 of RR No. 16-2005, as amended. Thus, petitioner's allocation resulted to an amount of ₱57,805,871.70 input VAT attributable to VATable sales and an amount of ₱49,992,599.37 input VAT attributable to zero-rated sales xxx
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> Thereafter, petitioner deducted the input tax attributable to VATable sales in the amount of ₱57,805,871.70 from its output VAT liability of ₱86,899,123.61 from said sales which resulted to a net output VAT still due of ₱29,093,251.91 xxx
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> Considering that petitioner's input VAT attributable to VATable sales was not enough to cover its output VAT liability, the input VAT attributable to zero-rated sales was utilized by petitioner against the remaining output VAT liability of ₱29,093,251.91. Consequently, petitioner asserts that it still has a net refundable amount of ₱20,899,347.46 xxx
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> xxx xxx xxx
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> xxx the Court finds that out [of] petitioner's total reported input VAT amounting to ₱107,798,471.06 for the 3rd quarter of TY 2018 or the period from July 1, 2018 to September 30, 2018, only the amount of ₱81,339,537.08 represents petitioner's valid input VAT for said period xxx
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> xxx xxx xxx

Section 112 (A) of the NIRC, as amended, requires that the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, the same provision recognizes that where there are zero-rated or effectively zero-rated sale and taxable sales or exempt sales, and the input taxes cannot be directly and

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[12] See Note 1, pp. 14-16.

entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume.

For the 3rd quarter of TY 2018 or the period from July 1, 2018 to September 30, 2018, petitioner had zero-rated sales and VATable sales. Since petitioner's input VAT cannot be directly or entirely attributed to any of the said sales, the valid input VAT of ₱81,339,537.08 shall be allocated proportionately on the basis of its total sales volume xxx

xxx xxx xxx

Thus, after allocation, only the amount of ₱37,722,008.95 represents petitioner's valid input VAT attributable to its total zero-rated sales for the 3rd quarter of TY 2018 or the period from July 1, 2018 to September 30, 2018.

Ninth Requisite: Petitioner had no unutilized input taxes available for refund

Chevron Holdings, Inc. (formerly: Caltex Asia Limited) v. Commissioner of Internal Revenue ruled that the input tax attributable to zero-rated sales may, at the option of the VAT-registered taxpayer, be: (1) charged against output tax from regular 12% VATable sales, and any unutilized or 'excess' input tax may be claimed for refund or the issuance of tax credit certificate; or (2) claimed for refund or tax credit in its entirety. The option is vested with the taxpayer-claimant and the Court may not, on its own, deduct the input tax attributable to zero-rated sales from the output tax derived from the regular twelve percent (12%) VAT-able sales first and use the resultant amount as the basis in computing the allowable amount for refund.

Here, petitioner chose to claim for refund its input VAT attributable to zero-rated sales after charging its output VAT thereto, and the Court simply adopted said choice. Again, petitioner's claimed input VAT attributable to zero-rated sales in the amount of ₱49,992,599.37 was partially applied against its reported output VAT liability to the extent of ₱29,093,251.91. Hence, only the amount of ₱20,899,347.46 is being claimed for refund.

Following the same computation, after deducting the amount of ₱43,617,528.13 valid input VAT allocated to VATable sales/receipts from its output VAT liability of ₱86,899,123.31 on the said sales/receipts, petitioner has a net output VAT payable of ₱43,281,595.48 xxx

xxx xxx xxx

> Since petitioner's input VAT attributable to VATable sales is not enough to cover its output VAT liability, the valid input VAT attributable to zero-rated sales shall be utilized against the remaining output VAT liability. However, the valid input VAT attributable to zero-rated sales of ₱37,722,008.95 is apparently lower than the net output VAT payable of ₱43,281,595.48. Accordingly, petitioner has net output VAT still due of P5,559,586.53 xxx

xxx xxx xxx

> Thus, for the 3rd quarter of TY 2018 or the period from July 1, 2018 to September 30, 2018, petitioner has no unutilized input VAT attributable to its zero-rated sales which may be the subject of a claim for refund.[13]

After careful review, the Court *En Banc* agrees with the findings of the Court in Division.

In essence, petitioner argues that following the ruling in *Chevron*, its compliance with the minimum requirements of the law entitles it to the subject refund claim. Yet, a review of the instant Petition shows that petitioner failed to refute the disallowances found by the Court in Division, which effectively reduced its valid input VAT attributable to its total zero-rated sales for the 3rd quarter of TY 2018, in the amount of <u>₱37,722,008.95</u>, as against petitioner's *alleged* input VAT attributable to zero-rated sales in the amount of ₱49,992,599.37.

Meanwhile, Section 112(A) of the Tax Code pertinently provides:

> **SEC. 112. Refunds or Tax Credits of Input Tax. –**
>
> (A) Zero-rated or Effectively Zero-rated Sales. – xxx 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

[13] See Note 2, pp. 78-90, citing *Chevron Holdings, Inc. (formerly Caltex Asia Limited) v. Commissioner of Internal Revenue*, G.R. No. 215159, July 5, 2022.

> 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero rated sales.

Applying the above-quoted provision in cases involving mixed transactions, *i.e.*, VATable sales and zero-rated sales, the most recent case of *Commissioner of Internal Revenue v. Toledo Power Company*,[14] is instructive:

> Meanwhile, taxpayers engaged in mixed transactions must first categorize its input taxes. Those which can be *directly and entirely* attributed to VAT-taxable transactions, VAT-exempt transaction, zero-rated transactions, and effectively zero-rated transactions shall first be applied to the respective output tax resulting from such transaction. Thereafter, residual input taxes, or input tax which "cannot be *directly and entirely* attributed to any one of the transactions, [xxx] shall be allocated to any one of the transactions [xxx] proportionately on the basis of the volume of sales." Simply stated, even if the input VAT cannot be directly and entirely allocated in any of these transactions, the taxpayer may still apply the input VAT proportionately based on the volume of the transactions. This is so because requirement of direct and entire attributability only applies in mixed transactions and only to the extent that input taxes can be attributed as a particular transaction.

In relation thereto, the Court in Division found that petitioner's transactions involved both VATable and zero-rated sales. Consequently, petitioner charged its input tax attributable to zero-rated sales to its output VAT on VATable sales.

Consistent with the guidelines laid down by the Supreme Court in *Chevron* and later, in *Toledo*, the Court in Division is correct: *first*, in proportionately allocating petitioner's input VAT based on its volume of sales; *second*, in applying the input VAT attributable to VATable sales to the output VAT from VATable sales; and *third*, in applying the input VAT attributable to zero-rated sales to the output VAT from VATable sales, as the option chosen by petitioner.

Hence, the Court *En Banc* finds no error when the Court in Division found that there is no refundable excess input VAT attributable to zero-rated sales, because the valid input VAT attributable to zero-rated sales of ₱37,722,008.95 is apparently lower than the net output VAT payable of ₱43,281,595.48.

Considering the foregoing, the Court *En Banc* finds no reason to deviate from the findings and conclusion reached by the Court in Division. Consequently, the denial of the instant Petition for Review is in order.

[14] G.R. No. 255324 & 255353, April 12, 2023.

ACCORDINGLY, the instant Petition for Review is **DENIED**, for lack of merit. The *Decision* dated July 5, 2024 and the *Resolution* dated December 13, 2024, respectively, of the CTA 3rd Division are **AFFIRMED**

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

WE CONCUR:

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

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
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.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice