REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 2528
(CTA Case No. 9592)

- versus -

Present:
DEL ROSARIO, *PJ,*
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, and
FERRER-FLORES, *JJ.*

CARMEN COPPER CORPORATION,
Respondent.

Promulgated:
APR 20 2023 4:18pm

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DECISION

REYES-FAJARDO, *J.*:

For action is the Petition for Review filed by the Commissioner of Internal Revenue, challenging the Decision[1] dated October 1, 2020 and the Resolution[2] dated July 8, 2021 in CTA Case No. 9592, whereby the Third Division of the Court (Court in Division) partially granted Carmen Copper Corporation's claim for refund of its excess and unutilized input value-added tax (VAT) for the 4th quarter of taxable year (TY) 2014, arising from its importation of goods and from services rendered by non-residents attributable to its zero-rated sales,

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1 *Rollo*, pp. 25-60.
2 *Id.* at pp. 61-81.

amounting to Eight Million Fifty-Two Thousand One Hundred Sixty-Five and 65/100 Pesos (₱8,052,165.65).

Petitioner is empowered to perform the duties of said office including, among others, the power to decide, approve and grant tax refunds or tax credits as provided for by law. He may be served with summons, pleadings and other processes at his office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[3]

On the other hand, respondent is a domestic corporation organized and existing under Philippine law with office address at Five E-Com Center, Palm Coast Avenue corner Pacific Drive, Mall of Asia Complex, Barangay 76, Pasay City. It is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer, with Taxpayer Identification Number 233-903-100-00000.[4]

On December 29, 2016, respondent filed with the BIR, an *Application for Tax Credits/Refunds* (BIR Form No. 1914), seeking for the refund or tax credit of input VAT in the amount of ₱60,158,190.74, for the period from October 1, 2014 to December 31, 2014.[5]

On April 17, 2017, respondent received a copy of the undated letter of the CIR, through Ms. Teresita M. Angeles, OIC-Assistant Commissioner for Large Taxpayers Service of the BIR, informing respondent that after verification of the documents submitted to substantiate the refund claim, it was ascertained that only the amount of ₱38,195,441.97 was recommended for the issuance of tax credit certificate (TCC).[6]

On May 17, 2017, respondent filed a *Petition for Review* with the Court of Tax Appeals (CTA).[7] On November 17, 2017, respondent submitted its *Amended Petition for Review*.[8]

On October 1, 2020, the Court in Division rendered the challenged Decision, the dispositive portion of which reads:

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3 *Supra* note 1, p. 26.
4 *Id.*
5 *Id.*
6 *Id.*
7 Docket (CTA Case No. 9592), pp. 10-21.
8 *Id.* at pp. 178-190.

> **WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, [petitioner] is **DIRECTED TO REFUND** [respondent] the amount of **₱8,052,165.65**, representing the latter's excess and unutilized input VAT from importation of goods and from services rendered by non-residents attributable to its zero-rated sales for the 4th quarter of 2014.
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> **SO ORDERED.**

On November 23, 2020, petitioner filed a *Motion for Partial Reconsideration (Re: Decision promulgated 28 October 2020)* with the Court in Division.[9]

On July 8, 2021, the Court in Division rendered the challenged Resolution, denying petitioner's Motion for Partial Reconsideration, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, [petitioner's] Motion for Partial Reconsideration (Re: Decision promulgated 28 October 2020) and [respondent's] Motion for Reconsideration (With Motion for Leave of Court to Reopen the Case for the Recall of a Witness) are both **DENIED** for lack of merit.
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> **SO ORDERED.**

On October 29, 2021, petitioner filed a Petition for Review with the Court *En Banc*,[10] to which respondent filed its comment on February 23, 2022.[11]

On April 20, 2022, the Petition for Review was submitted for decision.[12]

Petitioner states that he rendered a decision partly granting respondent's administrative claim for input VAT refund. Due to the appellate nature of the Court in Division's jurisdiction over such decision, the Court in Division may only review whether the decision he rendered is proper, solely taking into account respondent's

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9 *Id.* at pp. 815-827.
10 *Rollo*, pp. 1-19.
11 *Id* at, pp. 86-94.
12 *Id* at, pp. 98-104.

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evidence submitted at the administrative level. Therefore, the Court in Division erred in considering respondent's evidence presented for the first time at the judicial level in the partial grant of its refund claim.

Petitioner further imputes fault on the Court in Division's ruling that respondent is entitled to a partial refund amounting to ₱8,052,165.65 representing excess and unutilized input VAT attributable to its zero-rated sales covering the 4th Quarter of TY 2014 because respondent failed to demonstrate that there was direct attributability between the input tax on purchases and the zero-rated sales for said quarter.

Respondent counters that documents not submitted at the administrative level may be submitted to the Court in Division, where the denial of the refund by the BIR is due to inaction of the BIR, or when no express request for submission of the questioned documents was given to the taxpayer.

Respondent further retorts that the National Internal Revenue Code of 1997 (NIRC), as amended, does not require that only input taxes that are "directly attributable" could be creditable and be the subject of a claim for refund. Further, the matter of direct attributability was never raised as an issue during trial or at the administrative level. In addition, petitioner failed to present evidence that would controvert its evidence supporting its claim that its input taxes are attributable to its zero-rated sales.

RULING

The Petition is denied.

The case is litigated anew before the Court. Hence, the Court may accept evidence that was not presented by respondent at the administrative level.

Petitioner cites *Pilipinas Total Gas*[13] in arguing that since a decision on the refund claim of respondent was rendered at the administrative level, the Court in Division's jurisdiction is strictly appellate in nature. For him, the Court in Division should not have allowed respondent to present evidence which were not adduced in the administrative level.

The Court disagrees.

In relation to an administrative claim for input VAT refund, *Pilipinas Total Gas* envisioned two (2) scenarios, namely: (1) dismissal thereof by the BIR due to the taxpayer's failure to submit complete documents, despite the former's notice or request; or (2) inaction tantamount to a denial, or denial *other than* due to taxpayer's failure to submit complete documents despite notice or request. In the *first* scenario, the refund claimant must show the Court its entitlement to a VAT refund under substantive law, and submission of complete supporting documents at administrative level requested by petitioner. In the *second* scenario, a taxpayer-claimant may present all evidence to prove its entitlement to a VAT refund, and the Court will consider all evidence offered even those not presented before respondent at the administrative level.[14] Petitioner's partial denial of respondent's administrative claim for input VAT refund falls under the *second* scenario.

To be precise, respondent's VAT refund claim was partially denied by petitioner because of violation of invoicing requirements under Section 113, in relation to Section 110 of the NIRC, as amended.[15] Following *Pilipinas Total Gas*, the Court may give credence to all evidence presented by respondent to support its prayer for refund, irrespective of whether such evidence was presented at administrative level.

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13 G.R. No. 207112, December 8, 2015 citing *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007.

14 See *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*, G.R. No. 207112, December 8, 2015 citing *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007 as cited in *Stefanini Philippines, Inc. v. Commissioner of Internal Revenue,* CTA Case No. 10188, November 23, 2022 and *Commissioner of Internal Revenue v. CE Luzon Geothermal Power Company, Inc.*, CTA EB Case No. 2132 (CTA Case Nos. 7180 & 7279), January 28, 2021.

15 Exhibit "R-3." BIR Records, p. 306.

Further, *Philippine Airlines, Inc. v. Commissioner of Internal Revenue (PAL)*[16] ruled that in the exercise of the Court's appellate jurisdiction, it is *not* precluded from considering evidence that was not presented in the administrative claim before the BIR:

> Section 8. Court of record; seal; proceedings. - The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the forms of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence.

> As such, parties are expected to litigate and prove every aspect of their case anew and formally offer all their evidence. No value is given to documentary evidence submitted in the Bureau of Internal Revenue unless it is formally offered in the Court of Tax Appeals. Thus, the review of the Court of Tax Appeals is not limited to whether or not the Commissioner committed gross abuse of discretion, fraud, or error of law, as contended by the Commissioner. As evidence is considered and evaluated again, the scope of the Court of Tax Appeals' review covers factual findings.

The pronouncement in *PAL* was again discoursed in *Commissioner of Internal Revenue v. Univation Motor Philippines (Univation)*,[17] whereby the Supreme Court held that the Court is not limited by the evidence presented in the administrative claim before the BIR. The claimant may present new and additional evidence to the Court to support its case for tax refund:

> Cases filed in the CTA are litigated *de novo* as such, respondent should prove every minute aspect of its case by presenting, formally offering and submitting...to the Court of Tax Appeals all evidence...required for the successful prosecution of its administrative claim. Consequently, the CTA may give credence to all evidence presented by respondent, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance.

Consistent with *PAL* and *Univation,* the Court in Division correctly ruled that as a court of record, it may consider all evidence

16 G.R. Nos. 206079-80, January 17, 2018.
17 G.R. No. 231581, April 10, 2019.

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formally offered and admitted in this case, even if some of them has not been submitted at the administrative level.

The Court in Division did not err in partially granting petitioner's claim for refund.

As discussed by the Court in Division in the challenged Decision, the following requisites must be complied with by the taxpayer-claimant to successfully obtain a refund or issuance of tax credit certificate of excess and unutilized input VAT:

As to the timeliness of the filing of the administrative and judicial claims:

1. the claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[18]
2. that in case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act on the said claim within a period of 120 days, the judicial claim has been filed with this Court, within thirty 30 days from receipt of the decision or after the expiration of the said 120-day period;[19]

With reference to the taxpayer's registration with the BIR:

3. the taxpayer is a VAT-registered person;[20]

In relation to the taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[21]

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[18] *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue,* G.R. No. 166732, April 27, 2007; *San Roque Power Corporation v. Commissioner of Internal Revenue,* G.R. No. 180345, November 25, 2009; and *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue,* G.R. No. 182364, August 3, 2010.

[19] *Steag State Power, Inc. (Formerly State Power Development Corporation) v. Commissioner of Internal Revenue,* G.R. No. 205282, January 14, 2019; *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue,* G.R. No. 168950, January 14, 2015.

[20] *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue,* supra; *San Roque Power Corporation v. Commissioner of Internal Revenue,* supra; and *AT&T Communications Services Philippines, Inc. v. CIR,* supra.

[21] *Id.*

5. for zero-rated sales under Sections 106(A)(2)(a)(1), (2), and (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;[22]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[23]
7. the input taxes are due or paid;[24]
8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and 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;[25] and
9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[26]

Petitioner theorizes the absence of the *eighth* requisite, claiming that respondent's input taxes must be directly attributable to its zero-rated sales.

The Court disagrees.

Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Taganito HPAL Nickel Corporation[27] squarely debunked petitioner's position that input taxes must be directly attributable to the refund claimant's zero-rated sales. The Supreme Court discoursed:

> **Tellingly, Section 112(A) does not require direct attributability for input tax to be creditable or refundable. In sooth, the law allows as tax credit an allocable portion of a taxpayer's input tax that is not directly and entirely attributable to their zero-**

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22 *Id.*

23 *Id.*

24 *Id.*

25 *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, supra; and *San Roque Power Corporation v. Commissioner of Internal Revenue*, supra.

26 *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation v. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc. v. CIR*, supra.

27 G.R. No. 259024, September 28, 2022.

> **rated sales. In such instance, what the law requires is for the creditable input tax to be attributable to the zero-rated or effectively zero-rated sales.**
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> At any rate, creditable input tax does not arise solely from purchases that form part of the finished goods. A plain reading of Section 110 of the Tax Code readily reveals that it did not limit creditable input tax to purchases or importation of goods which are to be converted into or intended to form part of a finished product for sale, or to be used in the chain of production. In particular, Section 110(A) also treats as input tax all VAT due from or paid by a VAT-registered person in the course of their trade or business on the importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. **Corollary thereto, even if the purchased goods do not find their way into the taxpayer's finished product, the input tax incurred therefrom can still be credited against the output tax as long as it is (1) incurred or paid in the course of the VAT-registered taxpayer's trade or business, and (2) supported by a VAT invoice issued in accordance with the invoicing requirements of the law.**

Computation of the Refundable Amount

For the 4th Quarter of TY 2014, petitioner declared in its Quarterly VAT Return, taxable sales, zero-rated sales, and exempt sales subject to 12% VAT, in the amount of ₱3,593,834,209.78,[28] as follows:

VATable Sales	₱1,418,157.04
Zero-Rated Sales	3,591,062,072.74
Exempt Sales	1,353,980.00
Total Sales	**₱3,593,834,209.78**

Yet, in the challenged Decision, no valid input VAT allocation pertaining to exempt sales was made. Specifically, the exempt sales in the amount of ₱1,353,980.00 was omitted in computing the item pertaining to "Divided by the sum of Reported VATable Sales and Zero-Rated Sales," as emphasized below:[29]

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[28] See p. 33, challenged Decision and Exhibit "P-5," Docket, (CTA Case No. 9592), p. 471.

[29] See pages 33-34, challenged Decision.

Total VATable Sales per VAT Return	₱1,418,157.04
Divided by the sum of Reported VATable Sales and Zero-Rated Sales (₱1,418.157.04 plus ₱3,591,062,072.74)	**3,592,480,229.78**
Multiplied by Total Valid Input VAT	18,233,684.33
Valid Input VAT allocated to Reported Sales subject to 12%	₱7,197.88
Total Zero-Rated Sales per VAT Return	P3,591,062,072.74
Divided by the sum of Reported VATable Sales and Zero-Rated Sales	3,592,480,229.78
Multiplied by Total Valid Input VAT	18,233,684.33
Valid Input VAT allocated to Reported Zero-Rated Sales	₱18,226,486.45

Section 112(A) of the NIRC, as amended, decrees that when the taxpayer is engaged in VATable, zero-rated, and exempt sales, and that the 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 total sales volume.[30] Following said provision, the Court would add the amount of ₱1,353,980.00, corresponding to respondent's exempt sales for said quarter, with its reported VATable sales and zero-rated sales, amounting to ₱3,592,480,229.78.[31] The sum thereof amounting to ₱3,593,834,209.78[32] is respondent's total reported sales which must be used for allocation of its valid input VAT. Therefore, respondent's valid input VAT allocated to reported zero-rated sales must be adjusted from ₱18,226,486.45 to ₱18,219,619.61, as demonstrated below:

Total Zero-Rated Sales per VAT Returns	3,591,062,072.74
Divided by the sum of Reported Sales per VAT Returns **(₱1,418.157.04+₱3,591,062,072.74+₱1,353,980.00)**	3,593,834,209.78
Multiplied by Total Valid Input VAT	18,233,684.33
Valid input VAT allocated to zero-rated sales	**18,219,619.61**

30 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 non-zero-rated sales. (Boldfacing supplied)

31 ₱1,418.157.04+₱3,591,062,072.74.

32 ₱1,418,157.04+₱3,591,062,072.74+₱1,353,980.00.

Total VATable Sales per VAT Returns	1,418,157.04
Divided by the sum of Reported Sales per VAT Returns	3,593,834,209.78
Multiplied by Total Valid Input VAT	18,233,684.33
Valid input VAT allocated to sales subject to 12% VAT	**7,195.16**

Total Exempt Sales per VAT Returns	1,353,980.00
Divided by the sum of Reported Sales per VAT Returns	3,593,834,209.78
Multiplied by Total Valid Input VAT	18,233,684.33
Valid input VAT allocated to exempt sales	**6,869.56**

In *Chevron Holdings, Inc. (Formerly Caltex Asia Limited) v. Commissioner of Internal Revenue,*[33] the Supreme Court laid down the guidelines in computing the refundable input tax attributable to zero-rated sales when the taxpayer-claimant is engaged in mixed transactions.

Consistent with Chevron, respondent's refundable input VAT should be ₱8,125,468.19, computed as follows:

Valid zero-rated sales	₱1,686,163,697.85
Divided by total reported sales	3,593,834,209.78
Multiplied by valid input tax not directly attributable to any activity	18,233,684.33
Refundable input tax attributable to zero-rated sales	8,554,923.46
Less: TCC already issued in respondent's favor	429,455.27
Balance of refundable input tax	₱8,125,468.19

WHEREFORE, the Petition for Review filed on October 29, 2021, by the Commissioner of Internal Revenue is **DENIED,** for lack of merit. The Decision dated October 1, 2020, and the Resolution dated July 8, 2021 in CTA Case No. 9592 are **AFFIRMED** with **MODIFICATION.** Accordingly, the Commissioner of Internal Revenue is **DIRECTED** to refund Carmen Copper Corporation, the amount of **₱8,125,468.19,** representing the latter's excess and unutilized input VAT from importation of goods and from services rendered by non-residents attributable to its zero-rated sales for the 4th quarter of taxable year 2014.

SO ORDERED.

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33 G.R. No. 215159, July 5, 2022.

MARIAN IVY F. REYES-FAJARDO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

ON LEAVE
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

ON LEAVE
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
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