REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 2355** (CTA Case Nos. 9350 & 9430)
	Present:
-versus-	**DEL ROSARIO**, *PJ,* **CASTAÑEDA, JR.**, **UY**, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, and **CUI-DAVID**, *JJ.*
CHEVRON HOLDINGS, INC., *Respondent.*	Promulgated: DEC 0 9 2021 2:32 pm

x --x

DECISION

DEL ROSARIO, PJ.:

Before this Court is a Petition for Review filed on October 20, 2020 by the Commissioner of Internal Revenue pursuant to Section 3 (b), Rule 8 of the Revised Rules of the Court of Tax Appeals, praying that the Court *En Banc*: *(i)* reverse and set aside the Decision dated February 12, 2020 and the Resolution dated September 29, 2020 promulgated by the Court of Tax Appeals (CTA) Third Division[1] in CTA Case Nos. 9350 and 9430, entitled *Chevron Holdings, Inc. vs. Commissioner of Internal Revenue* which partially granted Chevron Holdings, Inc.'s consolidated Petitions for Review; and, *(ii)* deny Chevron Holdings, Inc.'s claim for refund in its entirety.

---

[1] Composed of Associate Justice Erlinda P. Uy, Associate Justice Ma. Belen M. Ringpis-Liban, and Associate Justice Maria Rowena Modesto-San Pedro.

The dispositive portions of the assailed Decision and assailed Resolution of the Court in Division read:

February 12, 2020 Decision:

> "**WHEREFORE**, in light of the foregoing considerations, the instant consolidated *Petitions 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 **Php27,540,901.25**, representing the latter's unutilized input VAT attributable to Petitioner's zero-rated sales for the first and second quarters of TY 2015.
>
> **SO ORDERED.**"

September 29, 2020 Resolution:

> **WHEREFORE,** premises considered, respondent's Motion for Partial Reconsideration (Re: Decision promulgated 12 February 2020) is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE PARTIES

Petitioner is the duly appointed Commissioner of Internal Revenue (CIR) who is empowered to perform the duties of his office, including, among others, the duty to act on and approve claims for refund as provided by law. He holds office at the Bureau of Internal Revenue (BIR) National Building Office, Diliman, Quezon City.[2]

Respondent Chevron Holdings, Inc. (Chevron), formerly known as Caltex (Asia Limited), is a corporation organized and existing under the laws of the State of Delaware, United States of America. It was granted a license to transact business in the Philippines by the Securities and Exchange Commission (SEC) under SEC Reg. No. A199802486.[3] It is registered with the BIR as a value-added tax (VAT) taxpayer with Tax Identification No. 201-056-391-0000.[4]

---

[2] Par. 2, Joint Stipulation of Facts and Issues (JSFI), *CTA Division Docket*, Vol. IV, p. 1725.
[3] Exhibits "P-1", "P-2", "P-4", and "P-5", *CTA Division Docket*, Vol. VIII, pp. 3658 to 3680, and 3683 to 3695.
[4] Exhibit "P-3", *CTA Division Docket*, Vol. VIII, pp. 3681 to 3682.

THE FACTS

The facts as culled from the assailed Decision[5] are as follows:

"*Antecedents (administrative level)*

On December 18, 2015, Petitioner filed with the BIR an *Application for Tax Credits/Refunds* (BIR Form No. 1914), and the letter dated December 16, 2015, requesting for the issuance of tax credit certificates and/or tax refund of its unutilized and excess input VAT in the total amount of Php14,516,165.27, for the first quarter of TY 2015.

Thereafter, on April 01, 2016, Petitioner filed with the BIR another *Application for Tax Credits/Refunds* (BIR Form No. 1914), and the letter dated December 16, 2015, requesting for the issuance of tax credit certificates and/or tax refund of its unutilized and excess input VAT in the total amount of Php18,968,294.79, this time for the second quarter of TY 2015.

Proceedings before this court

On May 16, 2016, Petitioner filed a Petition for Review before this Court. The case was docketed as **CTA Case No. 9350** and was initially raffled to this Court's First Division. In the said *Petition*, Petitioner prays that judgment be rendered ordering Respondent to refund in its favor the amount of Php14,516,165.27, allegedly representing unutilized input VAT for the first quarter of TY 2015.

Respondent then filed its *Answer* in CTA Case No. 9350 on July 15, 2016, interposing the following special and affirmative defenses, to wit:

xxx xxx xxx

The Pre-Trial Conference for CTA Case No. 9350 was initially set on September 14, 2016. The *Respondent's Pre-Trial Brief* for the said case was filed on July 29, 2016. Thereafter, Respondent transmitted to this Court the BIR Records for the same case on August 03, 2016.

On August 17, 2016, Petitioner filed another *Petition for Review* before this Court. The case was docketed **as CTA Case No. 9430** and was likewise initially raffled to this Court's First Division. In the said *Petition*, Petitioner prays that judgment be rendered ordering Respondent to refund in its favor the amount of Php18,968,294.79, allegedly representing unutilized input VAT for the second quarter of TY 2015.

---

[5] Court of Tax Appeals Third Division Decision dated February 12, 2020, pp. 2 to 13.

Subsequently, on September 02, 2016, Petitioner filed a *Motion to Consolidate (With Urgent Motion to Defer Pre-Trial Conference)* in CTA Case No. 9350, praying for the consolidation of the said case with CTA Case No. 9430, and the deferral of the Pre-Trial Conference. Simultaneously, Petitioner filed a *Motion to Consolidate* in CTA Case No. 9430, praying for the consolidation thereof with CTA Case No. 9350. Thus, in the Resolutions dated September 21, 2016 separately promulgated for the said cases, the Court granted the said *Motion to Consolidate*, and ordered the consolidation of the said cases.

On November 04, 2016, Respondent filed his *Answer* in CTA Case No. 9430, interposing the following special and affirmative defenses, to wit:

xxx xxx xxx

The Pre-Trial Conference for the consolidated cases was set to, and held on, February 22, 2017.

Respondent filed its *Pre-Trial Brief* on December 19, 2016; while Petitioner submitted its *Consolidated Pre-Trial Brief* on February 17, 2017.

On March 13, 2017[,] the parties filed their *Joint Stipulation of Facts and Issues* (JSFI). In the Resolution dated March 23, 2017, the Court approved the said JSFI, and deemed the Pre-Trial terminated. Thereafter, the Pre-Trial Order dated May 02, 2017 was issued by this Court.

The trial of the case then proceeded.

During trial, Petitioner presented its documentary and testimonial evidence. It offered the testimonies of the following individuals, namely: (1) Ms. Carolyn C. Ardina, Finance Coordinator of Petitioner; (2) Mr. Benedicto A. Santos, Manager — Business Analysis and Support; and (3) Atty. Walter L. Abela, Jr., the court-commissioned Independent Certified Public Accountant (ICPA).

On November 5, 2017, Petitioner filed its *Formal Offer of Evidence*. Thus, in the Resolution dated February 26, 2018, the Court admitted Petitioner's Exhibits, *except* for the following:

xxx xxx xxx

Thus, Petitioner filed a *Motion for Reconsideration (With Motion to Set Additional Commissioner's Hearing)* on March 13, 2018. In the Resolution dated October 22, 2018, the Court partially granted petitioner's Motion for Reconsideration, but still denied the admission of the following:

xxx xxx xxx

For his part, Respondent likewise presented his documentary and testimonial evidence. He offered the testimonies

> of Revenue Officer ("RO") Melinda M. Rugayan for CTA Case No. 9350, and RO Romualdo I. Plocios for CTA Case No. 9430, by way of their judicial affidavits.
>
> Respondent filed his *Formal Offer of Evidence* on March 01, 2018. Thus, in the Resolution dated December 04, 2018, the Court admitted all the evidence offered by Respondent.
>
> In the meantime, the instant consolidated cases were transferred to this Court's Third Division, pursuant to the Order dated October 01, 2018.
>
> Subsequently, Respondent filed its *Memorandum* on January 09, 2019; while Petitioner filed its *Memorandum* on February 18, 2019.
>
> The case was deemed submitted for decision on February 21, 2019."

As aforestated, on February 12, 2020, the Court in Division rendered the assailed Decision[6] partially granting Chevron's consolidated Petitions for Review.

On February 20, 2020, CIR filed *via* registered mail a Motion for Partial Reconsideration (Re: Decision promulgated on 12 February 2020).[7]

On September 29, 2020, the Court in Division issued the assailed Resolution[8] denying CIR's Motion for Partial Reconsideration.

Aggrieved, CIR filed the present Petition for Review[9] before the Court *En Banc* on October 20, 2020.

After Chevron's filing of its Comment (to Petitioner's Petition for Review dated October 13 2020) on November 25, 2020, the Court *En Banc* gave due course to the Petition for Review and submitted the same for decision in the Resolution[10] dated January 5, 2021.

---

[6] *CTA Division Docket (CTA Case No. 9350),* Vol. IX, pp. 4757 to 4808.
[7] *CTA Division Docket (CTA Case No. 9350),* Vol. IX, pp. 4809 to 4821.
[8] *CTA Division Docket (CTA Case No. 9350),* Vol. IX, pp. 4833 to 4838.
[9] *CTA En Banc Docket*, pp. 1 to 14.
[10] *CTA En Banc Docket*, pp. 89 to 90.

THE ISSUE

The sole issue raised by the CIR for the Court *En Banc*'s resolution is "whether the Third Division Court erred in ruling that respondent is entitled to refund in the amount of ₱27,540,901.25, representing unutilized input VAT allegedly attributable to zero-rated sales for the first and second quarters of TY 2015."

PETITIONER'S ARGUMENTS

CIR contends that Chevron was not able to prove its entitlement to the claim for refund or issuance of tax credit certificate (TCC) as no attributability was established between the input VAT generated from its purchases *vis-à-vis* its zero-rated sales. 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. CIR further argues that tax refund is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer and that the taxpayer must present convincing evidence to substantiate a claim for refund.

RESPONDENT'S ARGUMENTS

Chevron points out that CIR's arguments in his Petition for Review are identical repetitions of his arguments in his Motion for Reconsideration. Chevron also submits that CIR's argument that the claimed input taxes should be directly attributable to Chevron's zero-rated sales would render insignificant, inoperative, or nugatory the provisions of Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, which allows for the proportionate allocation of creditable input tax on the basis of the volume of sales in cases where the taxpayer is engaged in zero-rated sale, taxable sale or exempt sale of goods or properties and services, and the amount of creditable input tax due or paid cannot be directly or entirely attributed to any one of the transactions.

RULING OF THE COURT *EN BANC*

Timeliness of the filing of the present Petition for Review

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 (b), Rule 8 of the Revised Rules of the Court of Tax Appeals states:

> "**SEC. 3.** *Who may appeal; period to file petition.* – xxx
>
> 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 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. (Rules of Court, Rule 42, sec. 1a)"

Records show that CIR received the assailed Resolution on October 8, 2020. CIR had fifteen (15) days from October 8, 2020 or until October 23, 2020 within which to file his Petition for Review before the Court *En Banc*. His Petition for Review was thus timely filed on **October 20, 2020**.

Entitlement of Chevron to its claim for refund or issuance of TCC

As aptly pointed out by Chevron, CIR's arguments in his Petition for Review are mere rehash of his arguments in his Motion for Reconsideration filed before the Court in Division which arguments have been sufficiently passed upon by the Court in Division in the assailed Resolution.

Section 112 (A) and (C) of the 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.

xxx xxx xxx

(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.

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)*

A taxpayer has to prove the following requisites to be entitled to a claim for refund:

1. taxpayer is VAT-registered;

2. the claim for refund was filed within the prescriptive periods both in the administrative and judicial levels;

3. that there must be zero-rated or effectively zero-rated sales;

4. that input taxes were incurred or paid;

5. such input taxes are attributable to zero-rated or effectively zero-rated sales; and,

6. the input taxes were not applied against any output VAT liability.

Based on the above enumerated requisites, the Court in Division correctly found that respondent was able to comply with the foregoing requisites as elucidated in the assailed Decision.

In his present Petition for Review, similar to the Motion for Reconsideration he filed before the Court in Division, CIR insists that Chevron'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 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.*:

(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.[11]

[11] *H. Villarica Pawnshop, Inc. et al. vs. Social Security Commission et al.*, G.R. No. 228087, January 24, 2018.

As correctly found by the Court in Division, Chevron has valid creditable input tax in the amount of ₱39,168,665.68 for the taxable year 2015. Since the same cannot be directly or entirely attributed to its zero-rated sales and taxable sales, the Court in Division properly allocated the valid input tax of ₱39,168,665.68 on the basis of Chevron's volume of sales and found that the valid input VAT attributable to Chevron's valid zero-rated sales amounts to ₱33,689,852.71.

After applying its output VAT liability in the amount of ₱7,404,883.09 against its valid creditable input tax attributable to its taxable sales in the amount of ₱1,255,931.63, Chevron still has output VAT liability of ₱6,148,951.46. The Court in Division rightly applied the valid input VAT attributable to zero-rated sales in the amount of ₱33,689,852.71 against the said remaining output VAT liability of Chevron in the amount of ₱6,148,951.46; thus, leaving a balance of ₱27,540,901.25 in Chevron's valid input VAT attributable to zero-rated sales.

The CIR contends that Chevron failed to prove that the remaining input VAT in the amount of ₱27,540,901.25 is directly attributable to its zero-rated sales. Hence, there is no basis to order the refund or issuance of a TCC in favor of Chevron in the amount of ₱27,540,901.25.

Again, the Court *En Banc* finds the CIR's contention bereft of merit.

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 distinguere debemos.* It is a principle in statutory construction that where the law does not distinguish, we ought not to distinguish.[12]

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,

---

[12] *Commissioner of Internal Revenue vs. Central Luzon Drug Corporation*, G.R. No. 159647, April 15, 2005.

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 and 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*[13] and *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*[14], the allocation of creditable input tax proportionately on the basis of volume of sales.

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

WHEREFORE, in light of the foregoing, the Petition for Review filed on October 20, 2020 by the Commissioner of Internal Revenue is hereby **DENIED** for lack of merit. The assailed Decision dated February 12, 2020 and assailed Resolution dated September 29, 2020 of the Court in Division in CTA Case Nos. 9350 & 9430 are hereby **AFFIRMED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

---

[13] G.R. No. 180345, November 25, 2009.
[14] G.R. No. 166732, April 27, 2007.

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

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

(On Leave)
LANEE S. CUI-DAVID
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