REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 2389** (CTA Case No. 9426)
	PRESENT:
-versus-	**DEL ROSARIO**, *P.J.*, **CASTAÑEDA, JR.**, **UY**, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, *and* **REYES-FAJARDO,** *JJ.*
LEPANTO CONSOLIDATED MINING COMPANY, *Respondent.*	Promulgated: NOV 09 2021 2:55 p.m.

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DECISION

DEL ROSARIO, P.J.:

This is a Petition for Review filed by petitioner Commissioner of Internal Revenue on December 22, 2020, assailing the Decision[1] dated June 30, 2020 of the Court of Tax Appeals Third Division (Court in Division) in *Lepanto Consolidated Mining Company vs. Commissioner of Internal Revenue, CTA Case No. 9426*, which ordered the issuance of a Tax Credit Certificate (TCC) in favor of herein respondent Lepanto Consolidated Mining Company in the amount of ₱22,458,084.40, representing the latter's unutilized input Value-Added Tax (VAT) attributable to its zero-rated sales for the four (4) quarters of the year 2014, and the Resolution dated November 24, 2020 of the Court in Division denying the CIR's Motion for Partial Reconsideration for lack of merit.

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[1] Penned by Associate Justice Erlinda P. Uy and concurred by Associate Justice Ma. Belen M. Ringpis-Liban and Associate Justice Maria Rowena Modesto-San Pedro.

THE PARTIES

Petitioner Commissioner of Internal Revenue (CIR) is the chief of the Bureau of Internal Revenue (BIR), who has the power to, among others, decide refunds of internal revenue taxes, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals (CTA).[2]

Respondent Lepanto Consolidated Mining Company (LCMC), on the other hand, is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at Lepanto Building, 8747 Paseo de Roxas, Barangay Bel-Air, Makati City. It is registered with the BIR under Certificate of Registration (COR) No. 8RC00000017236 with Tax Identification No. (TIN) 000-160-247- 0002, and with the Board of Investments (BOI) as a new producer of copper concentrate, gold and silver under Republic Act (R.A.) No. 7942 with COR Nos. EP 96-334, EP 2004-001 and 2006-144.[3]

THE FACTS

The undisputed facts disclose that LCMC filed its Quarterly VAT Returns for the year 2014 on the following dates:[4]

Period	VAT Return	Date of Filing
1st Quarter	Original Quarterly VAT Return	April 23, 2014
	Amended Quarterly VAT Return	October 17, 2014
2nd Quarter	Original Quarterly VAT Return	July 22, 2014

[2] Sections 3 and 4 of the National Internal Revenue Code (NIRC) of 1997 as amended, state:
"Section 3. Chief Officials of the Bureau of Internal Revenue. – The Bureau of Internal Revenue shall have a chief to be known as Commissioner of Internal Revenue, hereinafter referred to as the Commissioner and four (4) assistant chiefs to be known as Deputy Commissioners.
Section 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases. – The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.
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 this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.
[3] Assailed Decision of the Court in Division, CTA EB Rollo, pp. 27-28.
[4] Assailed Decision of the Court in Division, CTA EB Rollo, p. 28.

	Amended Quarterly VAT Return	October 21, 2014
3rd Quarter	Original Quarterly VAT Return	October 22, 2014
	Amended Quarterly VAT Return	July 10, 2015
4th Quarter	Original Quarterly VAT Return	January 22, 2015
	Amended Quarterly VAT Return	July 10, 2015

On March 16, 2016, LCMC filed an Application for Tax Credits/Refunds (BIR Form No. 1914), together with the Checklist of Mandatory Requirement for Claims for VAT Credit/Refund, for its alleged input VAT in the total amount ₱25,501,862.20, broken down as follows:[5]

Period	Amount of Claim
1st Quarter	₱ 9,957,169.00
2nd Quarter	4,069,498.96
3rd Quarter	7,383,741.98
4th Quarter	4,091,452.26
Total	₱ 25,501,862.20

Due to the alleged inaction of the CIR, LCMC filed its Petition for Review before the Court in Division on August 12, 2016, praying that the Court grant its claim for tax credit of input VAT and that the CIR be directed to issue a TCC in the amount of ₱25,501,862.20.[6]

After trial, the Court in Division rendered the assailed Decision on June 30, 2020, partially granting the Petition for Review of LCMC.[7] The dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, in light of the foregoing considerations, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱22,458,084.40** representing the latter's unutilized input VAT attributable to its zero-rated sales for the four quarters of the year 2014.
>
> **SO ORDERED.**"[8]

CIR filed its Motion for Partial Reconsideration (Re: Decision promulgated 30 June 2020) *via* registered mail on August 18, 2020 and which was received by the Court in Division on August 28, 2020. LCMC

[5] Assailed Decision of the Court in Division, CTA EB Rollo, p. 28.
[6] Assailed Decision of the Court in Division, CTA EB Rollo, p. 29.
[7] Assailed Decision of the Court in Division, CTA EB Rollo, pp. 27-50.
[8] Assailed Decision of the Court in Division, CTA EB Rollo, p. 49.

filed its Comment/Opposition (to the Motion for Partial Reconsideration dated 06 August 2020) on October 21, 2020.[9]

On November 24, 2020, the Court in Division denied the said Motion for Partial Reconsideration of the CIR for lack of merit.[10]

Undaunted, CIR filed before the Court *En Banc* his Motion for Extension of Time to File Petition for Review on December 11, 2020,[11] which was granted in a Minute Resolution of the Court *En Banc* dated December 11, 2020, thereby granting the CIR a final and non-extendible period of fifteen (15) days from December 12, 2020 or until December 27, 2020 within which to file his Petition for Review.[12]

On December 22, 2020, the CIR filed the present Petition for Review praying that the assailed Decision and Resolution of the Court in Division be reversed and set aside and that a new one be rendered by the Court *En Banc* denying LCMC's entire claim for refund.[13]

In his Petition for Review, CIR faults the Court in Division in ruling that LCMC is entitled to the issuance of a TCC in the reduced amount of ₱22,458,084.40.[14] CIR contends that LCMC was not able to prove its entitlement to the TCC as no attributability was established between the input VAT generated from its purchases *vis-à-vis* its zero-rated sales.[15] CIR claims that only the creditable input taxes are refundable and to be creditable, the input tax must come from purchases of goods that form part of the finished product of the taxpayer or the purchases must be directly used in the chain of the production.[16] CIR argues that taxes collected by the BIR are presumed to have been made in accordance with law, and that claims for refund are construed strictly against the claimant.[17]

In a Resolution dated January 19, 2021, the Court *En Banc* ordered LCMC to file its comment on the CIR's Petition for Review within ten (10) days from receipt thereof.[18]

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[9] Assailed Resolution of the Court in Division, CTA EB Rollo, p. 51.
[10] Assailed Resolution of the Court in Division, CTA EB Rollo, pp. 51-54.
[11] CTA EB Rollo, p. 1-5.
[12] CTA EB Rollo, p. 6.
[13] CTA EB Rollo, pp. 7-54, inclusive of annexes.
[14] CTA EB Rollo, p. 9.
[15] CTA EB Rollo, p. 9.
[16] CTA EB Rollo, pp. 11-13.
[17] CTA EB Rollo, pp. 16-17.
[18] CTA EB Rollo, pp. 56-57.

On March 5, 2021, LCMC filed its Comment (On the Petition for Review dated 11 December 2020).[19]

In a Resolution dated May 26, 2021, the Court *En Banc* expunged from the records LCMC's Comment (On the Petition for Review dated 11 December 2020) for being filed out of time and submitted the present Petition for Review for decision.

THE ISSUES

The sole issue for the Court *En Banc*'s resolution is:

> Whether or not the Court in Division erred in ordering the CIR to issue a TCC in favor of LCMC in the reduced amount of ₱22,458,084.40 (representing LCMC's unutilized input VAT attributable to its zero-rated sales for the four (4) quarters of the year 2014) due to the alleged failure of LCMC to prove that said input VAT is creditable and directly attributable to its zero-rated sales.

THE COURT *EN BANC'S* RULING

The Petition for Review was timely filed; hence, the Court En Banc has jurisdiction over the case

Before delving on the merits of the case, the Court En Banc shall determine whether the present Petition for Review was timely filed.

Section 3, Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended, states:

> "**SEC. 3.** *Who may appeal; period to file petition.* – xxx
>
> (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**

[19] CTA EB Rollo, pp. 58-67.

> **questioned decision or resolution**. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, **the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.**" *(Boldfacing supplied)*

In this case, the CIR received the assailed Resolution of the Court in Division on **November 27, 2020**. Pursuant to Section 3, Rule 8 of the RRCTA, as amended, CIR had fifteen (15) days from November 27, 2020 or until **December 12, 2020** within which to file a Petition for Review or a motion for additional period to file a petition for review before the Court *En Banc*.

On **December 11, 2020,** within the aforesaid fifteen (15)-day period, CIR filed a Motion for Extension of Time to File Petition for Review before the Court *En Banc* praying for an additional period of fifteen (15) days from December 12, 2020 or until December 27, 2020 within which to file his Petition for Review.

In the Minute Resolution dated December 16, 2020,[20] the Court *En Banc* granted the CIR's Motion for Extension of Time to File Petition for Review thereby giving the CIR an additional fifteen (15) days from December 12, 2020 or until **December 27, 2020** within which to file his Petition for Review.

The filing of the CIR's Petition for Review on **December 22, 2020** was timely made; hence, the Court *En Banc* has acquired jurisdiction to take cognizance of the present case.

Respondent is entitled to the issuance of a TCC in the amount of ₱22,458,084.40

The Court notes that the arguments in the present Petition for Review are mere rehash of the arguments raised in the CIR's Motion for Reconsideration filed before the Court in Division which have been adequately passed upon by the Court in Division in the assailed Resolution.

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[20] CTA EB Rollo, p. 6.

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Section 112(A) of the National Internal Revenue Code (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 nonzero-rated sales.
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> xxx xxx xxx
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> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.*- In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for **creditable input taxes** within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
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> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals." *(Boldfacing supplied)*

Relatedly, Section 110(A) of the NIRC of 1997, as amended, defines creditable input tax as follows:

> "SEC. 110. *Tax Credits.* -
>
> (A) **Creditable Input** Tax. -
>
> (1) **Any input tax** evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof **on** the following transactions shall be creditable against the output tax:

(a) **Purchase or importation of goods**:

(i) **For sale**; or

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

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

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

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

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

In his present Petition for Review, similar to the Motion for Reconsideration he filed before the Court in Division, CIR insists that LCMC's input taxes are not creditable and that said input taxes are not directly attributable to its zero-rated or effectively zero-rated sales.

CIR posits that in order for an input tax to be creditable, the input tax must come **solely from purchases of goods that form part of the finished product of the taxpayer or must be directly used in the chain of the production**. CIR further avers that the creditable input tax must be directly attributable to the finished product the sale of which is subject to VAT at zero percent (0%).

The Court finds CIR's arguments bereft of merit.

There is nothing in Section 110(A) of the NIRC of 1997, as amended, which states that only those input taxes from purchases of goods that form part of the finished product of the taxpayer or must be directly used in the chain of the production shall be considered as creditable.

Section 110(A) of the NIRC of 1997, as amended, is plain and categorical that any input tax evidenced by a VAT invoice or official receipts on the following transactions shall be creditable, *viz.*:

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(a) purchase or importation of goods intended for:

- (i) sale;
- (ii) conversion into or intended to form part of a finished product for sale including packaging materials;
- (iii) use as supplies in the course of business;
- (iv) use as materials supplied in the sale of service;
- (v) use in trade or business for which deduction for depreciation or amortization is allowed under the NIRC of 1997, as amended.

(b) purchase of services on which VAT has actually been paid.

Contrary to CIR's stance, there is no legal basis to limit the source of creditable input tax on purchases or importation of goods that actually form part of the finished products or directly used in the chain of the production only. It is doctrinal that when the words of a statute are clear and unambiguous, courts cannot deviate from the text of the law and resort to interpretation lest they end up betraying their solemn duty to uphold the law and worse, violating the constitutional principle of separation of powers.[21]

As correctly found by the Court in Division, LCMC has duly substantiated its creditable input tax in the amount ₱25,941,911.34 for the year 2014. After applying its output VAT liability in the amount of ₱2,832,332.93 against its valid creditable input tax in the amount of ₱25,941,911.34, LCMC still has excess input VAT amounting to ₱23,109,578.41. Of LCMC's excess input VAT amounting to ₱23,109,578.41, the Court in Division has determined that the amount of ₱22,458,084.40 is attributable to LCMC's valid zero-rated sales in the amount of ₱1,414,068,311.34.

Truth to tell, a plain reading of Section 112(A) of the NIRC of 1997, as amended, clearly shows that it merely states that the creditable input VAT should be "attributable" to the zero-rated or effectively zero-rated sales. There is nothing in the aforesaid Section which requires that the input VAT should be "directly" attributable to zero-rated or effectively zero-rated sales. *Ubi lex non distinguit nec nos*

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[21] Id.

distinguere debemos. It is a principle in statutory construction that where the law does not distinguish, we ought not to distinguish.[22]

Section 112 of the NIRC of 1997, as amended, merely requires a claimant to establish that: *(i)* it is engaged in zero-rated sales of goods or services; and, *(ii)* it paid input VAT that are attributable to zero-rated sales. In other words, the claimant must prove that it made a purchase of taxable goods or services for which it paid input VAT, and subsequently, engaged in the sale of goods or services subject to VAT, albeit at zero rate.

While the words *"directly"* and *"attributed"* are found in Section 112(A) of the NIRC of 1997, as amended, the Court *En Banc* finds that their use refer to situations where the creditable input VAT cannot be "*directly and entirely attributed*" to any transaction, in which case proportionate allocation must be made on the basis of the volume of sales.

For purposes of determining the refundable input tax in a case where the taxpayer is engaged in zero-rated sales or effectively zero-rated sales <u>and</u> in taxable or exempt sales of goods, properties or services and the amount of creditable input tax cannot be directly and entirely attributable to any type of such sales, the Supreme Court affirmed, in ***San Roque Power Corporation vs. Commissioner of Internal Revenue***[23] and ***Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue***[24], the allocation of creditable input tax proportionately on the basis of volume of sales.

The other contention of the CIR that LCMC was not able to prove its entitlement to the refund, without stating what particular requirement was not established by the said claimant, cannot constitute a reversible error on the part of the Court for being unsubstantiated, vague, highly speculative, and uncertain.[25] The findings and conclusion of the Court in Division prevails over the general averment of the CIR in the absence of any evidence to the contrary. Findings of fact by the Court in Division are not lightly to be disturbed considering that the members

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[22] Commissioner of Internal Revenue vs. Central Luzon Drug Corporation, G.R. No. 159647, April 15, 2005.
[23] G.R. No. 180345, November 25, 2009.
[24] G.R. No. 166732, April 27, 2007.
[25] CIR vs. Oncho Philippines, Incorporated, CTA EB No. 2059, October 30, 2020.

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of the Division are in the best position to analyze the documents presented by the parties.[26]

In conclusion, the Court *En Banc* finds no cogent reason to modify, much more, reverse the assailed Decision of the Court in Division.

WHEREFORE, premises considered, the present Petition for Review filed by petitioner Commissioner of Internal Revenue on December 22, 2020 is **DENIED** for lack of merit. Accordingly, the Decision dated June 30, 2020 and the Resolution dated November 24, 2020 issued by the Court in Division are hereby **AFFIRMED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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