REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PAG-ASA STEEL WORKS, INC.,
Petitioner,

CTA EB No. 2410
(CTA Case No. 9506)

- versus -

BUREAU OF INTERNAL REVENUE, COMMISSIONER OF INTERNAL REVENUE AND ASSISTANT COMMISSIONER TERESITA M. ANGELES,
Respondents.

x---x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 2412
(CTA Case No. 9506)

Present:

Del Rosario, P.J.
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena,
Reyes-Fajardo, and
Cui-David, JJ.

- versus -

PAG-ASA STEEL WORKS, INC.,
Respondent.

Promulgated:
SEP 13 2022 2:50 pm

x--x

DECISION

RINGPIS-LIBAN, J.:

THE CASE

Before the Court *En Banc* are consolidated Petitions for Review, docketed as follows:

a. CTA EB No. 2410, that Pag-asa Steel Works, Inc. (PSWI) filed on February 11, 2021;[1] and

b. CTA EB No. 2412, that the Commissioner of Internal Revenue (CIR) filed on February 10, 2021.[2]

CTA EB No. 2410 seeks the modification of the Decision dated September 2, 2020,[3] (Assailed Decision) and the Resolution dated December 21, 2020[4] (Assailed Resolution) of the First Division (Court in Division)[5] of this Court in CTA Case No. 9506, both entitled *Pag-asa Steel Works, Inc. v. Bureau of Internal Revenue, Commissioner of Internal Revenue, Assistant Commissioner Teresita M. Angeles.*

On the other hand, CTA EB No. 2412 prays for the reversal of the Assailed Decision and Resolution and for rendition of a judgment by this Court denying the Petition for Review filed before the Court in Division for lack of merit.

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

Assailed Decision:

> "**WHEREFORE**, the instant Petition for Review is **PARTIALLY GRANTED**. The assessments for deficiency VAT are **UPHELD WITH MODIFICATION**. Nevertheless, petitioner has no deficiency VAT liability and even incurred VAT overpayment amounting to ₱217,420,492.45, as computed above.
>
> **SO ORDERED**."

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[1] CTA EB No. 2410 Docket, Vol. I, pp. 47-91.
[2] CTA EB No. 2412 Docket, pp. 7-76.
[3] *Id.*, pp. 22-56.
[4] *Id.*, pp. 57-61.
[5] Composed of Presiding Justice Roman G. Del Rosario as Chairperson and Associate Justice Catherine T. Manahan (ponente).

<u>**Assailed Resolution:**</u>

> "**WHEREFORE**, the *Motion for Partial Reconsideration* filed by petitioner, and respondent's *Motion for Partial Reconsideration (Re: Decision dated 02 September 2020)* are both **DENIED**.
>
> **SO ORDERED.**"

THE PARTIES[6]

PSWI is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office address at 408 Amang Rodriguez Ave., Bo. Manggahan, Pasig City, Metro Manila.

The Bureau of Internal Revenue (BIR) is the government agency in charge of the assessment and collection of all national and internal revenue taxes, fees and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith. The CIR is the head of the BIR. Respondent Assistant Commissioner Teresita M. Angeles (ACIR Angeles) is the Officer-in-Charge of the Large Taxpayers Service who acted as the authorized representative of the CIR. Respondents CIR and ACIR Angeles are impleaded in their official capacities as officers of the BIR.

THE FACTS

As found by the Court in Division in its Decision dated September 2, 2020, the facts of the present case are as follows:[7]

> Petitioner has been producing the finest quality steel bars since 1964. The company is one of the leading producers of concrete-reinforcement steel bars today and ranks among the Top 200 Corporations in the country.
>
> Petitioner filed its VAT Declaration for January 2014, for February 2014, Quarterly VAT Return for the First Quarter 2014 or as of March 31, 2014, for April 2014, for May 2014, and Quarterly VAT Return for the Second Quarter or as of June 30, 2014. The filing of the VAT declarations and returns were made within the prescribed periods under the law.

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[6] Assailed Decision, pp. 1-2, CTA EB No. 2412 Docket, pp. 22-23.
[7] CTA EB No. 2412 Docket, pp. 23-26 (Citations omitted).

Petitioner filed its VAT returns for the period January 1, 2014 to June 30, 2014, as summarized below:

Tax Period	Date Filed	Computation of Tax		
		Output Tax	Input Tax	Payment/ (Excess Input Tax)
Jan. 2014	Feb. 22, 2014	₱75,320,403.95	₱314,622,464.50	(₱239,302,060.55)
Feb. 2014	Mar. 22, 2014	₱88,608,202.67	₱318,710,963.41	(₱230,102,760.74)
1st Qtr. 2014	Apr. 24, 2014	₱260,638,473.74	₱459,391,472.29	(₱198,752,998.55)
Apr. 2014	May 21, 2014	₱69,908,317.45	₱266,006,798.53	(₱196,098,481.08)
May 2014	June 24, 2014	₱91,665,291.20	₱365,722,364.27	(₱274,057,073.07)
2nd Qtr. 2014	July 21, 2014	₱232,073,517.31	₱465,566,743.54	(₱233,493,226.23)

On August 14, 2014, petitioner received the Letter of Authority (LOA) No. LOA-LV1-2014-00000039 dated August 12, 2014 signed by Nestor S. Valeroso, OIC-Assistant Commissioner, Large Taxpayers Service authorizing Revenue Officers Linda Macaspac, Kristine Rose Estolas, and Group Supervisor Marisol Girang of the Large Taxpayers Service to examine petitioner's books of accounts and other accounting records for VAT for the period from January 1, 2014 to June 30, 2014 pursuant to RMO 19-2012, VAT Audit Program.

On April 25, 2016, petitioner received the Preliminary Assessment Notice (PAN) with Details of Discrepancies signed by Assistant Commissioner Nestor S. Valeroso.

Petitioner protested the PAN on May 12, 2016.

On June 20, 2016, petitioner received the FLD/FAN informing petitioner of its deficiency VAT for the period January 1, 2014 to June 30, 2014 and requesting petitioner to pay the deficiency. The assessment was computed as follows:

Assessment No. VAT-LVI-2014-00000039-06-16-10-A

I. Deficiency VAT		
Taxable Sales per VAT Return		₱4,105,933,270.10
Add: Adjustments		
Sales discounts not indicated in the sales invoice		323,376.84
Zero-rated sales considered taxable		28,710,395.03
Hauling charged to customers, not taken up in sales		11,961,076.59
Offsetting of accounts receivable with account payable		316,543.03
Adjusted sales subject to VAT		₱4,147,244,661.59
Multiply by VAT rate		12%
Output Tax Due Thereon		₱497,669,359.39
Less: Allowable Input Tax Per Return	₱492,711,991.05	
Less: Disallowed input tax		
Non-compliance with invoicing reqts.	(11,573,755.17)	481,138,235.88

/

Net VAT Payable		₱16,531,123.51
Less: Tax payments		-
Net VAT Still Due		₱16,531,123.51
Add: Interest 7/25/14 to 6/30/16	36.68%	6,394,238.57
TOTAL AMOUNT DUE		**₱22,925,362.08**

Assessment No. VAT-LVI-2014-00000039-06-16-10-B

II. Administrative Penalty	
Compromise Penalty - Failure to file and/or pay an Internal Revenue Tax at the time or times required by law	₱50,000.00
TOTAL ADMINISTRATIVE PENALTY	**₱50,000.00**

On July 20, 2016, petitioner filed its Protest to the FLD/FAN, requesting for reconsideration and/or reinvestigation. On September 15, 2016, petitioner filed its submission of supporting documents.

On November 21, 2016, petitioner received the Final Decision on Disputed Assessment (FDDA), which found petitioner still liable for basic deficiency VAT of Php16,164,274.58 or a total of Php23,913,427.82 including surcharge and interest.

The instant Petition for Review was filed on December 16, 2016. After summons and extensions, respondents Answer was admitted on May 24, 2017.

The parties filed their respective pre-trial briefs and their Joint Stipulation of Facts and Issues (JSFI). The Pre-Trial Order (PTO) was issued on October 4, 2017 to govern the proceedings.

Trial proceeded with petitioner presenting the following witnesses: (1) Ms. Lydia T. Lim, (2) Ms. Marita M. Mena, and (3) Court-commissioned Independent Certified Public Accountant (ICPA) Jose Isagani M. Lacson.

Petitioner's Formal Offer of Evidence was filed on April 20, 2018, which was resolved by the Court on November 14, 2018.

Subsequently, respondent presented his sole witness, Revenue Officer Mariesol Girang. On April 12, 2019, respondent filed his Formal Offer of Evidence which was resolved on July 10, 2019.

With the filing of respondent's Memorandum on August 16, 2019, and the Memorandum for the Petitioner on August 20, 2019, the case was submitted for decision on September 3, 2019.

On September 2, 2020, the Court in Division rendered the Assailed Decision. Both parties moved for partial reconsideration of the Assailed Decision.

On December 21, 2020, the Court in Division promulgated the Assailed Resolution denying both Motions.

Within the extended period granted by the Court *En Banc*,[8] PSWI filed its Petition for Review on February 11, 2021, pursuant to Rule 43 of the Rules of Court, as amended, in relation to Sec. 11, Republic Act 9282, as amended, and Sec. 4(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended. The Petition for Review was docketed as CTA EB No. 2410.

Meanwhile, the CIR filed on February 10, 2021 his Petition for Review docketed as CTA EB No. 2412.

In a Minute Resolution dated February 15, 2021, the Court *En Banc* ordered the consolidation of CTA EB No. 2412 with CTA EB No. 2410, the latter case bearing the lower docket number.[9]

In a Resolution dated March 10, 2021, the Court *En Banc* required the parties to file their respective Comments on each other's Petition for Review.[10]

On March 19, 2021, PSWI filed a Motion for Extension of Time to File Petition for Review.[11]

On April 19, 2021, PSWI filed via electronic mail its Comment (To CIR's Petition for Review).[12] A hard copy thereof was received by the Court on May 17, 2021. On the other hand, the CIR filed a Comment/Opposition (Re: Petition for Review dated 11 February 2021) via registered mail on March 25, 2021 and received by this Court on May 21, 2021.[13]

In a Resolution dated June 16, 2021,[14] the Court *En Banc* granted PSWI's Motion for Extension of Time to File Petition for Review. In the same Resolution, the Court *En Banc* admitted PSWI's Comment (To CIR's Petition for Review) as part of the case records and noted CIR's Comment/Opposition (Re: Petition for Review dated 11 February 2021). The Court *En Banc* likewise

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[8] Minute Resolution dated January 28, 2021, CTA EB No. 2410 Docket, Vol. I, p. 46.
[9] CTA EB No. 2410 Docket, Vol. II, p. 674.
[10] *Id.*, pp. 646-647.
[11] *Id.*, pp. 648-650.
[12] *Id.*, pp. 654-664.
[13] *Id.*, pp. 667-676.
[14] *Id.*, pp. 708-709.

referred the present case to mediation before the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA).

On November 2, 2021, the PMC-CTA submitted a Back to Court stating that mediation was refused by PSWI.[15]

In a Resolution dated February 3, 2022,[16] this Court noted PMC-CTA's Back to Court dated November 2, 2021 and noted PSWI's Manifestation that it has submitted an offer of settlement to the CIR and was awaiting the action on the said offer. Accordingly, the Court *En Banc* directed the parties to update the Court on the status of the compromise settlement within fifteen (15) days from notice.

On February 22, 2022, PSWI filed a Compliance/Manifestation wherein it states that the compromise settlement had failed and thus moves that the present cases be submitted for decision.

In a Resolution dated March 17, 2022, the Court *En Banc* noted PSWI's Compliance/Manifestation and submitted the present consolidated Petitions for Review for decision.[17]

THE ISSUES

In **CTA EB No. 2410**, PSWI filed its Petition for Review on the basis of the following grounds:[18]

> "<u>**First**</u>
>
> **THE COURT OF TAX APPEALS (First Division) ERRED IN RULING THAT PETITIONER IS LIABLE FOR ADDITIONAL VAT LIABILITY IN THE AMOUNT OF Php16,072,732.41 FOR THE PERIOD JANUARY 1, 2014 TO JUNE 30, 2014.**
>
> <u>**Second**</u>
>
> **ASSUMING FOR THE SAKE OF ARGUMENT THAT THE ADDITIONAL VAT LIABILITY OF Php16,072,732.41 IS JUSTIFIED, THE COURT OF TAX APPEALS**

[15] *Id.*, p. 711.
[16] *Id.*, pp. 715-717.
[17] *Id.*, pp. 723-724.
[18] CTA EB No. 2410 Docket, Vol. I, p. 55.

> **(First Division) ERRED IN NOT RULING THAT THE AMOUNT CAN BE CREDITED AGAINST PETITIONER'S EXCESS VAT INPUT IN VIOLATION OF SECTION 110 OF THE NIRC AND THIS HONORABLE COURT'S RULING IN THE EARLIER CASE OF *CIR vs. PORT BARTON DEVELOPMENT CORPORATION.*"**

On the other hand, the CIR in **CTA EB No. 2412**, file his Petition for Review on the sole ground that:[19]

> **"THE HONORABLE COURT IN DIVISION ERRED IN RULING THAT RESPONDENT HAS NO DEFICIENCY VAT LIABILITY."**

THE COURT *EN BANC'S* RULING

CTA EB No. 2410

a. Sales Discounts

In its Petition, PSWI claims that the Court in Division erroneously upheld the VAT assessments made by the CIR in disregard of the documentary evidence submitted by PSWI in support of its claims that it is not liable thereto.[20] More specifically, PSWI maintains that: (1) the sales discount of ₱323,376.84 is not subject to VAT;[21] (2) the zero-rated sales of ₱27,947,555.03 to Subic Bay Freeport Zone registered enterprises should not be subjected to VAT, regardless of whether it is "pick-up sales" or "delivered sales" and irrespective of place of delivery of goods;[22] (3) delivery expenses or hauling charges should not be subjected to VAT;[23] (4) the offsetting of accounts with Jelaina's Trading and Construction in the sum of ₱316,543.03 should not be subjected to VAT;[24] and (5) the input tax in the sum of ₱11,573,755.17 from domestic purchases for the suppliers' alleged non-compliance with invoicing requirement should not be disallowed.[25]

PSWI avers that the sales discount of ₱323,376.84 should not be subjected to VAT as there was only an error in the use of an accounting title. It claims that out of the said total amount, ₱1,077.95 represents uncollected difference while

[19] CTA EB No. 2412 Docket, p. 10.
[20] CTA EB No. 2410 Docket, Vol. I, p. 57.
[21] *Id.*, pp. 58-63.
[22] *Id.*, pp. 63-69.
[23] *Id.*, pp. 69-73.
[24] *Id.*, pp. 73-74.
[25] *Id.*, pp. 74-81.

₱322,298.89 reflects the adjustments for pricing errors. PSWI insists that the documentary evidence it presented sufficiently proves these points. It also contends that the Court in Division erred in subjecting these amounts to VAT on the ground that these sales discounts were not granted at the time of sale, pursuant to Section 4.106-9 of RR No. 16-05.

PSWI's position is untenable.

The Court *En Banc* agrees with the Court in Division's findings in the Assailed Decision. The schedule of the price adjustments[26] offered by PSWI is insufficient to prove the real nature of the transactions indicated therein. While PSWI argues that the schedule it presented made reference to the journal vouchers from which the adjusting entries were made, the alleged journal vouchers were not presented as evidence. Accordingly, the Court in Division cannot be faulted for relying on what was indicated on the schedule, *i.e.*, that the price adjustments were given as sales discounts. The Court in Division also correctly ruled that such sales discounts cannot be allowed as deductions from the gross selling price as it is clear under Section 4.106-9 of RR No. 16-05 that only those sales discounts granted and indicated in the sales invoice at the time of sales may be excluded from gross sales within the same month or quarter they were given.

b. Sale of Rebars to MSK and SB

PSWI also claims that the Court in Division erroneously subjected to VAT some of its rebar sales to MSK Group Work, Inc. ("MSK") and SB Construction and Water Treatment Corporation ("SB"). While it was duly proved that both of these companies are Subic Bay Freeport Zone-registered enterprises, the Court in Division nevertheless subjected to VAT some of the sales PSWI made to them because of the following reasons: (1) PSWI failed to present proof that the delivery locations are declared as ecozones pursuant to a special law; (2) some are "pick up sales" and there was no evidence as to where the goods were actually brought; (3) some of the sales to MSK bore a delivery address as "Clarkfield, Pampanga" and, according to the Court in Division, it was not sufficient to presume that the same were delivered to MSK's Clark Freeport Zone address.

The Court *En Banc* agrees with the Court in Division's findings.

In *Coral Bay Nickel Corp. v. Commissioner of Internal Revenue*,[27] the Supreme Court aptly held as follows:

> "x x x Section 8 of Republic Act No. 7916 mandates that PEZA shall manage and operate the ECOZONE as a separate customs

[26] Exhibits "P-409" to "P-410", Division Docket, Vol. II, pp. 783-784.
[27] G.R. No. 190506, June 13, 2016.

> territory. **The provision thereby establishes the fiction that an ECOZONE is a foreign territory separate and distinct from the customs territory. Accordingly, the sales made by suppliers from a customs territory to a purchaser located within an ECOZONE will be considered as exportations.** Following the Philippine VAT system's adherence to the Cross Border Doctrine and Destination Principle, the VAT implications are that 'no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority'." *(Emphasis supplied)*

In consonance with the above doctrine, the Court in Division correctly held that proof of delivery of goods sold to a purchaser located in an ecozone is necessary before such sale may be considered as zero-rated. Given that PSWI failed to present evidence that some of the rebars it sold to MSK and SB were actually delivered to an ecozone area, the Court in Division did not err in partially upholding the assessment.

c. Hauling Charges

PSWI maintains that reimbursement of hauling charges from customers (whether ordinary sales or zero-rated sales) who earlier agreed that these charges shall be for their account cannot be subjected to VAT. PSWI asserts that these charges are treated separately from its sales as they are merely reimbursable expenses. PSWI points out that it does not issue sales invoices when collecting these charges but only acknowledgment receipts.

PSWI also submits that treating the reimbursement of hauling charges not as an income yet subjecting the same to VAT is incongruent with Sec. 105 of the 1997 NIRC. In its view, it is illogical to consider a transaction creating additional "Accounts Receivable", which is not an income, as subject to VAT but not to income tax. PSWI stresses that it is not engaged in the hauling business and does not earn income from common carrier's services of delivering the products to its customers.

PSWI's position is untenable.

Reimbursement of actual expenses is not subject to VAT if it is duly established that: (1) the payment is pure reimbursement of cost, *i.e.*, that the amount paid to PSWI is exactly the same amount advanced by it, without any mark-up or profit; (2) the input tax pertaining to the hauling charges is not claimed by the advancing party, the billing being in the name of the party accommodated; and (3) that the payment of reimbursement is not covered by VAT invoices/official receipts.

In the present case, the documentary evidence presented by PSWI failed to establish the foregoing conditions. The Court in Division correctly pointed out that the summary of hauling charges presented by PSWI is inadequate to prove that the amounts indicated therein are mere reimbursements and that no mark-up or profit was added therein. Neither can it prove that PSWI did not claim the input tax related to such charges. The Court cannot likewise give credence to the testimony of PSWI's witness considering that the same was essentially based on the documents that were never presented before the Court in Division.

Mere allegations are not evidence and are not equivalent to proof.[28] Without any other evidence to support PSWI's allegations, the Court is constrained to uphold the correctness of the assessment. After all, tax assessments are presumed correct and made in good faith unless proven otherwise.[29]

d. Offsetting of Accounts with Jelaina's Trading and Construction

Petitioner also challenges the imposition of VAT on the offsetting of its receivables from Jelaina's Trading and Construction with that of its payables to the said supplier. It maintains that these are mere adjustments in contract prices borne by contract changes that reflect the agreement between petitioner and Jelaina's. Petitioner argues that reimbursable advances such as electricity and utilities, which are chargeable to Jelaina's, are allowable adjustments. It asserts that it did not earn any sales or revenues from the reimbursement of electricity and water utilities and that it did not sell electricity or utilities to Jelaina's in the ordinary course of business.

With respect to the rebars supplied to Jelaina's, petitioner claims that these were used in the construction of petitioner's own plant and that the same are properly cognizable as capital assets and not sales. Not being sales, they are not subject to VAT.

The Court *En Banc* finds no compelling reason to disturb the Court in Division's findings.

A closer scrutiny of petitioner's arguments in the present Petition for Review reveals that the same are mere reiterations of those which were already ruled upon by the Court in Division in the Assailed Decision. Without any evidence to back up its assertions, petitioner's arguments necessarily fail.

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[28] *Menez v. Status Maritime Corporation et. al.*, G.R. No. 227523, August 29, 2018.

[29] *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005.

e. Disallowance of Input Tax for Non-compliance with the Invoicing Requirements

- **Jelaina's Trading and Construction - ₱11,553,439.79**

It may be recalled that in the Assailed Decision, the Court in Division ruled that petitioner is not entitled to claim input VAT credits from its purchase of services from Jelaina's Trading and Construction amounting to ₱11,553,439.79 on the ground that:

a. Some of the purchases were evidenced by VAT invoices only; and

b. The VAT official receipts supporting the purchases bore the notation: "THIS DOCUMENT IS NOT VALID FOR CLAIM OF INPUT TAXES."

In the present Petition for Review, petitioner contends that Jelaina's Trading and Construction is both a supplier of construction materials and, at the same time, a contractor providing construction services. Thus, according to petitioner, Jelaina's Trading and Construction is allowed and authorized to issue both invoice and official receipt.

Petitioner also alleges that Jelaina's Trading and Construction started as a small enterprise subject to percentage taxes and, as such, used non-VAT official receipts. It is only when its business grew that Jelaina's Trading and Construction applied for VAT-registered official receipts. Petitioner also claims that Jelaina's Trading and Construction subsequently issued to it the VAT-registered official receipts to correct the substantiation requirements with the BIR. Petitioner likewise avers that it submitted the corrected invoices/receipts to the examiners but the same were not considered by them.

Petitioner's arguments are unmeritorious.

The Court *En Banc* agrees with the Court in Division's ruling that in order for petitioner to be credited with the input VAT from its purchase of services, it must present the VAT official receipt issued by its supplier containing all the information required under Section 113(B) of the 1997 NIRC and Section 4.113-1(B) of RR No. 16-05. In *KEPCO Philippines Corporation v. Commissioner of Internal Revenue*,[30] the Supreme Court aptly clarified as follows:

> **"Under the law, a VAT invoice is necessary for every sale, barter or exchange of goods or properties while a VAT official**

[30] G.R. No. 181858, November 24, 2010.

receipt properly pertains to every lease of goods or properties, and for every sale, barter or exchange of services. In *Commissioner of Internal Revenue v. Manila Mining Corporation*, the Court distinguished an invoice from a receipt, thus:

> A 'sales or commercial invoice' is a written account of goods sold or services rendered indicating the prices charged therefor or a list by whatever name it is known which is used in the ordinary course of business evidencing sale and transfer or agreement to sell or transfer goods and services.
>
> A 'receipt' on the other hand is a written acknowledgment of the fact of payment in money or other settlement between seller and buyer of goods, debtor or creditor, or person rendering services and client or customer.

In other words, the VAT invoice is the seller's best proof of the sale of the goods or services to the buyer while **the VAT receipt is the buyer's best evidence of the payment of goods or services received from the seller**. Even though VAT invoices and receipts are normally issued by the supplier/seller alone, the said invoices and receipts, taken collectively, are necessary to substantiate the actual amount or quantity of goods sold and their selling price (proof of transaction), and the best means to prove the input VAT payments (proof of payment). **Hence, VAT invoice and VAT receipt should not be confused as referring to one and the same thing. Certainly, neither does the law intend the two to be used alternatively**." *(Emphasis supplied and citations omitted)*

That Jelaina's Trading and Construction is both a supplier of construction materials and a contractor providing construction services is simply irrelevant. What matters in this case is that the transactions between petitioner and Jelaina's Trading and Construction are in the nature of sale of services which, under the law, shall be duly substantiated by VAT official receipts.

The Court *En Banc* also agrees with the Court in Division in finding that the notation in the VAT-registered official receipts that "THIS DOCUMENT IS NOT VALID FOR CLAIM OF INPUT TAXES" is fatal to petitioner's input VAT claim. Petitioner's naked assertion that Jelaina's Trading and Construction subsequently issued to it the VAT-registered official receipts to correct the substantiation requirements with the BIR and that it submitted the corrected invoices/receipts to the examiners but the same were not considered cannot be given due credence in the absence of evidence to prove the same. To be sure, petitioner could have presented the alleged corrected invoices/official receipts that were not considered by the BIR so that this Court could assess whether the same duly substantiate petitioner's input VAT claim.

- **M-Lav Industrial Gas, Inc. - ₱19,237.52**
- **Brownstone Asia Tech, Inc. - ₱642.86**
- **St. Ignatius de Loyola Health Care Service - ₱227.14**
- **Botica de la Naval - ₱207.86**

In the Assailed Decision, the Court in Division likewise disallowed the input VAT claims on the foregoing purchases for failure to comply with the invoicing requirements. More particularly, the disallowance was due to the following:

1. For the transactions with M-Lav Industrial Gas, Inc., the VAT charge sales invoices presented do not indicate the TIN therein despite each sales transaction exceeded the amount of ₱1,000.00;

2. The services rendered by Brownstone Asia Tech, Inc. were evidenced only by a collection receipt and not by VAT official receipt; and

3. The VAT official receipts and cash invoices covering the purchases from St. Ignatius de Loyola Health Care Service and Botica de la Naval were not issued in the name of PSWI.

After perusal of the records, the Court *En Banc* concurs with the Court in Division's findings. This is especially so considering that PSWI did not raise any compelling reason in its Petition for Review to disturb such disposition.

At this juncture, it is important to stress that the fulfillment of the invoicing requirements prescribed by law is not a perfunctory exercise devoid of any meaning. As aptly explained by the Supreme Court in *Team Energy Corporation v. Commissioner of Internal Revenue*,[31] to wit:

> "Strict compliance with substantiation and invoicing requirements is necessary considering VAT's nature and VAT system's tax credit method, where tax payments are based on output and input taxes and where the seller's output tax becomes the buyer's input tax that is available as tax credit or refund in the same transaction. **It ensures the proper collection of taxes at all stages of distribution, facilitates computation of tax credits, and provides accurate audit trail or evidence for BIR monitoring purposes**." *(Emphasis supplied)*

[31] G.R. Nos. 197663 & 197770, March 14, 2018.

CTA EB No. 2412

In her Petition, the CIR asserts that the Court in Division erred in computing PSWI's deficiency VAT assessment. She insists that the input VAT that should be deducted from the output VAT amounted only to ₱492,711,991.05 (the amount reflected as allowable input tax per return in the assessment notices) instead of ₱726,205,217.28 as used by the Court in Division in the Assailed Decision. The CIR asserts that the excess input tax of ₱233,493,226.23 (as of June 30, 2014) had been forwarded to succeeding returns after the period of audit, and thus, cannot be credited against PSWI's deficiency VAT assessment.

The CIR's Petition lacks merit.

It is improper for the CIR to disallow PSWI's excess input tax as of June 30, 2014 merely on the ground that the said amount was carried over to succeeding returns after the period of audit. Having found that PSWI has total allowable input tax per return amounting to ₱726,205,217.28, the Court in Division correctly credited the said amount against PSWI's deficiency VAT liability. To be sure, any tax benefit derived by PSWI from the carry-over of excess input tax redounds to that succeeding period and not to the period covered by the subject VAT assessment. Logically, the assessment should be made in that succeeding period.

WHEREFORE, the consolidated Petitions for Review are **DENIED**. The Assailed Decision and Resolution in CTA Case No. 9506 are **AFFIRMED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

With due respect, please see Concurring and Dissenting Opinion
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 the above decision were reached in consultation before the cases were 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

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BUREAU OF INTERNAL REVENUE, COMMISSIONER OF INTERNAL REVENUE, AND ASSISTANT COMMISSIONER TERESITA M. ANGELES
Respondents.

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB NO. 2412
(CTA Case No. 9506)

Present:

DEL ROSARIO, *P.J.*,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, *and*
CUI-DAVID, *JJ.*

- versus -

PAG-ASA STEEL WORKS, INC.,
Respondent.

Promulgated:
SEP 13 2022 2:40pm

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CONCURRING AND DISSENTING OPINION

BACORRO-VILLENA, J.:

I concur with the *ponencia* of our esteemed colleague, Justice Ma. Belen Ringpis-Liban, in upholding: (1) the deficiency output Value-Added Tax (**VAT**) of ₱4,498,977.26; and, (2) the disallowance of input tax amounting ₱11,573,755.17. However, with due respect, I beg to differ with the conclusion reached in the *ponencia* that Pag-Asa Steel Works, Inc. (**PSWI**) has no deficiency VAT liability despite the findings of deficiency output VAT and disallowed input tax. The *ponencia* affirms the Court in Division's computation for deficiency VAT, which effectively utilizes PSWI's input tax carry-over as of 30 June 2014 as payment for its deficiency VAT.

The *ponencia* rules that the Commissioner of Internal Revenue's (**CIR**'s) "disallowance" of PSWI's excess input tax as of 30 June 2014 is improper and that any tax benefit derived by PSWI from the carry-over of excess input tax redounds to that succeeding period and not to the period covered by the subject VAT assessment.

I, respectfully, disagree.

Firstly, the disallowance of excess input tax carry-over is not disallowance *per se*. It is employed so as not to disrupt the amount of deficiency tax being assessed for the period. To illustrate, if CIR did not reflect the "disallowance" in the computation of basic deficiency VAT, the Final Decision on Disputed Assessment (**FDDA**) would show the following, which is the Court in Division's computation[1] as affirmed in the *ponencia*:

Taxable sales per Returns		₱ 4,105,933,270.10
Add: Income not subjected to VAT		
Sales discount not indicated in sales invoice	₱ 323,376.84	
Zero-rated sales considered taxable	27,947,555.03	
Hauling charged to customers, not taken up in sales	8,904,002.03	
Offsetting of receivable accounts with payable account	316,543.03	37,491,477.13
Total Vatable Sales		4,143,424,747.23
Output Tax Due	12%	497,210,969.66

[1] *Rollo* (CTA EB No. 2410), Volume I, pp. 43-44.

Allowable input tax per return	726,205,217.28[2]	
Less:		
Disallowed input tax for non-compliance with invoicing requirements	11,573,755.17	714,631,462.11
DEFICIENCY VAT		**₱ (217,420,492.45)**

Based on the foregoing, this would eliminate the deficiency VAT for the period, *i.e.*, deficiency output VAT on income not subjected to VAT totaling ₱4,498,977.26 and disallowed input tax of ₱11,573,755.17. Hence, if the total allowable input tax is not reduced by the excess input tax carried over to subsequent periods, a portion of the excess input tax that should have been carried forward and utilized in the subsequent period would be utilized and offset against the basic deficiency VAT, which would contradict the premise that the tax benefit from excess input tax carried over redounds to the subsequent period.

Secondly, the decision to not "disallow" or reduce the total allowable input tax would put additional burden on the taxpayer to amend subsequent returns to remove the excess input tax already utilized and prevent any Bureau of Internal Revenue (**BIR**) assessment on the matter. Additional burden would also be imposed upon the BIR to monitor the decisions of this Court to make sure that utilized excess tax credits are not being utilized again in the subsequent periods.

Lastly, PSWI was not able to sufficiently establish that it has not utilized the initial input tax carried over of ₱233,493,226.23 to the 3rd quarter of taxable year (**TY**) 2014. In fact, based on PSWI's subsequent quarterly VAT returns up to the 2nd quarter of TY 2017, its excess input tax carried over is declining, which means that its prior period excess input tax is gradually being utilized, to wit:

VAT Return	Excess input tax from prior quarter [A]	Output tax for the quarter [B]	Input tax for for the quarter [C]	Total allowable input tax [D = A + C]	Others (Tax Credits/ Payments) [E]	Excess input tax to be carried over [B - D - E]
3rd quarter of 2014[3]	233,493,226.23	208,649,997.25	266,636,170.64	500,129,396.87	-	(291,479,399.62)
4th quarter of 2014[4]	291,479,399.62	211,308,156.48	170,511,547.93	461,990,947.55	320.20	(250,683,111.27)

2 *Per* CIR's FDDA, the allowable input tax per return is ₱492,711,991.05 which is ₱726,205,217.28 less ₱233,493,226.23 (excess input tax carried over to subsequent periods).

3 Exhibits "P-79" to "P-80", Division Docket, Volume I, pp. 451-452.

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1st quarter of 2015[5]	250,683,111.27	235,507,993.08	190,785,772.11	441,468,883.38	-	(205,960,890.30)
2nd quarter of 2015[6]	205,960,890.30	235,015,074.83	205,423,001.10	411,383,891.40	82.09	(176,368,898.66)
3rd quarter of 2015[7]	176,368,898.66	225,868,968.95	224,384,127.64	400,753,026.30	43.06	(174,884,100.41)
4th quarter of 2015[8]	174,884,100.41	190,597,902.92	177,268,741.74	352,152,842.15	-	(161,554,939.23)
1st quarter of 2016[9]	161,554,939.23	194,357,887.19	206,857,440.26	368,412,379.49	-	(174,054,492.30)
2nd quarter of 2016[10]	174,054,492.30	227,587,504.38	154,359,477.39	328,413,969.69	-	(100,826,465.31)
3rd quarter of 2016[11]	100,826,465.31	175,593,779.10	234,529,841.69	335,356,307.00	-	(159,762,527.90)
4th quarter of 2016[12]	159,762,527.90	215,715,260.29	185,380,404.89	345,142,932.79	167.83	(129,427,840.33)
1st quarter of 2017[13]	129,427,840.33	254,690,484.95	242,937,121.17	372,364,961.50	-	(117,674,476.55)
2nd quarter of 2017[14]	117,674,476.55	192,255,719.16	194,966,407.47	312,640,884.02	-	(120,385,164.86)

Thus, if the Court were to allow this without ascertaining that such excess input tax carried over is still available, taxpayers may end up benefiting twice from it, *i.e.*, tax credit against output VAT in the subsequent periods and payment for deficiency VAT at the expense of the government.

With the above discussions, I vote to: (1) **DENY** the Petition for Review filed by PSWI in CTA EB No. 2410; and, (2) **GRANT** the Petition for Review filed by Commissioner of Internal Revenue in CTA EB No. 2412, specifically to **ORDER** PSWI to pay the basic deficiency VAT of **₱16,072,732.43**, plus interest and surcharges, for the 1st and 2nd quarters of taxable year 2014.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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4 Exhibits "P-113" to "P-114", id., pp. 485-486.
5 Exhibits "P-144" to "P-145", id., Volume II, pp. 516-517.
6 Exhibits "P-161" to "P-162", id., pp. 533-534.
7 Exhibits "P-187" to "P-188", id., pp. 559-560.
8 Exhibits "P-213" to "P-214", id., pp. 585-586.
9 Exhibits "P-226" to "P-227", id., pp. 600-601.
10 Exhibits "P-241" to "P-242", id., pp. 615-616.
11 Exhibits "P-256" to "P-257", id., pp. 630-631.
12 Exhibits "P-279" to "P-280", id., pp. 653-654.
13 Exhibits "P-295" to "P-296", id., pp. 669-670.
14 Exhibits "P-316" to "P-317", id., pp. 690-691.