Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

CHEVRON HOLDINGS, INC., [formerly CALTEX (ASIA) LIMITED], Petitioner,	**CTA EB Case No. 1146** (CTA Case No. 8064)
	Present:
- versus -	**DEL ROSARIO,** *PJ,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** *and* **RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** APR 14 2015 11:38 a.m.

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DECISION

CASANOVA, ***J.*****:**

This is an appeal, by way of a Petition for Review,[1] filed by petitioner Chevron Holdings, Inc., [formerly Caltex (Asia) Limited] from the Decision[2] dated October 14, 2013 ("assailed Decision") and Resolution[3] dated March 11, 2014 ("assailed Resolution") of the Court of Tax Appeal's (CTA) Special Third Division in CTA Case No. 8064, which denied petitioner's claim for refund or issuance of tax credit certificate in the total amount of ₱177,337,492.52, representing its accumulated and unutilized input value-added tax (VAT) for taxable year 2008.

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[1] CTA *En Banc* Rollo, pp. 1-42
[2] Annex "A", Petition for Review, CTA *En Banc* Rollo, pp. 50-86
[3] Annex "B", *Ibid.*, pp. 87-102

The facts of the case, as found by the CTA Special Third Division, are as follows:

> "Petitioner Chevron Holdings, Inc. is a corporation organized and existing under the laws of the State of Delaware, United States of America, and is licensed by the Securities and Exchange Commission (SEC) to transact business in the Philippines as a Regional Operating Headquarters (ROHQ). It is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer under OCN 9RC0000136077. Petitioner renders service to its affiliates, subsidiaries or branches in the Asia-Pacific and North America regions pursuant to Service Agreements executed with its affiliates.
>
> The Commissioner of Internal Revenue (respondent) is the government official charged with the administration and enforcement of national internal revenue laws, including the granting of refund and tax credit of taxes erroneously or illegally collected. She holds office at the BIR National Office Building, Diliman, Quezon City.
>
> Petitioner duly filed its Audited Financial Statements for taxable year 2008 and its Quarterly VAT Returns, Annual Income Tax Return, and Monthly VAT Returns for taxable year 2008 with the BIR.
>
> Petitioner filed an administrative claim for refund of its purported unutilized input VAT for the four quarters of taxable year 2008 on March 5, 2010 and was later amended on March 31, 2010. Due to inaction of respondent on the administrative claim for refund, petitioner filed the instant Petition for Review with this Court on March 31, 2010.
>
> Respondent filed her Answer on June 11, 2011, interposing the following special and affirmative defenses:
>
> '5. Taxes paid and collected by the Bureau of Internal Revenue (BIR) are presumed to have been made in accordance with law, rules and regulations,

and the burden to prove otherwise is upon petitioner.

6. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.

7. Petitioner must prove it is entitled to a claim for refund under the strictest terms.

8. Petitioner must prove that it paid the alleged VAT input taxes for the period in question.

9. Petitioner must prove that the same alleged VAT input taxes was not utilized against any output tax liability.

10. Petitioner must prove that the alleged VAT input taxes for the period in question are attributable to its alleged VAT zero-rated sales.

11. Petitioner must prove that the administrative and judicial claims were filed within the period prescribed by law.

12. Petitioner's assertion that its services rendered to its affiliates, subsidiaries or branches abroad are subject to zero (0%) percent VAT cannot be accorded weight. Plain allegations without any evidentiary document to support its claim will not justify petitioner's application for tax refund.

13. Petitioner must prove that its sales are VAT zero-rated as contemplated under Section 112(A) of the Tax Code of 1997.

14. The claim for refund in the amount of One Hundred Seventy Seven Million Three Hundred Thirty Seven Thousand Four Hundred Ninety Two Pesos and 52/100 (P177,337,492.52) allegedly representing accumulated and unutilized VAT input taxes paid by it for the taxable year 2008 is not properly documented. To support its claim, it is indispensable for petitioner to prove the following:

a) Registration requirements of a value-added taxpayer in compliance with Section 9.236.1 (a) of Revenue Regulations No. 16-2005 and Section 236 of the NIRC of 1997, as amended;

b) Invoicing and accounting requirements for VAT-registered persons as well as the filing and payment of VAT pursuant to the provisions of Section 113 and 114 of the 1997 Tax Code, as amended. Failure to comply with the invoicing requirements on the documents supporting the sale of goods and services will result in the disallowance of claim for input tax of the taxpayer claimant. (Revenue Memorandum Circular No. 42-2003).

c) Petitioner must prove that it has fully complied with the requirements of Section 9.236.1.a *[sic]* of RR No. 16-2005 and Revenue Memorandum Order No. 53-98, otherwise, there would be no sufficient compliance with regard to the filing of administrative claim for tax credit/refund which is a condition *sine qua non* prior to the filing of judicial claim;

d) In relation thereto, Section 112 (C) of the NIRC of 1997, as amended, requires submission of complete documents in support of the application for tax refund filed with respondent before the one hundred twenty (120) day period shall apply and before petitioner could avail of the judicial remedies provided by law. Ergo, petitioner's failure to submit proof of compliance with the aforesaid requirements warrants the dismissal of the instant Petition for Review;

15. In the case entitled *'San Roque Power Corp. vs. Commissioner of Internal Revenue'*, the Supreme Court had the occasion to say:

'In order to claim a refund or tax credit under Section 112 (A), petitioner must comply with the following criteria:

1. The taxpayer is VAT-registered;
2. The tax-payer is engaged in zero-rated or effectively zero-rated sales;
3. The input taxes are due or paid;
4. The input taxes are not transitional input taxes;
5. The input taxes have not been applied against output taxes during and in the succeeding quarters;
6. The input taxes claimed are attributable to zero-rated or effectively zero-rated sales;
7. For zero-rated sales under Section 106 (A) (2) (1) and (2); 106 (B), and 108 (B) (1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;
8. Where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and that the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and
9. The claim is filed within 2 years after the close of the taxable quarter when such sales were made.'

16. For judicial claim for refund of input VAT to prosper, the petitioner must prove that there must be (a) zero-rated or effectively zero-rated sales; (b) that input taxes were incurred or paid; (c) that the input taxes are attributable to zero-rated or effectively zero-rated sales; (d) that the input taxes were not applied against any output VAT liability; and (e) the claim for refund/tax credit must be filed within the two year prescriptive period. *(EG & G Omni, Inc. v. CIR, CTA Case No. 5987, March 26, 2004)*

17. Corollary thereto, Sec. 4.110.8 of RR 16-2005 explicitly provides:

> 'Input Taxes for the importation of goods or the domestic purchases of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against 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 imported goods; (2) For domestic purchases of goods and properties – invoice showing the information required under Sections 113 and 237 of the Tax Code.'

18. In its Petition for Review, petitioner alleged that it filed the administrative claim for tax credit/refund on its unutilized input VAT on March 5, 2010 and subsequently, amended the same on March 31, 2010. On March 31, 2010 or the same day that it filed the amended administrative claim for refund, petitioner filed its judicial claim for refund before this Honorable Court. Suffice it to say that respondent was not given an opportunity to act on the matter.

19. Guided by the pertinent provision of Section 112 (C) of the NIRC of 1997, as amended, respondent should have been given a period of one hundred twenty (120) days from March 31, 2010 or until July 29, 2010 to resolve the administrative claim for refund. As clearly provided by law, it is only after the expiration of the aforesaid period that petitioner is given 30 days or until August 23, 2010 within which to elevate the same before the Honorable Court of Tax Appeals. Ergo, since

petitioner prematurely filed its judicial claim on March 31, 2010, the Honorable Court cannot acquire jurisdiction over the instant case.

20. Granting for the sake of argument that the running of the one hundred twenty (120) day period starts to run on March 5, 2010 or the date when the original administrative claim for refund was filed by petitioner, respondent, therefore, is given until July 3, 2010 within which to act on the administrative claim for refund. It is only after July 3, 2010 that petitioner is given a period of thirty days or until August 2, 2010 the right to raise the same before the Honorable Court should an unfavorable decision be given by respondent or the latter fails to act on the matter. Again, since petitioner prematurely filed the Petition for Review on March 31, 2010, the Honorable Court has no jurisdiction to hear and decide the instant case.

21. The provision*[s]* of law regarding prescriptive periods are jurisdictional, compliance with which is essential for this Honorable Court to exercise authority over the instant case. Such statutes or rules are construed as mandatory as they have been absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of business and are necessary incidents to the proper, efficient and orderly discharge of official functions.

22. It is well-established in this jurisdiction that claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation and are therefore held against the claimant. Petitioner must present clear and convincing evidence to merit a tax refund. The taxpayer bears the burden of establishing the factual basis of its claim for refund.

23. Likewise, for a judicial claim to prosper, the party must not only prove that it is a VAT-registered entity, it must substantiate the input VAT paid by purchase invoices or official receipts *(Commissioner*

of Internal Revenue vs. Manila Mining Corporation, 468 SCRA 571). Such that failure to comply with the requirements for a valid request for refund including the requirement for a valid sales invoice is fatal to the claim for refund. *(EG & G Omni, Inc. v. CIR, CTA Case No. 5987, March 26, 2004)*

24. Basic is the rule that tax refunds are regarded as tax exemptions that are in derogation of the sovereign authority and are to be construed strictissimi juris against the person or entity claiming the exemption *(Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue, G.R. No. 141973, June 28, 2005).* The burden of proof is upon him who claims the exemption and he must be able to justify his claim by the clearest grant under Constitutional or statutory law and he cannot be permitted to rely upon vague implications. *(BPI Leasing Corporation v. the Honorable Court of Appeals, et al., G.R. No. 127624, November 18, 2003).* The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted *(Sea-Land Service vs. Court of Appeals, 357 SCRA 444).*'

Both petitioner's Pre-Trial Brief and respondent's Pre-Trial Brief were filed on July 13, 2010.

In the Pre-Trial Order dated September 27, 2010, the Court considered the stipulations of the parties as stated in their Joint Stipulation of Facts and Issues filed on August 27, 2010, terminated the pre-trial, and ordered the presentation of petitioner's evidence.

During trial, petitioner presented Mr. Jose C. Catequista, Editha B. Marquez, Ma. Teresa S. De Leon, and Ruth T. Medina as its witnesses. On the other hand, during the November 21, 2012 hearing, respondent's counsel manifested that respondent would no longer present any witness and would just submit the case for decision.

> The case was submitted for decision on January 29, 2013, after petitioner filed its Memorandum on January 21, 2013 and respondent filed her Memorandum on January 22, 2013."

After trial on the merits, the CTA Special Third Division denied petitioner's appeal for lack of merit. The dispositive portion of the assailed Decision[4] reads as follows:

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

On October 31, 2013, petitioner filed a Motion for Reconsideration with Motion for New Trial[5], praying for the reversal and setting aside of the assailed Decision; or in the alternative, the re-opening of the case for the reception of supplemental documentary evidence.

The CTA Special Third Division issued a Resolution[6] on March 11, 2014, denying petitioner's Motion for Reconsideration stating that there are no affidavits of witnesses attached to the said Motion, and the attached proffered documents are mere photocopies.[7]

Petitioner then elevated the matter to the Court *En Banc* on March 28, 2014 *via* the instant Petition for Review. It prays that the Court *En Banc* reverse and set aside the assailed Resolution dated March 11, 2014 and assailed Decision dated October 14, 2013 by granting petitioner's claim for refund and/or the issuance of tax credit certificate in the amount of ₱177,337,492.52; or in the alternative by granting petitioner's motion for new trial.

In a Resolution[8] dated May 12, 2014, the Court *En Banc* directed respondent to file her Comment to the instant petition within ten (10)

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[4] *Supra* No. 2
[5] Division Docket (Vol. II), pp. 956-991
[6] *Supra* No. 3
[7] *See* Section 6, Rule 15 of A.M. No. 05-11-07-CTA
[8] CTA *En Banc* Rollo, pp. 104-105

days from receipt thereof. However, as per *En Banc* Records Verification[9] dated July 1, 2014, respondent failed to file her comment.

On July 22, 2014, the Court *En Banc* issued a Resolution[10] which gave due course to the instant petition and granted the parties a period of thirty (30) days within which to file their respective memorandum.

In compliance, petitioner's Memorandum[11] was filed on August 28, 2014, while respondent failed to file hers, as per *En Banc* Records Verification[12] dated September 30, 2014. Thus, in the October 10, 2014 Resolution[13], the Court *En Banc* deemed the case submitted for decision.

Petitioner raised the following issues[14] in its petition:

1. Whether the evidence on record sufficiently established the second requisite under Section 108(B)(2) of the 1997 NIRC, as amended, *i.e.* whether Chevron Holdings' services were rendered to persons engaged in business conducted outside of the Philippines or to a non-resident person not engaged in business who is outside of the Philippines when the services were performed;

2. Whether the input taxes in the amount of Php137,461,786.95 were supported by VAT official receipts (ORs) where the VAT amount was not separately indicated, should be refunded;

3. Whether the Court erred in denying Chevron Holdings' accumulated "input tax carry-over of Php196,500,668.53" from previous taxable quarters on *[the]* ground that it failed to substantiate the same;

4. Having denied the accumulated input tax carry-over from previous taxable quarters, whether the Court erred in applying the Php54,072,494.38 which it ruled as the valid and substantiated excess input tax for year 2008 against Chevron Holdings' Php72,895,829.33 output tax liabilities for the same year; and

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[9] *Ibid.*, p. 106
[10] *Id.*, pp. 108-109
[11] *Id.*, pp. 110-154
[12] *Id.*, p. 155
[13] *Id.*, pp. 157-158
[14] Issues, Petition for Review, CTA *En Banc* Rollo, pp. 9-10

5. Whether the Court erred in denying the Motion for New Trial to receive supplementary documentary and testimonial evidence as proof that the recipient of Chevron Holdings' services are entities not doing business in the Philippines or engaged in business conducted outside of the Philippines or simply located outside of the Philippines and to substantiate the accumulated input VAT from previous quarters which was credited against Chevron's output tax liabilities for year 2008.

Anent the first issue raised, petitioner asserts that, contrary to the finding of the CTA Special Third Division, zero-rated transactions are those rendered to *either* persons engaged in business outside the Philippines *or* persons not engaged in business but are outside the Philippines when the services were performed. In short, petitioner justifies that it is the fact that the customer is located outside the Philippines when the services were performed that is relevant, regardless of whether the customer is engaged in business or not. As to the second issue, petitioner claims that the amount of ₱137,461,786.95 was covered by VAT official receipts issued by suppliers under a valid Authority-To-Print (ATP) prior to the effectivity of Republic Act (R.A.) No. 9337 in 2005, which amended Section 113 of the National Internal Revenue Code (NIRC) of 1997, as amended. With regard to the third issue, petitioner insists that Section 112 of the NIRC of 1997, as amended, which prescribes the requirements for the issuance of tax refund or tax credit certificates, does not mandate the substantiation of input tax carried over. Thus, to require such, as an additional condition, amounts to judicial legislation. Finally, as to the fourth and fifth issues, petitioner begs the indulgence of the Court *En Banc* to allow it to present supplemental documentary and testimonial evidence to substantiate its prior quarters' accumulated and excess input taxes, which it believes will "materially alter the outcome of the case."

After due consideration of petitioner's arguments and thorough evaluation of the records of this case, the Court *En Banc* finds no merit in the instant petition.

Even though majority of the issues raised in the instant Petition have been thoroughly passed upon and analyzed by the CTA Special Third Division, the Court *En Banc* would still address the issues raised accordingly.

The evidence on record did not sufficiently establish the second requisite under Section 108(B)(2) of the 1997 NIRC, as amended.

It has been settled that before supply of services can be considered as VAT zero-rated, Section 108 (B)(2) of the NIRC of 1997, as amended, requires, among others, that the recipient of the service should be located outside the Philippines. *To wit:*

> "**SEC. 108.** ***Value-added Tax on Sale of Services and Use or Lease of Properties.*** **–**
>
> *xxx* *xxx* *xxx*
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* - The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> *xxx* *xxx* *xxx*
>
> (2) Services other than those mentioned in the preceding paragraph **rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed**, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
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> *xxx* *xxx* *xxx" (Emphasis Ours)*

During the trial of the instant case in the Court *a quo,* petitioner presented as its documentary evidence the Securities and Exchange Commission (SEC) Certificates of Non-Registration of Corporation/Partnership [15], Service Agreements [16], Articles of

[15] Exhibits "C" to "C-43" and "HHHH" to "HHHH-62"
[16] Exhibits "R" to "R-17"

Association, Articles/Certificates of Incorporation[17], and printed screenshots of the United States SEC website for company filings of Chevron Corporation[18], to prove that the recipients of services it rendered are non-resident foreign corporations doing business outside the Philippines. Petitioner insists that zero-rated transactions are those that are rendered to *either* persons engaged in business outside the Philippines *or* persons not engaged in business but are outside the Philippines when the services were performed.

At the risk of being repetitive, *We* quote with emphasis the Court *a quo*'s exhaustive explanation in answering the issue at hand. Thus:

> "**Albeit the Court accedes to petitioner's stance** that for a taxpayer's sale of services to be considered zero-rated it only needs to prove that the recipients of petitioner's services are: [1] not doing business in the Philippines; and [2] located outside the Philippines when the services were performed, regardless of whether the customer is engaged in business or not; **still the Court cannot sustain petitioner's urging that the *SEC Certificates of Non-Registration* standing alone are sufficient proof that the recipients of petitioner's services are not doing business in the Philippines and are located outside the Philippines.**"[19]

Based on the above excerpt, the Court *a quo* submits that in cases of VAT zero-rating, what is relevant is that the recipient of the service is located outside the Philippines when the services were performed, regardless of whether the recipient is engaged in business or not. Such fact has been clearly established. However, what the Court *a quo* points out in the instant case is that each one of the documents presented by petitioner, **standing alone**, is inadequate to prove that the recipient of the services rendered by petitioner is not doing business in the Philippines and that said entity is outside the Philippines. A portion of the CTA Special Third Division's Decision is quoted below:

> "Each one of the enumerated documents, standing alone, is inadequate proof that petitioner's client is a non-

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[17] Exhibits "SS" to "EEEE"
[18] Exhibits "GGGG" to "GGGG-8"
[19] Par. 1, page 6 of the assailed Resolution dated March 11, 2014, CTA *En Banc* Rollo, p. 92

> resident foreign corporation doing business outside the Philippines. While the SEC Certificates of Non-Registration show that the named entities therein are not registered corporations/partnership in the Philippines, the same do not prove that such entities are non-resident foreign corporations doing business outside the Philippines. Likewise, the Service Agreements only show the names of petitioner's customers to whom it renders services but the same do not establish that such customers are non-resident foreign corporations doing business outside the Philippines. Also, the Articles of Association, the Articles/Certificate of Incorporation, and the printed screenshots of the United States SEC website for company filings of Chevron Corporation only prove that the named entities therein were incorporated or organized abroad but do not establish that such entities are not doing business in the Philippines."

Now, petitioner argues that the SEC Certificates of Non-Registration coupled with the Certificates of Inward Remittance issued by JPMorgan Chase Bank N.A. constitute a preponderance of evidence to establish that the recipients of petitioner's services were located outside the Philippines when the services were rendered.

We are not convinced.

Case law dictates that in a claim for tax refund or tax credit, the applicant must prove not only entitlement to the claim but also compliance with all the documentary and evidentiary requirements therefor.[20] Such is a question of fact which could only be answered after reviewing, examining, evaluating, or weighing all over again the probative value of the evidence before the Court *a quo.* Verily, "Preponderance of evidence" is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of evidence" or "greater weight of credible evidence". [21] In determining where the preponderance of evidence or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstance of the case.[22] Unfortunately, petitioner failed to meet the required quantum of proof. The Court *En Banc* cannot base its decision on mere

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[20] Western Mindanao Power Corporation vs. CIR, G.R. No. 181136, June 13, 2012
[21] Rosena Fontelar Ogawa vs. Elizabeth Gache Menigishi, G.R. No. 193089, July 9, 2012
[22] Section 1, Rule 133 of the Rules of Court

implication or inference, claims must be verified and allegations must be proven.

Input taxes in the amount of Php137,461,786.95 were not properly supported by VAT official receipts.

Sections 113 of the NIRC of 1997, as amended, provides that a VAT taxpayer shall for every sale, barter or exchange of services, issue a VAT official receipt which must contain certain information; and in connection with this, Section 4.110-8 of Revenue Regulations No. 16-2005 further requires that the input taxes must be substantiated and reported in the taxpayer's VAT Return. Thus:

> "**Sec. 113.** ***Invoicing and Accounting Requirements for VAT-Registered Persons.-***
>
> (A) *Invoicing Requirements.* - A VAT-registered person shall issue:
>
> *xxx* *xxx* *xxx*
>
> (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;

xxx xxx xxx"

"**SEC. 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: *xxx*"
(Emphasis and Underscoring Ours)

In the instant case, petitioner argues that the VAT official receipts issued by its suppliers should still be considered by the Court, despite of the above-cited provisions considering that the said VAT official receipts were issued under a valid ATP prior to the effectivity of R.A. No. 9337[23] in 2005, which amended Section 113 of the NIRC of 1997, as amended.

We hold otherwise.

As correctly held by the Court *a quo,* petitioner's argument failed to persuade the Court since R.A. No. 9337 was enacted long before petitioner filed the instant case. There is no reason why petitioner should not adhere to the provisions of the law, considering that they are clear and express. As stated by the Court *a quo* in the assailed Resolution:

"It bears to stress that the instant case involves a claim for refund or issuance of tax credit certificate (TCC) of input taxes allegedly incurred during taxable year 2008, whereas RA No. 9337, which required the VAT to be indicated as a separate item in the VAT ORs/invoices became effective beginning November 1, 2005. RA No. 9337 had been in effect long before the subject taxable year;

[23] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES

without a doubt, the provisions of RA No. 9337 fairly and justly apply in this case."

Parenthetically, where the provision of the law or rule is clear and unequivocal, its meaning must be determined from the language employed. It must be given its literal meaning and applied without interpretation.[24] Thus, following the *verba legis* doctrine, the law must be applied exactly as worded since it is clear, plain, and unequivocal. The general rule of requiring adherence to the letter in construing statutes applies with particular strictness to the tax laws and provisions of a taxing act are not to be extended by implication.[25]

The Court correctly denied the accumulated "input tax carry-over of Php196,500,668.53" from petitioner's previous taxable quarters for its failure to substantiate the same.

and,

The Court correctly applied the amount of Php54,072,494.38 against the Php72,895,829.33 output tax liability of petitioner for the year 2008.

Considering that both issues are intertwined, the Court *En Banc* shall dispose of them jointly.

In the assailed Decision, the Court *a quo* declared that "[s]ince there is no excess input VAT which may be the subject of a claim for refund or tax credit under Section 112 (A) of the NIRC of 1997, as amended, the instant claim must be denied."[26] In arriving at said conclusion, the Court *a quo* rationalized that petitioner failed to present sufficient VAT invoices or receipts to corroborate its claimed amount of

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[24] Commissioner of Internal Revenue vs. Central Luzon Drug Corporation, G.R. No. 159610, June 12, 2008
[25] Commissioner of Internal Revenue vs. Julieta Ariete, G.R. No. 164152, January 21, 2010
[26] Decision, at p. 36

₱196,500,668.53 reflected in its Quarterly VAT Return[27] for the 1st Quarter of 2008 as "Input Tax Carried Over from Previous Quarter". Consequently, the said amount cannot be applied against petitioner's output tax for 2008 in accordance with Section 110 of the NIRC of 1997, as amended.

We sustain the Court *a quo*'s findings.

As discussed earlier, Section 110 (A) (1) and (B) of the NIRC of 1997, as amended, provides that the input tax shall be creditable only against the output tax if it is evidenced by a VAT invoice or official receipt in accordance with the substantiation requirements under Section 113 of the same code. Any excess of the input tax thereof shall be carried over to the succeeding quarter or quarter. Thus:

"**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:

xxx xxx xxx

(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."

Still unconvinced, petitioner now argues that since claims for refund of input taxes is provided under Section 112 (A) of the NIRC of 1997, as amended, nowhere in the said Section will the substantiation of input tax carried over from the previous quarters requirement will be

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[27] Exhibit "F"

found. Hence, by imposing against petitioner the said requirement, the CTA Special Third Division violated the *Verba Legis* principle, or the plain meaning rule, of statutory construction.

We find petitioner's argument without merit.

In claiming excess/unutilized input tax from zero-rated or effectively zero-rated transactions, it is the excess over the output taxes which should be refunded to the taxpayer or credited against other internal revenue tax.[28] Hence, it is important for the taxpayer to prove that it has enough *prior year's excess input tax credits* to cover its output tax liability for the current taxable year. As correctly held by the Court *a quo* in the assailed Resolution:

> "The 'prior year's excess input tax credits' may be proved by following the substantiation requirements under Section 4.110-8 of Revenue Regulations No. 16-2005, otherwise known as the 'Consolidated Value-Added Tax Regulations of 2005'. Mere declaration of the amount of ₱196,500,668.53 as 'Input Tax Carried Over from Previous Quarter' in petitioner's Quarterly VAT Return for taxable year 2008 will not suffice.
>
> *xxx* *xxx* *xxx*
>
> In this case, petitioner failed to present and offer in evidence any VAT invoice or official receipt to support the 'Input Tax Carried Over from Previous Quarter' which petitioner seeks to be credited or charged against its output Vat liability for taxable year 2008. Hence, the input tax carry-over of ₱196,500,668.53 cannot be validly applied against petitioner's output tax for the year 2008 pursuant to Section 110 of the NIRC of 1997, as amended."

All told, the CTA Special Third Division correctly disallowed the input VAT that did not meet the required standard of substantiation.

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[28] Section 110 of the NIRC of 1997, as amended

That having been settled, petitioner also questions whether the amount of ₱54,072,494.38[29] was correctly applied by the CTA Special Third Division in the assailed Decision, against the ₱72,895,829.33 output tax liability it stated for the year 2008.

We answer in the affirmative.

However, it is worthy to note that, as per the Court *a quo's* Resolution dated March 11, 2014 the amount of ₱54,072,494.38 was increased by ₱757,203.40, representing the VAT component on the sale of services to DHL Express (Philippines) Corp.[30] and Larsen and Tourbo Infotech Limited[31]. Accordingly, petitioner's total valid input VAT is now adjusted to ₱54,829,697.78, as shown in the table below:

	TOTAL
Input VAT Claim	₱ 206,659,149.05
Less: Disallowances	
Per ICPA's report	11,141,221.78
Per this Court's further verification	141,445,432.89
Valid Input VAT per Decision dated October 14, 2013	₱ 54,072,494.38
Add: Per Further verification of Exhibits GG-89 and II-481	757,203.40
TOTAL VALID INPUT VAT	**₱ 54,829,697.78**

Nonetheless, petitioner still has no excess input VAT to claim as refund since its total output tax liability as indicated in its Quarterly VAT Returns[32] for the year 2008 amounts to ₱72,895,829.33, which even if subtracted with ₱54,829,697.78, would still leave a difference of ₱18,066,131.55 as output tax.

While petitioner was given the opportunity by the CTA Special Third Division to submit evidence which it deemed will support its claim for refund during the trial conducted therein, petitioner, however, failed to do so. It must be stressed that the taxpayer claiming the tax credit or refund has the burden of proving that he is entitled to the

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[29] Total Valid Input VAT out of the Input VAT claimed by petitioner per Decision dated October 14, 2013
[30] Exhibit "GG-89"
[31] Exhibit "II-481"
[32] Exhibits "F", "G", "H" and "I"

refund or credit, by submitting evidence that he has complied with the requirements laid down in the tax code and the BIR's revenue regulations under which such privilege of credit or refund is accorded.[33]

Although it is true that the CTA is not strictly governed by technical rules of evidence,[34] the invoicing and substantiation requirements must, nevertheless, be followed because it is the only way to determine the veracity of a taxpayer's claims.[35]

The Court did not err in denying the petitioner's Motion for New Trial to receive supplementary documentary and testimonial evidence.

As earlier discussed, the CTA Special Third Division held that the SEC Certificates of Non-Registration standing alone are insufficient to prove zero-rated sales. As such, petitioner begs the indulgence of the Court *En Banc* to grant its motion for new trial and direct the re-opening of the case for the reception of supplemental documentary and testimonial evidence in order for it to address the issue that the recipients of its service are located outside the Philippines and also to further substantiate its accumulated input VAT from previous quarters. Thus, petitioner seeks the admission of additional incorporation papers and printed screenshots of the company profiles of its affiliates/entities which it claims could not be produced during trial because, despite exercising reasonable diligence and serious attempts to secure said documents, "it does not exercise absolute control over the management of the said foreign affiliates".

Notwithstanding due consideration on petitioner's arguments, the additional documents it sought to present, and the surrounding circumstances in the instant case; all of the foregoing still failed to persuade the Court *En Banc*. Findings of the Court *a quo* shall be given due respect since the granting or denial of a motion for new trial is, as a general rule, discretionary with the courts. Accordingly, the Court *a quo's* judgment should not be disturbed considering that it is in a better

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[33] Microsoft Philippines, Inc. vs. CIR, G.R. No. 180173, April 6, 2011
[34] Section 8, R.A. No. 1125
[35] Kepco Philippines Corp. vs. Commissioner of Internal Revenue, G.R. No. 181858, November 24, 2010

position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless there is a clear showing of abuse of discretion.

As justified by the Court *a quo* in the assailed Resolution:

> "In this instance, petitioner failed to establish that the proffered evidence consisting of incorporation documents and internal database of clients were discovered after trial, *xxx*. There is no way that petitioner could not have known of the existence of the incorporation documents and of the internal database of company profiles: petitioner knows the existence and importance of the incorporation documents as it even offered in evidence incorporation documents of its other clients; and also, petitioner could not deny its knowledge of the existence of the internal database as it is the one who created the database. It is also noteworthy that the attached photocopies of incorporation documents contain[s] no date or any indication, transmittal letter or note, which could confirm that these documents were received and made available to petitioner after trial."

It cannot be gainsaid that litigation is not a "trial and error" proceeding.[36] Litigants must prove their respective claims and defenses. Parties praying for the liberal interpretation of the rules must be able to hurdle that heavy burden of proving that they deserve an exceptional treatment,[37] especially since well-settled is the rule that tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer.[38]

Accordingly, finding no reversible error, the Court *En Banc* finds no cogent reason or justification to disturb the conclusions reached by the CTA Special Third Division.

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[36] Atlas Consolidated Mining and Development Corporation vs. CIR, G.R. Nos. 141104 & 148763, June 8, 2007

[37] Rhodora Prieto vs. Alpadi Development Corporation, G.R. No. 191025, July 31, 2013

[38] Commissioner of Internal Revenue vs. Bank of the Philippine Islands, G.R. No. 178490, July 7, 2009; Commissioner of Internal Revenue vs. Solidbank Corporation, G.R. No. 148191, November 25, 2003; Commissioner of Internal Revenue vs. Rio Tuba Nickel Mining Corp., G.R. Nos. 83583-84, March 25, 1992

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. The Decision dated October 14, 2013 and Resolution dated March 11, 2014 of the CTA Special Third Division in CTA Case No. 8064 are both **AFFIRMED.**

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

(With Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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 with the members of the Court *en banc* 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

CHEVRON HOLDINGS, INC., [FORMERLY CALTEX (ASIA) LIMITED], Petitioner,	**CTA EB NO. 1146** (CTA Case No. 8064)
	Present:
- versus -	Del Rosario, *PJ*, Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, *and* Ringpis-Liban, *JJ*.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: APR 14 2015 11:38 a.m.

x - x

CONCURRING OPINION

***DEL ROSARIO, PJ.*:**

In concur in the *ponencia* of my esteemed colleague, the Honorable Associate Justice Caesar A. Casanova, denying the Petition for Review for lack of merit.

Section 108(b)(2) of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act (RA) No. 9337, provides that:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* —

> (B) Transactions Subject to Zero Percent (0%) Rate. — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
>
> (2) **Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed**, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);" (Emphasis supplied)

In the assailed Resolution of the Court in Division, it was emphasized that for a taxpayer's sale of services to be considered zero-rated, it only needs to prove that the recipients of petitioner's services are: (a) **not doing business in the Philippines**; and **(b) located outside the Philippines when the services were performed, regardless of whether the customer is engaged in business or not**.

Indeed, a plain reading of Section 108(b)(2) of the NIRC of 1997, as amended RA No. 9337, reveals that it contemplates two (2) situations wherein sales can be regarded as zero-rated, *viz.*:

> 1) Services were rendered to a person engaged in business conducted outside the Philippines, and the consideration for which is paid for in foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
>
> **OR**
>
> 2) Services were rendered to a nonresident person not engaged in business who is outside the Philippines when the services are performed, and the consideration for which is paid for in foreign currency and accounted for in accordance with the rules and regulations of the BSP.

I therefore submit that the pronouncement of the Supreme Court in **Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.**,[1] which was later on cited in

[1] G.R. No. 153205, January 22, 2007.

Accenture, Inc., vs. Commissioner of Internal Revenue,[2] to the effect that in order for the supply of services to be VAT zero-rated, the claimant must be able to establish, among others that the *recipient of such services is doing business outside the Philippines,* **applies only to the first situation stated under Section 108(b)(2) of the NIRC of 1997, as amended by RA NO. 9337.**

In the second scenario, the taxpayer-claimant is not required to prove the fact that its customers are doing business outside the Philippines but it is required to establish that the services were rendered to nonresident persons who were outside the Philippines when the services were performed.

At any rate, as pointed out by the Court in Division, the SEC Certificates of Non-Registration submitted by petitioner, standing alone, are not sufficient to establish that the recipients of services are located outside the Philippines or are engaged in business conducted outside the Philippines.

All told, I CONCUR with the *ponente* and VOTE to DENY the Petition for Review filed by Chevron Holdings, Inc.

ROMAN G. DEL ROSARIO
Presiding Justice

[2] G.R. No. 190102, July 11, 2012.