REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- *versus* –

S & WOO CONSTRUCTION PHILIPPINES, INC.
Respondent.

CTA EB NO. 2420
(CTA Case No. 9533)

Present:

Del Rosario, P.J.,
Castañeda, Jr.,
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena,
Modesto-San Pedro,
Reyes-Fajardo, and
Cui-David, JJ.

Promulgated:
MAR 2 2 2022 3:55pm

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DECISION

CASTAÑEDA, JR., J.:

Before the Court *En Banc* is a Petition for Review[1] filed by the Commissioner of Internal Revenue on January 29, 2021. It seeks the reversal of the Decision dated June 24, 2020,[2] (Assailed Decision) as well as the Resolution dated January 8, 2021[3] (Assailed Resolution) of the Third

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[1] Court *En Banc's* Docket, pp. 1-11.
[2] *Id.*, pp. 18-49.
[3] *Id.*, pp. 50-55.

Division (Court in Division)[4] of this Court in the case docketed as CTA Case No. 9533.

The respective dispositive portions of the Assailed Decision and Resolution are quoted hereunder:

Assailed Decision:

> '**WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, Respondent is ordered to refund, or issue a tax credit certificate in favor of Petitioner in the amount of **Php10,262,360.41**, representing the latter's unutilized excess input VAT attributable to its zero-rated sales for the fourth quarter of CY 2015.
>
> **SO ORDERED.**'

Assailed Resolution:

> '**WHEREFORE**, premises considered, respondent's Motion for Partial Reconsideration (Re: Decision promulgated 24 June 2020) is **DENIED** for lack of merit.
>
> **SO ORDERED.**'

THE FACTS

The facts of the present case were laid down by the Court in Division in the Assailed Decision as follows:[5]

> "On September 6, 2016, Petitioner filed with the BIR an *Application for Tax Credits/Refunds* (BIR Form No. 1914), and letter dated September 09, 2016, requesting for the refund and/or issuance of a tax credit certificate, representing its alleged excess/unutilized input VAT amounting to Php44,354,629.84, for the first quarter of CY 2016.
>
> Subsequently, on September 09, 2016, Petitioner filed with the BIR another *Application for Tax Credits/Refunds* (BIR

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[4] Composed of Associate Justice Erlinda P. Uy, Associate Justice Ma. Belen M. Ringpis-Liban *(ponente)* and Associate Justice Maria Rowena Modesto- San Pedro.

[5] Court *En Banc's* Docket, pp. 33-41 (Citations omitted).

Form No. 1914), and letter dated September 09, 2016, requesting for the refund and/or issuance of a tax credit certificate, representing its alleged excess/unutilized input VAT amounting to Php14,585,272.73, for the fourth quarter of CY 2015.

Petitioner then filed the instant *Petition for Review* on February 2, 2017.

On April 21, 2017, Respondent filed his *Answer*, interposing the following defenses, to wit:

> 4. It is said that taxes are essential to government's very existence hence, the dictum that 'taxes are the lifeblood of the government.' And because taxes are the lifeblood of the nation, the court has always applied the doctrine of strict interpretation in construing tax exemptions. A claim for exemption from tax payments must be clearly shown and based on language in the law too plain to be mistaken. Else wise stated, taxation is the rule, exemption therefrom is the exception.
>
> 5. For this reason, the right of taxation cannot easily be surrendered, statutes granting tax exemptions are considered as a derogation of the sovereign authority. Since tax refunds are regarded as tax exemptions, therefore, these are to be construed *strictissimi juris* against the person or entity claiming the exemption.
>
> 6. In order to be entitled to a refund or issuance of a TCC of input VAT due or paid attributable to zero-rated or effectively zero-rated sales, Petitioner must prove compliance with the following requisites:
>
> 1. that there must be zero-rated or effectively zero-rated sales;
> 2. that input taxes were incurred or paid;
> 3. that such input taxes are directly attributable to zero-rated or effectively zero-rated sales;
> 4. that input taxes were not applied against any output VAT liability; and
> 5. that the claim for refund was filed within the two-year prescriptive period.
>
> 7. Claims for refund are construed strictly against the taxpayer and in favor of the Government, thus Petitioner must prove compliance with foregoing requirements.
>
> 8. Under Section 112(C) of the NIRC of 1997, as amended, the Commissioner has one hundred twenty

(120) days from the submission of complete documents within which to act on the petition for refund/credit.

> Sec. 112. Refunds or Credits of Input Tax. —
> xxx xxx xxx
>
> (C) Period within which Refund or Tax Credit shall be made. — In proper cases, the **Commissioner shall grant a refund or issue the tax credit certificate 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**. 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 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.

9. To reiterate, the above provision shows that the 120-day period will only commence to run upon the submission of complete documents in support of the application for refund filed. Further, Section 7 of Republic Act No. 9282 provides for the jurisdiction of the Court of Tax Appeals, to wit:

> SECTION 7. Section 7 of the same Act is hereby amended to read as follows:
>
> Sec. 7. Jurisdiction. — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws

> administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action in which case the inaction shall be deemed a denial.
>
> 10. Petitioner's alleged claim for refund is subject to administrative investigation/examination by the Bureau of Internal Revenue. A claim for refund is not ipso facto granted because Respondent CIR still has to investigate and ascertain the validity of the claim.
>
> 11. Only action taken by the Commissioner in response to taxpayer-claimant's written claim for refund/credit would constitute the decision which is appealable to the Court of Tax Appeals.
>
> 12. Since Petitioner failed to submit the complete documents to support its claim, the 120-day period will not commence to run rendering the Honorable Court without jurisdiction over the pending case.
>
> 13. Petitioner is charged with the heavy burden of proving that it has complied with and satisfied all the documentary requirements to be entitled to the tax refund.
>
> 14. To reiterate, claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation and as such, they are looked upon with disfavor. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications. 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.

The Pre-Trial Conference was set and held on July 11, 2017.

Respondent transmitted the *BIR Records* for the instant case on May 29, 2017.

Respondent's Pre-Trial Brief was filed on July 05, 2017, while *Petitioner's Pre-Trial Brief* was submitted on July 06, 2017.

On July 28, 2017, the parties filed their *Joint Stipulation of Facts and Issues* ('JSFI'). *gr*

Thereafter, the Independent Certified Public Accountant ('ICPA') Report was submitted on August 09, 2017.

On August 15, 2017, the Pre-Trial Order was issued, deeming the termination of the Pre-Trial Conference.

The trial of the case proceeded.

During trial, Petitioner presented its documentary and testimonial evidence. It offered the testimonies of the following individuals, namely: (1) Mr. Cheol Beom Lee, Accounting Manager of Petitioner; and (2) Ms. Krista V. Bambao, the Court-commissioned ICPA.

On March 28, 2018, Petitioner filed its *Formal Offer of Evidence*. Respondent filed his *Comment (Re: Petitioner's Formal Offer of Evidence* on April 11, 2018. Thus, in the Resolution dated June 07, 2018, the Court admitted Petitioner's Exhibits, *except* for Exhibits 'P-16', 'P-17-4', 'P-18-3', 'P-18-4', 'P-19-3', 'P-19-4', 'P-19-5', 'P-19-6', 'P-19-7', 'P-19-8', 'P-19-9', 'P-20-10', 'P-20-11', 'P-20-12', 'P-20-13', 'P-20-14', 'P-20-15', 'P-21-2', 'P-21-3', 'P-22-21', 'P-22-22', 'P-22-23', 'P-22-24', 'P-22-25', 'P-22-26', 'P-22-27', 'P-24-5', 'P-24-6', 'P-24-7', 'P-24-8', 'P-24-9', 'P-24-10', 'P-24-11', 'P-24-12', 'P-24-13', 'P-24-14', 'P-24-15', 'P-24-16', 'P-25-1', 'P-25-2', 'P-26-1', 'P-26-2', 'P-26-3', 'P-26-4', 'P-27-2', 'P-27-3', 'P-27-4', 'P-27-5', 'P-27-6', 'P-27-7', 'P-27-8', 'P-27-9', 'P-27-10', 'P-27-11', 'P-27-12', 'P-27-13', 'P-27-14', 'P-27-15', 'P-27-16', 'P-27-17', 'P-27-18', 'P-27-19', 'P-27-20', 'P-27-21', 'P-27-22', 'P-27-23', 'P-27-24', 'P-27-25', 'P-27-26', 'P-27-27', 'P-27-28', 'P-27-29', 'P-28-1', 'P-28-2', 'P-28-3', 'P-28-4', 'P-28-5', 'P-28-6', 'P-28-7', 'P-28-8', 'P-28-9', 'P-28-10', 'P-28-11', 'P-28-12', 'P-28-13', 'P-28-14', 'P-29-1', 'P-30-2', 'P-30-4', 'PP-30-5', 'P-30-6', 'P-30-7', and 'P-30-8', for failure to present the originals for comparison.

At the hearing held on January 24, 2019, Respondent's counsel manifested that he will not present any evidence in this case. By agreement, both parties were given thirty (30) days to file their respective memoranda.

Subsequently, Petitioner filed its *Memorandum* on February 26, 2019, while Respondent filed his *Memorandum* on March 25, 2019.

The instant case was deemed submitted for decision on March 29, 2019."

On June 24, 2020, the Court in Division rendered the Assailed Decision partially granting the Petition for Review. The Court in Division had ordered the refund of or issuance of tax credit certificate covering the amount Php10,262,360.41 representing unutilized excess input VAT attributable to zero-rated sales for the 4th quarter of CY 2015.

Aggrieved, the CIR filed a Motion for Partial Reconsideration (Re: Decision promulgated 24 June 2020) on August 17, 2020 which the Court in Division denied in the Assailed Resolution.

On January 29, 2021, petitioner filed the present Petition for Review.

In a Resolution dated February 17, 2021, this Court required respondent to file its Comment to the Petition for Review.[6]

On March 3, 2021, respondent filed its Comment/Opposition (to Petition for Review filed by the Commissioner of Internal Revenue).[7]

In a Resolution dated May 19, 2021, this Court noted respondent's Comment/Opposition and submitted the present case for decision.[8]

THE ISSUE

Petitioner CIR filed the present Petition for Review on the basis of the lone assignment of error as stated below: [9]

> **'ASSIGNMENT OF ERROR**
>
> THE THIRD DIVISION OF THE HONORABLE COURT ERRED IN RULING THAT RESPONDENT IS ENTITLED TO REFUND IN THE REDUCED AMOUNT OF P10,262,360.41 REPRESENTING UNUTILIZED EXCESS INPUT VAT ALLEGEDLY ATTRIBUTABLE TO ZERO-RATED SALES.

[6] *Id.*, pp. 57-58.
[7] *Id.*, pp. 59-67.
[8] *Id.*, pp. 69-70.
[9] *Id.*, p. 3.

THE COURT *EN BANC*'S RULING

In the present Petition for Review, the CIR claims that the law requires that only "creditable input taxes" that are "directly attributable" may be refunded and, in the present case, no attributability was established between the input tax on purchases vis-à-vis the zero-rated sales of respondent.[10] In other words, it is the CIR's position that to be creditable, the input tax must come from purchases of goods that form part of the finished product of the taxpayer or it must be directly used in the chain of production.[11]

Respondent S & Woo Construction Philippines, Inc., on the other hand, maintains that it only had zero-rated sales transactions and, in the VAT System, all input VAT will necessarily be attributable to such VAT zero-rated sales transactions.[12] It explained that all of its purchases are directly related to its export sales to its sole client SEMPHIL, a PEZA-registered entity.[13] It also pointed out that it was engaged to construct facilities for SEMPHIL within the ecozone and to do that, it has to purchase construction and other materials as well as engage the services of its subcontractors.[14]

After careful evaluation of the facts, issues, and arguments presented by the parties, the Court *En Banc* finds that the CIR failed to raise any new or substantial matter let alone any compelling reason to warrant the modification much less reversal of the Assailed Division and Resolution. At any rate, if only to put the CIR's mind to rest as well as to reinforce the discussion in the Assailed Decision and Resolution, the Court *En Banc* will address the matters herein raised.

Section 112(A) of the National Internal Revenue Code of 1997, as amended, in relevant part, 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 <u>attributable to such sales</u>**, except transitional input tax, to the extent that such input tax has not been applied against output tax:
>
> x x x

[10] *Id.*
[11] *Id.*, p. 6.
[12] *Id.*, pp. 60-63.
[13] *Id.*
[14] *Id.*

> *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 or 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.** *(Emphasis supplied)*

A textual analysis of Section 112(A) of the National Internal Revenue Code of 1997, as amended (1997 NIRC), readily debunks petitioner CIR's position. Nowhere in the said provision does it require that the input VAT subject of a claim for refund be *directly* attributable to zero-rated sales. The law merely states that the creditable input VAT should be *attributable* to zero-rated or effectively zero-rated sales. The use of the phrase "directly attributable" strictly relates to a situation involving taxpayers having both zero-rated or effectively zero-rated sale as well as taxable or exempt sale of goods, properties or services and the creditable input VAT cannot be directly attributed to any of such transactions. In such cases, the input taxes shall be allocated proportionately on the basis of the volume of sales.

Input taxes that bear a direct or indirect connection with a taxpayer's zero-rated sales satisfies the requirement of the law. It is a well-recognized rule that where the law does not distinguish, courts should not distinguish.[15]

Equally untenable is the CIR's position that to be creditable, the input tax must come from the purchases of goods that form part of the finished product of the taxpayer or the same must be directly used in the chain of production. Such position is contrary to Section 110 of 1997 NIRC which, in relevant part, states:

> 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

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[15] *Petron Corporation v. Tiangco*, G.R. No. 158881, April 16, 2008.

> (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, except automobiles, aircraft and yachts.
>
> (b) Purchase of services on which a value-added tax has been actually paid.
>
> x x x x x x
>
> The term *'input tax'* means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. It shall also include the transitional input tax determined in accordance with Section 111 of this Code.

It is plain from the above-quoted provision that input VAT evidenced by a VAT invoice or official receipt arising from any of the various transactions enumerated therein is creditable against the output VAT. These transactions are evidently not limited to purchases of goods that form part of the finished product or those that are directly used in the chain of production. They also include purchases or importation of goods for sale, for use as supplies in the course of business, and for use in trade or business for which deduction for depreciation or amortization is allowed under the 1997 NIRC. Also included are input taxes on purchase of services on which tax has actually been paid.

It is a rule in statutory construction that every part of the statute must be interpreted with reference to the context, *i.e.*, that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment.[16] The law must not be read in truncated parts and its provisions must be read in relation to the whole law.[17] The statute's clauses and phrases must not, consequently, be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole.[18]

In view of the foregoing, the Court *En Banc* finds no compelling reason to disturb the findings of the Court in Division in the Assailed Decision and Resolution.

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[16] *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. No. 192398, September 29, 2014.
[17] *Fort Bonifacio Development Corp. v. Commissioner of Internal Revenue*, G.R. Nos. 158885 & 170680, October 2, 2009.
[18] *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*, G.R. No. 180043, July 14, 2009.

WHEREFORE, the present Petition for Review is **DENIED** for lack of merit, and the Decision dated June 24, 2020 and Resolution dated January 8, 2021 in CTA Case No. 9533 are **AFFIRMED**.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ON LEAVE
ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in 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