REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

<u>En Banc</u>

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 2260** (CTA Case No. 9432)
	Present:
-versus-	**DEL ROSARIO**, *<u>PJ</u>,* **CASTAÑEDA, JR.**, **UY**, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, and **MODESTO-SAN PEDRO**, *<u>JJ</u>.*
MAERSK GLOBAL SERVICE CENTRES (PHILIPPINES) LTD., *Respondent.*	Promulgated: JUL 29 2021 4:05 p.m.

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DECISION

DEL ROSARIO, <u>PJ</u>.:

Before this Court is a Petition for Review posted on June 10, 2020 *via* registered mail 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* reverse and set aside the Decision dated October 23, 2019 and the Resolution dated March 2, 2020 promulgated by the Court of Tax Appeals (CTA) Third Division[1] in CTA Case No. 9432, entitled *Maersk Global Service Centres (Philippines) Ltd. vs. Commissioner of Internal Revenue* which partially granted respondent's Petition for Review.

The dispositive portion of the assailed Decision and assailed Resolution of the Court in Division are as follows:

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

October 23, 2019 Decision:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the total amount of **Php32,744,472.01**, representing its excess and unutilized input VAT attributable to its zero-rated sales for the four quarters of taxable year 2014.
>
> **SO ORDERED.**"

March 2, 2020 Resolution:

> "**WHEREFORE**, premises considered, Respondent's 'Motion for Partial Reconsideration (Re: Decision Promulgated on 23 October 2019)' is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

Petitioner is the duly appointed Commissioner of Internal Revenue (CIR) vested by law with authority to, *inter alia,* act upon and approve claims for refund or tax credit. He holds office at the BIR Building, Agham Road, Diliman, Quezon City.[2]

Respondent Maersk Global Service Centres (Philippines) Ltd. is a foreign corporation duly organized and existing under the laws of Hong Kong SAR. It is licensed to do business in the Philippines as a regional operating headquarters, with principal office at Levels 5-8, North Wing, Estancia Office, Capitol Commons, Meralco Avenue, Brgy. Oranbo, Pasig City.[3] It is a value-added tax (VAT) registered taxpayer having been issued a Certificate of Registration bearing Revenue District Office Control No. 3RC0000685349 by Bureau of Internal Revenue (BIR) Revenue Region No. 7, Revenue District Office No. 43A – East Pasig.[4]

Respondent renders corporate and administrative services for the ocean transportation business of its affiliate, A.P. Moller – Maersk A/S (APMM), a nonresident foreign corporation doing business outside the Philippines with address at Denmark, Esplanaden 50,

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[2] Par. 2, Petition for Review, *CTA Division Docket*, Vol. I, p. 10.
[3] Par. 1, *Id;* Exhibit "P-1", *CTA Division Docket*, Vol. I, p. 487.
[4] Par. 3, *Id*; Exhibit "P-7", *CTA Division Docket*, Vol. II, p. 533.

1098 Copenhagen. Respondent's export services include, among others, processing of import and export documentation, procurement, finance and accounting services, and information technology-related services.[5]

For taxable year 2014, respondent filed its quarterly VAT Returns on the following dates:

Quarter	Date Filed
1st	April 25, 2014[6]
2nd	July 27, 2014[7]
3rd	October 25, 2014[8]
4th	February 18, 2016[9]

On March 22, 2016, respondent filed with the BIR Revenue District Office No. 43A – East Pasig, an application for VAT refund of its unutilized and excess creditable input VAT attributable to its zero-rated sales for the four (4) quarters of 2014 in the total amount of ₱34,088,112.64.

Quarter	Amount of Claim
1st	₱ 7,681,980.14
2nd	₱ 12,013,750.47
3rd	₱ 7,170,746.57
4th	₱ 7,221,635.46
Total	₱ 34,088,112.64

In support thereof, respondent submitted documents together with its letter dated March 21, 2016,[10] with the attached Checklist of Mandatory Requirements for Claims for VAT Credit/Refund.[11]

On June 06, 2016, respondent received a Letter of Authority (LOA) No.43A-2016-0000027812[12] dated June 02, 2016, authorizing Revenue Officer Maria Sally Jesalva and Group Supervisor Zaldy

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[5] Par. 5, *Id.*; Exhibits "P-2" to "P-6", *CTA Division Docket*, Vol. I and II, pp. 494-532.
[6] Exhibit "P-9", *CTA Division Docket*, Vol. II, pp. 535-536.
[7] Exhibit "P-10", *CTA Division Docket*, Vol. II, pp. 537-538.
[8] Exhibit "P-11", *CTA Division Docket*, Vol. II, pp. 539-540.
[9] Exhibit "P-12", *CTA Division Docket*, Vol. II, pp. 541-542.
[10] Exhibits "P-16" and "P-16-A", *CTA Division Docket*, Vol. II, pp. 550-551.
[11] Exhibit "P-17", *CTA Division Docket*, Vol. II, p. 552.
[12] Exhibit "P-18", *CTA Division Docket*, Vol. II, p. 553.

Dioscoro Dy to audit petitioner's books of accounts regarding its claim for VAT refund for taxable year 2014.

Due to petitioner's inaction on its claim, respondent filed a Petition for Review[13] before the Court in Division on August 18, 2016 docketed as CTA Case No. 9432.

On November 2, 2016, petitioner filed a Motion to Admit Answer.[14] In response thereto, respondent filed its Comment (to Respondent's Motion to Admit Answer) and Motion to Declare Respondent in Default and Direct Respondent to Transmit BIR Records[15] on November 28, 2016. The Court granted petitioner's Motion to Admit Answer and denied respondent's Motion to Declare Respondent in Default in the Resolution[16] dated January 11, 2017.

In his *Answer*, [17] petitioner interposed the following Special and Affirmative Defenses:

> (1) Respondent is not entitled to the benefit of zero-rating pursuant to Section 108 (B) (2) of the National Internal Revenue Code (NIRC) of 1997, as amended, as A.P. Moller-Maersk A/S, the recipient of respondent's services, is an entity doing business in the Philippines;
>
> (2) Respondent's alleged claim for refund is still under administrative routine investigation/examination by petitioner;
>
> (3) In order to validly claim for tax credit/ refund, it is imperative for respondent to prove the following:
>
> > (a) Compliance with the registration requirements of a value-added taxpayer under the pertinent provisions of the NIRC of 1997, as amended, and its implementing revenue regulations (RR);
> >
> > (b) Compliance with the invoicing and accounting requirements for VAT registered persons, as well as the filing and payment of VAT pursuant to the provisions of Sections 113 and 114 of the NIRC of 1997, as amended. Failure to comply with the invoicing requirements anent respondent's sale of goods and services will result in the disallowance of the respondent's claim;

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[13] Petition for Review, *CTA Division Docket*, Vol. 1, pp. 1-20.
[14] *CTA Division Docket*, Vol. I, pp. 38-45.
[15] *CTA Division Docket*, Vol. I, pp. 48-57.
[16] *CTA Division Docket*, Vol. I, pp. 60-62.
[17] Answer, *CTA Division Docket*, Vol. I, pp. 41-45.

(c) The submission of complete documents in support of the administrative claim for tax refund pursuant to Section 112(C) of the NIRC of 1997, as amended is mandatory; otherwise, there would be no sufficient compliance with regard to the filing of administrative claim for tax credit/ refund which is a condition *sine qua non* prior to the filing of a judicial claim;

(d) The input taxes amounting to ₱34,088,112.64 allegedly representing the unutilized input VAT from respondent's purchases of goods and services from VAT registered suppliers were:

(i) paid by respondent;
(ii) attributable to its zero-rated or effectively zero-rated sales; and,
(iii) such input taxes paid should not have been applied against any output tax.

(e) Respondent's claim for tax credit/refund allegedly representing unutilized input VAT in the amount of ₱34,088,112.64 was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Section 112(A) of the NIRC of 1997, as amended;

(4) In an action for tax refund/credit, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund/credit, and failure to adduce sufficient proof is fatal to the action for tax refund/credit (*Commissioner of Internal Revenue* vs. *Tokyo Shipping Co., Ltd.*, 244 SCRA 336);

(5) Basic is the rule that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the entity claiming the same (*Philippine Geothermal, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 154028,July 27, 2005);

(6) Taxes collected are presumed to be in accordance with laws and regulations. Hence, not refundable; and,

(7) Respondent failed to sufficiently prove and demonstrate that the subject tax was erroneously or illegally collected.

On April 7, 2017, respondent filed its Pre-Trial Brief;[18] while petitioner filed his Pre-Trial Brief on July 3, 2017.[19]

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[18] *CTA Division Docket*, Vol. I, pp. 75-84.
[19] *CTA Division Docket*, Vol. I, pp. 185-187.

The Pre-Trial Conference was held on July 4, 2017.[20] The parties filed their Joint Stipulation of Facts and Issues[21] (JSFI) on July 19, 2017. The Pre-Trial Order[22] was issued on August 3, 2017 where the Court approved the parties' JSFI. The Court also terminated the Pre-Trial Conference in the same Order.

During trial, respondent presented documentary and testimonial evidence. Respondent presented as its witnesses, Ms. Rochelle V. Duclay, its Finance Accountant, and Mr. Richard R. Lapres, the court -commissioned Independent Certified Public Accountant (ICPA), who both testified by way of Judicial Affidavits. The exhibits enumerated in the Formal Offer of Evidence for Petitioner [now Respondent] Maersk Global Services Centres (Philippines) Ltd.[23] were admitted in the Resolutions dated February 2, 2018[24] and June 19, 2018.[25]

During the hearing on September 10, 2018, petitioner manifested that he will no longer present the witnesses listed in the Pre-Trial Order. The Court then gave the parties a period of thirty (30) days from September 30, 2018 to submit their respective memoranda. [26]

Respondent's Memorandum[27] was filed on October 10, 2018; while petitioner failed to submit his memorandum as per Records Verification dated October 11, 2018.[28] The Petition for Review in CTA Case No. 9432 was submitted for Decision on November 9, 2018.[29]

On October 23, 2019, the Court in Division issued the assailed Decision[30] partially granting respondent's Petition for Review.

On November 8, 2019, petitioner filed a Motion for Partial Reconsideration (Re: Decision Promulgated on 23 October 2019).[31]

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[20] *CTA Division Docket*, Vol. I, p. 201.
[21] *CTA Division Docket*, Vol. I, pp. 206-210.
[22] *CTA Division Docket*, Vol. I, pp. 213-218.
[23] *CTA Division Docket*, Vol. I, pp. 475-486.
[24] *CTA Division Docket*, Vol. II, pp. 808-809.
[25] *CTA Division Docket*, Vol. II, pp. 833-835.
[26] Minutes of the Hearing dated September 10, 2018, *CTA Division Docket*, Vol. II, p. 836.
[27] *CTA Division Docket*, Vol. II, pp. 838-857.
[28] *CTA Division Docket*, Vol. II, p. 859.
[29] *CTA Division Docket*, Vol. II, p. 861.
[30] *CTA Division Docket*, Vol. II, pp. 869-891.
[31] *CTA Division Docket*, Vol. II, pp. 892-907.

On March 2, 2020, the Court in Division issued the assailed Resolution[32] denying petitioner's Motion for Partial Reconsideration.

Undeterred, respondent filed a Petition for Review[33] before the Court *En Banc* through registered mail on June 10, 2020.

After respondent's filing of its Comment (to Petition for Review dated 22 May 2020) on July 27, 2020, the Court *En Banc* gave due course to the Petition for Review and submitted the same for decision in the Resolution[34] dated September 2, 2020.

THE ISSUES

Petitioner raised the following issues for the Court *En Banc*'s resolution:

I. Whether the Court in Division erred in ruling that respondent's alleged input tax attributable to its zero-rated sales for the period January 1, 2014 to December 31, 2014 remained unutilized despite being carried over to the succeeding periods; and,

II. Whether the Court in Division erred in ruling that respondent's input tax in the amount of ₱32,744,472.01 is directly attributable to its alleged zero-rated sales.

PETITIONER'S ARGUMENTS[35]

Petitioner argues that respondent failed to overcome the burden that the subject input tax being claimed for refund remained unutilized or have not been applied against any output tax. Petitioner contends that respondent's failure to present all the VAT Returns for the taxable year 2015 prevented it from proving that the input VAT subject of the present claim was not utilized during the four (4) quarters of taxable year 2015.

Petitioner also contends that respondent failed to prove that its input tax in the amount of ₱32,744,472.01 is directly attributable to its

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[32] *CTA Division Docket*, Vol. II, pp. 910-915.
[33] *CTA En Banc Docket*, pp. 1-9.
[34] *CTA En Banc Docket*, pp. 61-62.
[35] Petition for Review dated May 22, 2020, *CTA En Banc Docket, pp. 3-8.*

alleged zero-rated sales. Petitioner avers that it was erroneous for the Court in Division to conclude that since respondent's reported sales were all zero-rated sales, the claimed input VAT is entirely attributable thereto.

RESPONDENT'S ARGUMENTS[36]

Respondent points out that petitioner's arguments in his Petition for Review are identical repetitions of the arguments alleged in his Motion for Reconsideration. Petitioner's arguments have been adequately addressed by the Court in Division in the assailed Decision and assailed Resolution.

Respondent avers that petitioner's claim that it did not present all its VAT Returns for taxable year 2015 to prove that the subject refund claim for input tax was not utilized for the taxable year 2015 is false. Respondent cites the ICPA Report where the ICPA confirmed that he examined the succeeding quarters through the VAT Returns filed by respondent for taxable years 2014, 2015, 2016, two quarters ending June 30, 2017, and the months of July and August 2017; and the ICPA found that the input VAT subject of the present claim was not utilized in the succeeding period.

Respondent claims that petitioner's argument that the input taxes were not directly attributable to respondent's zero-rated sales is illogical and contrary to the evidence on record. Petitioner failed to consider that all of respondent's sales are zero-rated export sales except for the minimal sale of used assets. Clearly, all input taxes of respondent are directly attributable to its zero-rated sales.

RULING OF THE COURT *EN BANC*

The Petition for Review was filed on time

Before delving on the merits of the case, the Court *En Banc* shall determine whether the present Petition for Review was timely filed.

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[36] Respondent's Comment (To Petition for Review dated 22 May 2020), *CTA En Banc Docket*, pp. 50-54.

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 petitioner received the assailed Resolution on March 10, 2020. Petitioner had fifteen (15) days from March 10, 2020 or until March 25, 2020 within which to file his Petition for Review before the Court *En Banc*.

Due to the increasing cases of COVID-19, the Supreme Court issued Administrative Circular No. 31-2020 dated March 16, 2020 extending the filing of petitions falling due from the period of March 15, 2020 until April 15, 2020 for thirty (30) calendar days counted from April 16, 2020.

On April 8, 2020, the Supreme Court issued Administrative Circular No. 34-2020 extending again the filing of petitions falling due up to April 30, 2020 for thirty (30) calendar days counted from May 1, 2020.

On April 27, 2020, the Supreme Court issued Administrative Order No. 35-2020 further extending the filing of petitions falling due up to May 15, 2020 for thirty (30) calendar days counted from May 16, 2020.

Counting thirty (30) calendar days from May 16, 2020, petitioner had **until June 15, 2020** within which to file his Petition for Review. His Petition for Review was timely filed through registered mail on **June 10, 2020**.

Petitioner's arguments are mere rehash of the arguments he presented in his Motion for Reconsideration

As aptly pointed out by respondent, petitioner's arguments in his Petition for Review are mere rehash of arguments presented in his Motion for Reconsideration filed before the Court in Division which have been adequately passed upon 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)*

Based on the aforecited provisions of law, 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. there must be zero-rated or effectively zero-rated sales;

4. 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, however, petitioner insists that respondent failed to comply with the ***fifth*** and ***sixth*** requisites.

The Court *En Banc* shall address these issues to put petitioner's mind to rest.

Input VAT in the amount of ₱32,744,472.01 is directly attributable to its zero-rated sales

Petitioner argues that respondent failed to prove that its input VAT in the amount of ₱32,744,472.01 is directly attributable to its alleged zero-rated sales. He contends that Section 112 of the NIRC of 1997, as amended, uses the phrase "directly attributable" which means that input VAT must come from purchases of goods and services that actually form part of the finished product or service of the taxpayer. He further explains that the connection between the purchases and the finished product must be "concrete" and not "imaginary" or "remote".

Citing *Taganito Mining vs. Commissioner of Internal Revenue*[37] *(Taganito Mining case)*, *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*[38] *(2011 Atlas case)*, and *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*[39] *(2007 Atlas case)*, petitioner argues that it is erroneous for the Court to merely declare that the substantiated input taxes incurred by respondent are attributable to the alleged zero-rated sales without any determination of whether the same are *"directly attributable"* thereto.

Respondent counter-argues that the ICPA's findings reveal that the amount of ₱34,088,112.64 of unutilized input VAT allocable to zero-rated sales may be claimed by respondent. Respondent points out that the ICPA Report included annexes which pertain to the schedule of input VAT incurred by respondent for taxable year 2014 and the copies of official receipts and sales invoices of respondent's purchases of capital goods, goods other than capital goods, and services. These supporting documents prove that respondent could not have rendered its zero-rated services without the aforesaid purchases. Thus, respondent submits that its purchases are attributable to its zero-rated sales.

The Court *En Banc* finds petitioner's arguments without merit.

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 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.[40]

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

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[37] CTA Case No. 8680, September 14, 2017.
[38] G.R. No. 159471, January 26, 2011.
[39] G.R. Nos. 141104 & 148763, June 08, 2007.
[40] *Commissioner of Internal Revenue vs. Central Luzon Drug Corporation,* G.R. No. 159647, April 15, 2005.

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, 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.

Contrary to petitioner's stance, there is nothing in the *Taganito Mining case* which decrees that the input VAT be directly attributable to petitioner's zero-rated sales. Truth to tell, input taxes that bear a direct or indirect connection with a taxpayer's zero-rated sales satisfies the requirement of the law.

Anent petitioner's reliance on the *2011* and *2007 Atlas cases*, the Court *En Banc* affirms the findings of the Court in Division when it held that respondent erred in relying thereon as the doctrinal pronouncement therein may no longer be applied. Notably, said *Atlas cases* were decided under earlier Revenue Regulations which have been revoked by Revenue Regulations No. 14-2005 which deleted the requirement that the input VAT being claimed for refund should be "directly and entirely attributable" to zero-rated sales. The Court *En Banc* quotes with approval the disquisition of the Court in Division in the assailed Resolution, *viz.*:

> "Furthermore, Respondent's reliance in the *Atlas Case* is inaccurate as the doctrinal pronouncement therein may no longer be applied since it was decided under an earlier, now amended, Revenue Regulations. Verily, this court finds the recent CTA *En Banc* case *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership*, as instructive on the matter on hand:
>
> > 'We cannot rely on the rulings in the Atlas cases being invoked by the CIR. This must be so because, as clearly shown in the said cases, the latter were decided under the earlier Revenue Regulations (RR) No. 5-87 dated September 1, 1987, as amended by RR No. 3-88 dated February 15, 1988, Section 16 of which provides, in part, as follows:
> >
> > > 'In all cases, the amount of refund or tax credit that may be granted shall be limited to the amount of

value-added tax (VAT) paid **directly and entirely attributable to the zero-rated transaction** during the period covered by the application for credit or refund.' (Emphasis and underscoring supplied)

Understandably, on the basis thereof, the Supreme Court required and ruled in the Atlas cases that the input VAT being claimed for refund should be 'directly and entirely attributable' to the zero-rated sales. However, RR Nos. 5-87 and 3-88, and the jurisprudential pronouncements interpreting and/or applying the same, could no longer be applied as the same are deemed revoked.

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A cursory examination, however, of RR No. 14-2005 and subsequent RR pertaining to VAT would reveal that the provisions of RR Nos. 5-87 and 3-88, as to the **requirement that the input VAT being claimed for refund should be 'directly and entirely attributable' to the zero-rated sales, has not been retained**. Thus, the aforequoted portion of Section 16 of RR No. 5-87, as amended by RR No. 3-88, is no longer binding, upon the effectivity of RR No. 14-2005, i.e., on July 1, 2005.

Considering that the taxable year under consideration is 2008, the provisions of RR Nos. 5-87 and 3-88, as applied to the Atlas cases, may no longer be validly applied to the instant case."

Based on the foregoing, the Court *En Banc* affirms the findings of the Court in Division that the excess valid input VAT paid by respondent in the amount of ₱32,744,472.01 is entirely attributable to its zero-rated sales for the taxable year 2014.

Input VAT being claimed remained unutilized or has not been applied against any output VAT for the succeeding quarters of the following taxable year 2015

As aforestated, petitioner claims that respondent failed to comply with the fifth requisite as it failed to present evidence to show that the input VAT remained unutilized or was not applied against any output VAT for the succeeding quarters of taxable year 2015.

The Court finds petitioner's arguments untenable.

The Court in Division elucidated both in the assailed Decision and assailed Resolution that respondent's input VAT remains unutilized or have not been applied against any output tax for the succeeding quarters of the following taxable year 2015. On this score, the assailed Resolution aptly elucidates:

> "At the outset, this Court cannot find the basis in Respondent's contention that Petitioner failed to present all the VAT Returns for the taxable year 2015 to prove that the subject claim was not utilized for the taxable year 2015. Obviously, Respondent overlooked the fact that Quarterly VAT Returns for the period January to December of 2015 and 2016 were offered in evidence as Exhibits 'P-35.1' to 'P-35.16', as well as the Quarterly VAT Returns for the 1st and 2nd quarters of 2017 and Monthly VAT Returns for July and August 2017 were also offered as Exhibits 'P-36.1' to P-36.8', which were all admitted and considered by the Court in the Resolutions dated February 2, 2018 and June 19, 2018.
>
> Moreover, aside from the findings made by the court-commissioned ICPA, this Court also verified that the excess input taxes claimed by [Respondent] for taxable year 2014 were not applied against any of its output VAT liability."

Clearly, respondent was able to sufficiently prove that the input VAT, subject of the present claim, has not been applied against any output tax for the succeeding quarters of the following taxable year 2015. As judiciously pointed out by the Court in Division in the assailed Decision, *"although a portion of the claimed input VAT was carried over by respondent to its quarterly VAT Return for the succeeding first quarter of taxable year 2015,[41] the same remained unutilized since it was deducted as 'VAT Refund/Tax Credit Certificate' in the same quarter."*

All told, respondent's entitlement to the tax credit certificate in the amount of ₱32,744,472.01, representing excess and unutilized input VAT attributable to its zero-rated sales for the four (4) quarters of taxable year 2014, as found by the Court in Division, has been sufficiently established.

WHEREFORE, in light of the foregoing, petitioner Commissioner of Internal Revenue's *Petition for Review* posted on June 10, 2020 is **DENIED** for lack of merit. The assailed Decision dated October 23, 2019 and assailed Resolution dated March 2, 2020

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[41] Exhibit "P-35.1", Line 20A.

of the Court in Division in CTA Case No. 9432 are hereby **AFFIRMED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

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

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