REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	CTA EB CASE No. 1969 (CTA CASE No. 7863)
-versus-	*Present*: DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, and MODESTO-SAN PEDRO, *JJ.*
PILIPINAS TOTAL GAS INC., *Respondent.*	Promulgated: SEP 2 4 2019 2:46 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision on May 22, 2019, is a Petition for Review for the Court *En Banc* under *Section 4(b), Rule 8*[1] *of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA), as amended,* of the Decision, in the case entitled *Pilipinas Total Gas Inc. vs. the Commissioner of Internal Revenue,* docketed as CTA Case No. 7869, dated June 19,

[1] SEC. 4. *Where to appeal; mode of appeal.* –

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(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court *en banc* shall act on the appeal.

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2018[2] and the Resolution dated November 13, 2018[3] both rendered by the Special Third Division of this Court, the dispositive portions of which read as follows:

CTA Case No. 7863:
Decision dated June 19, 2018:

"**WHEREFORE,** premises considered, the instant Petition for Review is hereby **GRANTED**. Respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner Pilipinas Total Gas, Inc. in the reduced amount of **SEVEN MILLION THREE HUNDRED THIRTY-TWO THOUSAND FOUR HUNDRED TWENTY-THREE AND 73/100 PESOS (Php7,332,423.73),** representing its unutilized and excess input VAT attributable to zero-rated sales for the first and the second quarters of TY 2007.

SO ORDERED."

CTA Case No. 7863:
Decision dated November 13, 2018:

"**WHEREFORE,** finding no cogent reason to reverse the Court's ruling in the assailed Decision, respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 19 June 2018)** is **DENIED** for lack of merit.

SO ORDERED."

The facts of the case, as recited by the Special Third Division in its Decision, read as follows:

"Petitioner Pilipinas Total Gas, Inc. is a domestic corporation duly organized and existing under Philippine laws, with principal office at MDD 121 East

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[2] Penned by former Associate Justice Lovell R. Bautista, concurred in by Associate Justice Ma. Belen M. Ringpis-Liban and Associate Justice Esperanza R. Fabon-Victorino, *En Banc* Docket, pp. 21-42.
[3] *Ibid.*, pp. 43-47.

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Science Avenue, Laguna Technopark, Biñan, Laguna. It is engaged in the sale, transportation, and distribution of industrial gas, as well as the sale of gas equipment and other related business, as shown in its Securities and Exchange Commission Certificate of Registration Number AS095-011466. Petitioner is registered with the BIR as a VAT taxpayer, as shown in its BIR Certificate of Registration bearing Taxpayer Identification Number 004-609-538-000.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue ("CIR"), vested with authority to act as such, including, among others, the power to decide, approve, and grant refunds or tax credits of erroneously or excessively paid taxes.

On April 20, 2007 and July 20, 2007, petitioner filed with the BIR its Original Quarterly VAT Returns for the first and the second quarters of TY 2007, respectively.

However, on May 20, 2008, petitioner filed with the BIR its Amended Quarterly VAT Returns for the first and the second quarters of TY 2007, reflecting the following details:

	VATABLE SALES	ZERO-RATED SALES	EXEMPT SALES	DOMESTIC PURCHASES-GOODS OTHER THAN CAPITAL GOODS	DOMESTIC PURCHASES-SERVICES
1st	Php 1,169,920.98	Php 47,262,774.66	Php -	Php 36,308,089.75	Php 1,462,946.16
2nd	713,132.06	31,906,108.49	18,026,481.31	24,661,608.92	5,270,691.44
TOTAL	PHP 1,883,053.04	PHP 79,168,883.15	PHP 18,026,481.31	PHP 60,969,698.67	PHP 6,733,637.60

For the first and the second quarters of TY 2007, petitioner incurred unutilized input VAT credits from its domestic purchases of non-capital goods and services in the total amount of Php8,124,400.35 xxx

Of the total accumulated input VAT in the amount of Php8,124,400.35, the amount of Php7,898,433.98 is the excess or unutilized input VAT for the first and the second quarters of TY 2007.

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On May 15, 2008, petitioner filed an administrative claim for refund of unutilized input VAT for the two quarters of TY 2007, along with additional supporting documents.

In view of respondent's inaction, on January 23, 2009, petitioner filed its judicial claim for refund *via* the present Petition for Review with the Court.

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On January 13, 2011, the Court promulgated a Decision dismissing the Petition for Review for being prematurely filed due to petitioner's failure to prove that it submitted complete supporting documents (notwithstanding the fact that it submitted supporting documents along with its administrative claim for refund on May 15, 2008, and a Certification from the Department of Finance on August 28 2008) - to warrant the grant of the refund and to reckon the commencement of the one hundred and twenty (120)-day period for the CIR to decide on its claim. While petitioner contends that the 120- day period should start from August 28, 2008, the Court ruled that *per Revenue Memorandum Order ("RMO") No. 53-98*, the Summary List of Local Purchases and Certifications from the Board of Investments, Bureau of Customs and Office of the PEZA, are indispensable in the claim for refund. xxx

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Aggrieved, petitioner filed its Motion for Reconsideration on February 2, 2011 claiming that (1) the submission of the alleged incomplete supporting documents does not make the judicial appeal dismissible for lack of jurisdiction; (2) even assuming that the supporting documents are incomplete, the two (2) year prescriptive period for claiming a refund was already about to lapse when the Petition for Review was filed; and (3) the Court acquired jurisdiction over the Petition for Review.

On April 19, 2011, the Court issued a Resolution, finding no valid or compelling reason to reverse its Decision. xxx

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On May 10, 2011, petitioner filed its Petition for Review with the Court *En Banc* docketed as CTA EB No. 776, seeking the review and reversal of the January 13, 2011 Decision and the April 19, 2011 Resolution of the Court. This Petition for Review was likewise dismissed for lack of merit on October 11, 2012. xxx

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The Court *En Banc* started counting the 120-days from the filing of the administrative claim on May 15, 2008, ending on September 12, 2008, hence, petitioner had thirty (30) days therefrom or until October 12, 2008 to file a Petition for Review with the Court. The Court *En Banc* noted that petitioner's Petition for Review was filed in the court *a quo* belatedly on January 23, 2009, depriving it of competence to entertain the judicial action.

On November 20, 2012, petitioner reiterated its arguments in its Motion for Reconsideration37, which was denied by the Court *En Banc* on May 8, 2013 for lack of merit. xxx

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On June 27, 2013, petitioner filed its Petition for Review on *Certiorari* with the Supreme Court *En Banc* docketed as G.R. No. 207112. On December 8, 2015, the Supreme Court promulgated a Decision, the dispositive portion thereof reads:

> **WHEREFORE**, the petition is **PARTIALLY GRANTED**. The October 11, 2012 Decision and the May 8, 2013 Resolution of the Court of Tax Appeals *En Banc,* in CTA EB No. 776 are **REVERSED** and **SET ASIDE.**
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> The case is **REMANDED** to the CTA Third Division for *trial de novo*.

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SO ORDERED.

The Supreme Court found that the judicial claim was timely filed and that it was not premature; that the 120-day period should be reckoned from August 28, 2008 when the complete supporting documents were submitted; that RMO No. 53-98 merely serves as a guide for revenue examiners, and not a benchmark to determine whether documents are complete to support a refund claim; that respondent neither gave notice to petitioner that its documents are inadequate nor ruled to deny its claim within the 120-day period; that counting from August 28, 2008, respondent had until December 26, 2008 to decide the claim, which he failed to do; that, therefrom, petitioner had 30 days or until January 25, 2009 to file its judicial claim; and that petitioner timely filed its Petition for Review with the Court on January 23, 2009.

The Supreme Court failed to rule on the issue of petitioner's entitlement to a refund or the issuance of a TCC in the amount of Php7,898,433.98, considering that the Petition for Review was denied due course and dismissed by the Court solely on the ground of premature and/or belated filing. Hence, the case was remanded to the Court for *trial de novo*.

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Ultimately, the only issue to be resolved is:

WHETHER PETITIONER IS ENTITLED TO A REFUND OR TO THE ISSUANCE OF A TCC IN THE AMOUNT OF PHP7,898,433.98 REPRESENTING UNUTILIZED INPUT VAT ARISING FROM ITS ZERORATED TRANSACTIONS FOR THE PERIOD COVERING THE FIRST AND THE SECOND QUARTERS OF TY 2007." (Citations omitted.)

The Court in Division ruled that Pilipinas Total Gas Inc. (Total)'s sales to PEZA-registered entities are deemed zero-rated. It stated that PEZA-registered entities, being in the fiction of foreign territory, the destination principle, as a basis for jurisdiction of the Philippines to impose value-

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added tax (VAT), as well as the *situs* of the transaction, as criteria for determining the place where the transaction occurred as the taxable event, will apply. As a result of the destination principle, Revenue Memorandum Circular No. 74-99, as enunciated in the Supreme Court case of *Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils), Inc.*[4] and this Court *En Banc's* case of *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue*,[5] provides that any sale of goods and services made by a VAT-registered supplier in the customs territory to any registered enterprise operating in the economic zone, regardless of the class or type of the latter's PEZA registration, is actually qualified and thus legally entitled to zero percent (0%) VAT.

The Court in Division further explained that Total was able to prove that its clients are situated in the ecozone, that it generated zero-rated sales in the amount of ₱79,168,883.15, thus, not liable to pay any output VAT thereon and the reported unutilized input VAT attributable thereto may be the proper subject of a claim for refund or the issuance of a tax credit certificate. However, upon examination of the documents presented, only the amount of ₱77,610,519.85 was considered to be valid zero-rated sales. On the other hand, out of the total input VAT in the amount of ₱8,124,400.35, only ₱7,705,619.88 is supported with valid official receipts, invoices, and schedules. The input VAT of ₱418,780.47 was further disallowed for not being properly substantiated by supporting documents.

The Court in Division thereby concluded in the assailed Decision that a portion of the ₱7,705,619.88 shall be applied against the reported output VAT liability of ₱225,966.37 and the remaining input VAT of ₱7,479,653.51 can be attributed to the total zero-rated sales amounting to ₱79,168,883.15.

As a result, only the input VAT of ₱7,332,423.73 was granted by the Court in Division that is attributable to the valid zero-rated sales of ₱77,610,519.85.

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[4] G.R. No. 150154, August 9, 2005, 466 SCRA 211.
[5] CTA EB No. 403, May 29, 2009.

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The CIR filed his Motion for Reconsideration of the said Decision and argued that Section 112(A)[6] of the National Internal Revenue Code (NIRC) of 1997, as amended, provides that what is refundable are "creditable input taxes" and in turn, must be directly attributable to the subject zero-rated sales. Further, he contends that based on Section 110(1)[7] of the NIRC, as amended, for input taxes on purchase of goods to be creditable, they must be a factor in the chain of production. Finally, the CIR added that a tax refund is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer and the taxpayer must present convincing evidence to substantiate a claim for refund.

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[6] *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.

[7] SEC. 110. *Tax Credits. –*

A. *Creditable Input Tax. –*

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

(a) Purchase or importation of goods:

(i) For sale; or
(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or
(iii)For use as supplies in the course of business; or
(iv)For use as materials supplied in the sale of service; or
(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.

(b) Purchase of services on which a value-added tax has been actually paid.

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In the assailed Resolution, the CIR's Motion for Reconsideration was denied for lack of merit, hence, this Petition.

In his Petition for Review,[8] the CIR mainly reiterates his argument before the Court in Division that the law requires only "creditable input taxes" that are "directly attributable" may be refunded, that for purchase of goods to be creditable, they must be a factor in the chain of production and that a tax refund is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer.

After carefully examining the records of the case, this Court has no reason to deviate from the findings in the assailed Decision and denies the CIR's Petition for Review.

To reiterate, Section 112(A) of the NIRC 1997, as amended, provides:

> "SEC. 112.Refunds or Tax Credits of Input Tax.-
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> "(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(8)(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): <u>*Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sales and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the</u>

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[8] *En Banc Docket*, pp. 7-20.

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> 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(8)(6), the input taxes shall be allocated ratably between his zero-rated and nonzero-rated sales." (Italics in the original; Underlining supplied.)

The above provision clearly pronounces that the law does not require that the input taxes subject of the claim be directly attributable to zero-rated sales. The Code even allows allocation of input taxes in case the same cannot be directly or entirely attributed to any of the sales, 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, like Total in this case. Section 112(A) of the NIRC of 1997, as amended, only requires that the input tax paid or incurred is attributable to a taxpayer's zero-rated sales and does not mandate that the input tax be directly attributable to petitioner's zero-rated sales.[9] Input tax that bears a direct or indirect connection with petitioner's zero-rated sales satisfies the requirement of the law.[10]

As ruled upon by this Court: [11]

> "It is a well recognized rule that where the law does not distinguish, courts should not distinguish. *Ubi lex non distinguish nee nos distinguere debemos.* The rule, founded on logic, is a corollary of the principle that general words and phrases in a statute should ordinarily be accorded their natural and general significance. The rule requires that a general term or phrase should not be reduced into parts and one part distinguished from the other so as to justify its exclusion from the operation of the law. In other words, there should be no distinction in the application of a statute where none is indicated. For courts are not authorized to distinguish where the law makes no distinction. They should instead administer the law not

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[9] *Deutsche Knowledge Services Pte. Ltd. vs. Commissioner of Internal Revenue*, CTA Case No. 9496, May 28, 2019.
[10] *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 8905, October 19, 2017.
[11] *Deutsche Knowledge Services Pte. Ltd. vs. Commissioner of Internal Revenue*, CTA Case No. 9079, August 8, 2018.

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> as they think it ought to be but as they find it and without regard to consequences.[12]
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> Moreover, a cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application. As the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is what is known as the plain-meaning rule or *verba legis*. It is expressed in the maxim, *index animi sermo,* or "speech is the index of intention." Furthermore, there is the maxim *verba legis non est recedendum*, or "from the words of a statute there should be no departure."[13]"

While claims for tax refund are strictly construed against the taxpayer and liberally in favor of the State, Total has, with respect to the refundable amount of ₱7,332,423.73, overcome the burden of showing that it has strictly complied with the conditions for the grant of the tax refund.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the Decision and the Resolution, dated June 19, 2018 and November 13, 2018, respectively, are hereby **AFFIRMED**.

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[12] Citing *Philippine British Assurance Co., Inc. vs. Honorable Intermediate Appellate Court, et. al.*, G.R. No. 72005, May 29, 1987.
[13] Citing *Bolos vs. Bolos*, G.R. No. 186400, October 20, 2010.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
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 En Banc.

ROMAN G. DEL ROSARIO
Presiding Justice