REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,* -versus- CHEVRON HOLDINGS, INC., *Respondent.*	CTA EB No. 1886 (CTA Case No. 9021)

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CHEVRON HOLDINGS, INC., *Petitioner,* -versus- COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	CTA EB No. 1887 (CTA Case No. 9021) *Present*: DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, and MODESTO-SAN PEDRO, *JJ.* Promulgated: JAN 2 1 2020 3:43 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision on February 7, 2019, of this Court *En Banc*, are consolidated Petitions for Review filed separately by the Commissioner of Internal Revenue (CIR), petitioner in CTA EB No. 1886, and Chevron Holdings, Inc., (CHI) petitioner in CTA EB No. 1887, under Section 3(b), Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals[1], as amended.

In CTA EB No. 1886, petitioner CIR is seeking the reversal of Decision dated February 5, 2018[2] and the Resolution dated June 29, 2018[3] rendered by the Second Division of this Court.

On the other hand, in CTA EB No. 1887, petitioner CHI seeks for the modification of the same Decision and Resolution as to the amount of refund granted by the Court in Division representing its excess and unutilized input value-added tax (VAT) attributable to zero-rated transactions for the four (4) quarters of calendar year (CY) 2013.

The dispositive portions of the Decision and Resolution of the Second Division respectively read as follows:

Decision dated February 5, 2018:

> "**WHEREFORE,** the present Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the amount of **P20,250,968.78,** representing petitioner's excess and unutilized input VAT attributable to zero-rated transactions for the four quarters of calendar year 2013.
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> **SO ORDERED.**"

Resolution dated June 29, 2018:

> "**WHEREFORE,** premises considered, petitioner's **Motion for Partial**

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[1] RULE 8, Sec 3. Who may appeal; period to file petition.- x x x

> (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)

[2] Penned by Associate Justice Juanito C. Castañeda, Jr., concurred in by Associate Justice Caesar A. Casanova, and Associate Justice Catherine T. Manahan, En Banc Docket, pp.25-69.
[3] *Id.*, pp.70-77.

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Reconsideration (Re: Decision dated February 5, 2018) and respondent's **Motion for Partial Reconsideration Re: Decision dated February 5, 2018** are both **DENIED** for lack of merit.

SO ORDERED."

The following facts of the case as recited by the Court in Division in its Decision[4] and as established by evidence on record[5], read as follows:

"Petitioner Chevron Holdings, Inc. is the Philippine branch of Chevron Holdings, Inc. (CHI), a multinational company organized and existing under and by virtue of the laws of the State of Delaware, United States of America. It is licensed by the Securities and Exchange Commission (SEC) to transact business in the Philippines as a regional operating headquarters (ROHQ) under SEC Registration No. A199802486 dated June 3, 1998 with registered office address at the 35th Floor, Yuchengco Tower, RCBC Plaza, 6819 Ayala Avenue, 1200 Makati City. Petitioner is likewise registered with the BIR as a VAT taxpayer and was issued a Certificate of Registration No. OCN8RC0000039799 dated July 30, 1998 with Tax Identification Number (TIN) 201-056-391-000.

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue vested under the appropriate laws with the authority to carry out the functions, duties, and responsibilities of said office, including, inter alia, the power to decide, approve, and grant refunds and/or tax credits of overpaid and erroneously paid or collected internal revenue taxes. He holds office at the 5th Floor, Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.

Petitioner's purpose, as ROHQ in the Philippines, is limited to general administration and

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[4] Supra note 2, pp.26-39.
[5] Joint Stipulation of Facts and Issues (JSFI), Division Docket, (Vol. V), pp.1807-1822.

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planning; business planning and coordination; sourcing/procurement of raw materials and components; corporate finance advisory services; marketing control and sales promotion; training and personnel management; logistic services; research and development services and product development; technical support and maintenance; data processing and communication; and business development.

Petitioner filed its Quarterly VAT Returns (BIR Form No. 2550Q) for the four quarters of CY 2013 on the following dates:

CY 2013	VAT RETURN	DATE FILED
First Quarter	Original	April 24, 2013
	Amended	January 28, 2014
Second Quarter	Original	July 25, 2013
	Amended	March 10, 2014
Third Quarter	Original	October 22, 2013
	Amended	January 24, 2014
Fourth Quarter	Original	January 24, 2014
	Amended	February 19, 2014

Petitioner then filed with the BIR Large Taxpayer Services (BIR-LTS) and BIR Large Taxpayers Excise and Audit Division (BIR-LTEAD II) different administrative claims for the refund and/or issuance of TCC for unutilized input VAT for the four quarters of CY 2013, with the following details:

CY 2013	Date of Filing of Administrative Claim	Amount of Claim
1st Quarter	October 31, 2014	P21,119,273.12
2nd Quarter	November 3, 2014	P25,016,267.42
3rd Quarter	November 4, 2014	P27,170,624.04
4th Quarter	November 5, 2014	P27,797,269.41

On December 12, 2014, petitioner received Letter of Authority (LOA) No. LOA-124-2014-00000140 (eLA201100087136) dated November 13, 2014 for the examination of petitioner's books of accounts and other accounting records for VAT for the period of January 1, 2013 to December 31, 2013.

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On March 5, 2015, petitioner received a letter dated January 30, 2015 from the BIR-LTS which denied its administrative claim for refund or issuance of TCC for unutilized input VAT for the four quarters of CY 2013 in the aggregate amount of P101,103,433.99.

Thus, petitioner filed the present Petition for Review on March 30, 2015.

Within the extended time granted by the Court, respondent filed his Answer23 on July 2, 2015, interposing the following special and affirmative defenses:

"SPECIAL AND AFFIRMATIVE DEFENSES"

4. Respondent hereby reiterates and repleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses;

Petitioner's claim for refund of excess and unutilized input VAT should be denied for petitioner's failure to establish the recipients of its services do business outside the Philippines

5. Petitioner anchors its claim for refund or tax credit under Section 108(B) of the NIRC as amended, which states that:

> **(B) Transactions Subject to Zero Percent (0%) Rate** - The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate.
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> **(2) Services other than those mentioned in the preceding paragraph,**

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> **rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).**

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6. According to the above stated provision, services must be performed in the Philippines by a VAT registered person to a person engaged in business conducted outside the Philippines or to a non-resident person not engaged in business who is outside the Philippines when the services are performed.

7. Compliance with the aforementioned provisions of the 1997 NIRC, as amended, as well as the existing rules and regulations are necessary to establish its claim, that indeed there is the presence of valid zero-rated sales which would warrant the grant of the administrative application for refund of its unapplied/unutilized input VAT as well as the submission of supporting documents to corroborate the claim being applied for.

8. Simply put, the place where the recipient of the service conducts its business is material to consider a zero-rated transaction. In fact, in the ***Commissioner of Internal Revenue vs. Burmeister and Scandinavian Contractor Mindanao, Inc.*** case, the High Court found that, although the place of the consumption of the service does not affect the entitlement of a transaction to zero-rating, the place where the recipient conducts its business does.

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9. The Supreme Court in the case of Accenture, Inc., vs. CIR, GR No. 190102, July 11, 2012, ruled as follows:

> **Accenture has failed to establish that the recipients of its services do business outside the Philippines.**
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> Accenture argues that based on the documentary evidence it presented, it was able to establish the following circumstances:
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> 1. The records of the Securities and Exchange Commission (SEC) show that Accenture's clients have not established any branch office in which to do business in the Philippines.
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> 2. For these services, Accenture bills another corporation, Accenture Participations B.V. (APB), which is likewise a foreign corporation with no 'presence in the Philippines.'
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> 3. Only those not doing business in the Philippines can be required under BSP rules to pay in acceptable currency for their purchase of goods and services from the Philippines. Thus, in a domestic transaction, where the provider and recipient of services are both doing business in the Philippines, the BSP cannot require any party to make payment in foreign currency.
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> Accenture claims that these documentary pieces of evidence are supported by the Report of Emmanuel Mendoza, the Court-commissioned Independent Certified Public Accountant. He ascertained that Accenture's gross billings pertaining to zero-rated sales were all supported by zero-rated Official Receipts and Billing Statements. These documents show that

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these zero-rated sales were paid in foreign exchange currency and duly accounted for in the rules and regulations of the BSP.

In the CTA's opinion, however, the documents presented by Accenture merely substantiate the existence of the sales, receipt of foreign currency payments, and inward remittance of the proceeds of these sales duly accounted for in accordance with BSP rules. Petitioner presented no evidence whatsoever that these clients were doing business outside the Philippines. Accenture insists, however, that it was able to establish that it had rendered services to foreign corporations doing business outside the Philippines, unlike in Burmeister, which allegedly involved a foreign corporation doing business in the Philippines.

We deny Accenture's Petition for a tax refund.

The evidence presented by Accenture may have established that its clients are foreign. This fact does not automatically mean, however, that these clients were doing business outside the Philippines. After all, the Tax Code itself has provisions for a foreign corporation engaged in business within the Philippines and vice versa, to wit:

SEC. 22. *Definitions-* When used in this Title:

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(H) The term *'resident foreign corporation'* applies to a foreign corporation engaged in trade or business within the Philippines.

(I) The term *'nonresident foreign corporation'* applies to a foreign corporation

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not engaged in trade or business within the Philippines. (Emphasis in the original)
Consequently, to come within the purview of Section 108(B)(2), it is not enough that the recipient of the service be proven to be a foreign corporation; rather, it must be specifically proven to be a nonresident foreign corporation.

There is no specific criterion as to what constitutes 'doing' or 'engaging in' or 'transacting' business. We ruled thus in *Commissioner of Internal Revenue v. British Overseas Airways Corporation*:

x x x. There is no specific criterion as to what constitutes 'doing' or 'engaging in' or 'transacting' business. Each case must be judged in the light of its peculiar environmental circumstances. The term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of commercial gain or for the purpose and object of the business organization. 'In order that a foreign corporation may be regarded as doing business within a State, there must be continuity of conduct and intention to establish a continuous business, such as the appointment of a local agent, and not one of a temporary character.'

A taxpayer claiming a tax credit or refund has the burden of proof to establish the factual basis of that claim. Tax refunds, like tax exemptions, are construed strictly against the taxpayer. Accenture failed to discharge this burden. It alleged and presented evidence to prove only that its clients were foreign entities. However, as found by both the CTA Division and the CTA En Banc, no evidence was presented by

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> Accenture to prove the fact that the foreign clients to whom petitioner rendered its services were clients doing business outside the Philippines.
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> As ruled by the CTA En Banc, the Official Receipts, Intercompany Payment Requests, Billing Statements, Memo Invoices-Receivable, Memo Invoices-Payable, and Bank Statements presented by Accenture merely substantiated the existence of sales, receipt of foreign currency payments, and inward remittance of the proceeds of such sales duly accounted for in accordance with BSP rules, all of these were devoid of any evidence that the clients were doing business outside of the Philippines.

10. Petitioner in its petition for review merely mentioned in passing that petitioner rendered services to persons located and conducting business outside the Philippines. Pertinent part of the petition is quoted hereunder for easy reference, to wit:

> 'During the four quarters of CY 2013, Petitioner rendered services in the Philippines to persons located and conducting business outside the Philippines. As consideration for such services. Petitioner was paid in acceptable foreign currencies and accounted for in accordance with rules and regulations of Bangko Sentral ng Pilipinas (BSP).'

11. The foregoing allegations are mere self-serving allegations not supported by any concrete evidence.

12. Further, petitioner alleged in its petition that 'Despite the issuance of the LOA, Respondent neither notified nor required petitioner to submit any additional document in support of its administrative claims for refund'.

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13. Such argument runs contrary to its own allegations contained under paragraphs 10,11,12 and 13 of the petition which states that:

> Petitioner attached to its administrative claim for refund the relevant documents required by laws and pertinent regulations.

14. In addition, petitioner through its General Manager Kee Teek Hong executed a sworn certification which certify that the documents submitted are complete for the purpose of processing its claim for Value Added Tax (VAT) refund/credit and that those documents are the only documents that will be presented to support its claim. Pursuant to Revenue Memorandum Circular No. 54-2014 dated June 11, 2014, a decision shall be rendered by respondent based only on the documents submitted.

15. A perusal of the documents submitted disclosed that not a bit would prove that petitioner's clients are doing business outside the Philippines.

16. Accordingly, the documents submitted could not justify the essential requirement of proving that the services were rendered to foreign client doing business outside the Philippines to qualify as zero-rated sales. Thus, the claim for refund/tax credit certificate of unutilized input tax amounting to P101,103,433.99 covering the period January to December 2013 was properly denied.

17. In an action for refund, the burden of proof is on the taxpayer who claims the exemption and he must justify his claim by the clearest grant under the Constitutional or statutory law and cannot be permitted by vague implications. The taxpayer is charged with the burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund."

After trial on the merits, the Court in Division directed both parties to submit their respective Memoranda. CHI filed its Memorandum[6] on January 16, 2017 while the CIR failed to file his Memorandum[7]. Thereafter, the case was considered submitted for decision.

On February 5, 2018, the Court in Division rendered a Decision[8] which partially granted CHI's claim for refund in a reduced amount of P20,250,968.78 representing its excess and unutilized input VAT for the four (4) quarters of CY 2013.

Aggrieved, both CHI and the CIR filed their respective Motions for Partial Reconsideration, wherein both were denied in a Resolution dated June 29, 2018.

Consequently, on August 3, 2018, the CIR filed his Petition for Review. The case was docketed as CTA EB No. 1886.

On the same date, CHI also filed its Petition for Review. The case was docketed as CTA EB No. 1887.

Thereafter, in a Resolution dated August 6, 2018, this Court consolidated CTA EB No. 1887 with CTA EB No. 1886 bearing the lower docket number considering that both petitions are appeals from the Decision promulgated on February 5, 2018 and Resolution promulgated on June 29, 2018 both rendered by the Second Division of this Court in CTA Case No. 9021.

On October 12, 2018, the Court En Banc gave due course to both Petitions for Review and required the parties to submit their respective memoranda within thirty (30) days from notice.[9]

On November 16, 2018, petitioner CHI filed a Motion for Extension of Time to File Memorandum which was granted by this Court in a Resolution dated November 20, 2018.

On November 21, 2018, petitioner CIR in CTA EB No. 1886 likewise filed a Motion for Additional Time to File

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[6] Division Docket, (Vol. V), pp. 2271-2302.
[7] Records Verification dated February 1, 2017, Division Docket, (Vol. V), p.2303.
[8] Supra Note 2.
[9] En Banc Docket, pp. 118-119

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Memorandum which was granted by this Court in a Resolution dated November 23, 2018.

Both CHI and the CIR filed their Memoranda on December 10, 2018 and December 18, 2018, respectively.

On February 7, 2019, the Court En Banc promulgated a Resolution[10] submitting the consolidated cases for decision; hence, this Decision.

The crux of the issue boils down to the sole contention on whether CHI is entitled to the entire claim of its refund in the amount of P101,103,433.99, allegedly representing its excess and unutilized input value-added tax (VAT) attributable to zero-rated transactions for the four (4) quarters of CY 2013.

The CIR contends that the claim for refund must necessarily fail because there is no showing that Chevron submitted complete documents to substantiate its administrative claim for refund. That being the case, its application for refund should be deemed not filed. Accordingly, while the place of consumption of the service does not affect the entitlement of a transaction to zero-rating, the place where the recipient conducts its business does. It is therefore averred that CHI must establish that the recipient of its services is doing business outside the Philippines.

On the other hand, CHI insists that that services consumed outside the Philippines are deemed zero-rated, regardless of whether the recipient is engaged in business. It is argued that the Court in Division failed to consider that evidentiary value of the SEC Certificates of Non-Registration, coupled with the Certificates of Inward Remittance considering that such documents constitute preponderance of evidence showing that the recipients of CHI's services are not doing business in the Philippines and are located outside the Philippines when the services were performed.

In the same vein, CHI also maintains that it proved by way of testimonial evidence that the scanned copy of incorporation papers of its foreign affiliate customers are

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[10] En Banc Docket, pp. 232-233.

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complete, unaltered and accurate duplicates of the original incorporation papers, hence, are deemed equivalent to the originals pursuant to the Rules on Electronic Evidence.

The Court is not persuaded, and finds the instant petitions bereft of merit.

We resolve.

At the outset, it bears emphasis that this Court has repeatedly held that in claims for refund, the dispute most often centers on the sufficiency of the documentary evidence to prove the said erroneously paid taxes.

The CIR counters the claim for refund by anchoring its argument on the ground that the Court should only consider documents that have been submitted in the administrative level in order to determine CHI's entitlement to refund. This contention is misplaced.

The non-submission of complete supporting documents in the administrative level is not fatal to the taxpayer's judicial claim. The Court is not barred from receiving, evaluating and appreciating evidence submitted before it. Once the claim for refund has been elevated to the Court, the admissibility, materiality, relevance, probative value and weight of evidence presented therein become subject to the relevant provisions of the Rules of Court. The question of whether or not the evidence submitted by a party is sufficient to warrant the grant of a claim for refund lies within the sound discretion and judgment of the Court.[11]

As this Court had ruled in *Commissioner of Internal Revenue v. Philippine Airlines*[12] :

> "It has been settled in several CTA *En Banc* cases that judicial claims should not be denied on the sole ground that the taxpayer allegedly failed to submit before the BIR the complete documents in support of its administrative claim for refund. In the case of *Philippine Bank of Communications* vs.

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[11] Commissioner of Internal Revenue vs. CE Luzon Geothermal Power Company, Inc., CTA EB No. 474, September 1, 2009; Commissioner of Internal Revenue vs. Toledo Power Company, CT A EB No. 589, September 15, 2010; Commissioner of Internal Revenue vs. San Roque Power Corporation, CTA EB No.657, April 4, 2012.
[12] CTA EB No. 775, July 24, 2012.

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Commissioner of Internal Revenue We passed upon the issue on the non-submission of supporting documents in the administrative level as NOT fatal to a claim for refund. The pertinent portion of the Decision provides:

> **'Non-submission of supporting documents in the administrative level is not fatal to a claim for refund. Judicial claims are litigated *de novo* and decided based on what has been presented and formally offered by the parties during the trial.** In the case of *CIR* vs. *Manila Mining Corporation,* it was explained that 'Under Section 8 of RA 1125, the CTA is described as a court of record. As cases filed before it are litigated *de novo,* party litigants should prove every minute aspect of their cases. Finally, pieces of evidence submitted in the administrative proceeding have no evidentiary value unless presented and formally offered before the Court.

Likewise, in *Pilipinas Total Gas, Inc.* v. *Commissioner of Internal Revenue*[13], the Supreme Court dealt with the issue of submission of supporting documents regarding claims for refund for zero-rated transactions, which can be applied, by analogy, to the present case. The relevant discussion in the said case is as follows:

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> "x x x for purposes of determining when the supporting documents have been completed - **it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period. After all, he may have already completed the necessary documents the moment he filed his administrative claim**, in which case, the 120-day period is reckoned from

[13] Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue, G.R. No. 207112, December 8, 2015.

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the date of filing. The taxpayer may have also filed the complete documents on the 30th day from filing of his application, pursuant to RMC No. 49-2003. He may very well have filed his supporting documents on the first day he was notified by the BIR of the lack of the necessary documents. In such cases, the 120-day period is computed from the date the taxpayer is able to submit the complete documents in support of his application.

Then, except in those instances where the BIR would require additional documents in order to fully appreciate a claim for tax credit or refund, in terms of what additional document must be presented in support of a claim for tax credit or refund - it is the taxpayer who has that right and the burden of providing any and all documents that would support his claim for tax credit or refund. After all, in a claim for tax credit or refund, it is the taxpayer who has the burden to prove his cause of action. As such, he enjoys relative freedom to submit such evidence to prove his claim.

The foregoing conclusion is but a logical consequence of the due process guarantee under the Constitution. Corollary to the guarantee that one be afforded the opportunity to be heard, it goes without saying that the applicant should be allowed reasonable freedom as to when and how to present his claim within the allowable period.

Thereafter, whether these documents are actually complete as required by law - is **for the CIR and the courts to determine.** Besides, as between a taxpayer-applicant, who seeks the refund of his creditable input tax and the CIR, it cannot be denied that the former has greater interest in ensuring that the complete set of documentary evidence is provided for proper evaluation of the State.

We proceed.

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To reiterate, Section 112 (A)[14] of the NIRC provides the following requisites that must be complied with in order to be entitled to a refund or tax credit of unutilized VAT, to wit;

1. There must be zero-rated or effectively zero-rated sales;
2. Input taxes were incurred or paid;
3. Such input taxes are attributable to zero-rated or effectively zero-rated sales;
4. The input taxes were not applied against any output tax; and
5. The claim for refund was filed within the two-year prescriptive period.

Before delving into the merits and substantiation of CHI's claim for refund or tax credit of excess and unutilized input, the Court in Division resolved first CHI's compliance with the fifth requirement pertaining to the timeliness of the tiling of the administrative and judicial claims. Records reveal that, indeed, both administrative and judicial claims for refund were timely filed.

We agree with the findings of the Court in Division that CHI was able to submit supporting documents along with its administrative claim for refund, and that there was no evidence showing that the CHI was required to submit or that it actually submitted additional documents after the filing of the administrative claim, consequently, it is presumed that the complete documents accompanied the claim when it was filed. In this regard, We illustrate the timeliness of the judicial claim for refund filed before the CTA as follows:

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[14] SECTION 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 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 transactions, it shall be allocated proportionately on the basis of the volume of sales."

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Date of Filing of Administrative Claim for Refund	120th Day for the CIR's Decision	30th Day to appeal the CIR's decision to the CTA
October 31, 2014	February 28, 2015	March 30, 2015
November 3, 2014	March 3, 2015	April 2, 2015
November 4, 2014	March 4, 2015	April 3, 2015
November 5, 2014	March 5, 2015	April 4, 2015

From the foregoing, the 120-day period commenced to run from the date of filing of the administrative claims on October 31, 2014, November 3, 2014, November 4, 2014, and November 5, 2014. Therefrom, the CIR had until February 28, 2015, March 3, 2015, March 4, 2015 and March 5, 2015, respectively, to act on the refund.

However, records reveal that the letter dated January 30, 2015 denying CHI's administrative claim for refund covering the first, second and third quarter of CY 2013 was issued beyond the 120-day period. Hence, CHI had 30 days from expiration of the 120 days or until March 30, 2015, April 2, 2015 and April 3, 2015, respectively, to file its judicial claim with the Court in Division. Notably, considering that the letter of denial was timely issued with regard to petitioner's claim covering the fourth quarter of CY 2013, CHI has until April 4, 2015 to file the judicial claim.

Having filed the instant Petition for Review on March 30, 2015, the same was clearly filed within the prescribed period.

In determining whether CHI's services to its Customer-Affiliates are VAT Zero-Rated, it is an essential condition for zero-rated sales that the recipient of the services is doing business outside the Philippines. Section 108(B)(2) of the NIRC of 1997, as amended provides as follows:

> "SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. -
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> xxx xxx xxx
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> (B) Transactions Subject to Zero Percent (0%) Rate. - The following services performed in the Philippines by VAT -registered persons shall be subject to zero percent (0%) rate:

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xxx xxx xxx

> (2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);" (Emphasis supplied)

As clearly and succinctly worded in the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.,*[15] in order for the supply of services be VAT zero-rated, the claimant must be able to establish, among others, that the recipient of such services is doing business outside the Philippines.

The Court notes however, that the provision that was interpreted by the Supreme Court in the *Burmeister* case is Section 102(b)(2) of the NIRC prior to its amendment by RA No. 9337. We quote:

> "The Tax Code not only requires that the services be other than processing, manufacturing or repacking of goods and that payment for such services be in acceptable foreign currency accounted for in accordance with BSP rules. **Another essential condition for qualification to zero-rating under Section 102(b)(2) [now 108(B)(2)] is that the recipient of such services is doing business outside the Philippines. While this requirement is not expressly stated in the second paragraph of Section 102(b), this is clearly provided in the first paragraph of Section 102(b) [now 108(B)] where the listed services must be for other persons doing business outside the Philippines. The phrase for other persons doing business outside the Philippines not only refers to the services enumerated in the first paragraph of Section 102(b) [now**

[15] G.R. No. 153205, January 22, 2007.

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108(B)], but also pertains to the general term services appearing in the second paragraph of Section 102(b) [now 108(B)]. In short, services other than processing, manufacturing, or repacking of goods must likewise be performed for persons doing business outside the Philippines

This can only be the logical interpretation of Section 102(b)(2) [now 108(B)(2)]. If the provider and recipient of the other services are both doing business in the Philippines, the payment of foreign currency is irrelevant. Otherwise, those subject to the regular VAT under Section 102(a) [now 108(B)] can avoid paying the VAT by simply stipulating payment in foreign currency inwardly remitted by the recipient of services.

To interpret Section 102(b)(2) [now 108(B)(2)] to apply to a payer-recipient of services doing business in the Philippines is to make the payment of the regular VAT under Section 102(a) [now 108(A)] dependent on the generosity of the taxpayer. The provider of services can choose to pay the regular VAT or avoid it by stipulating payment in foreign currency inwardly remitted by the payer-recipient. Such interpretation removes Section 102(a) [now 108(A)] as a tax measure in the Tax Code, an interpretation this Court cannot sanction. A tax is a mandatory exaction, not a voluntary contribution.

When Section 102(b)(2) [now 108(B)(2)] stipulates payment in acceptable foreign currency under BSP rules, the law clearly envisions the payer-recipient of services to be doing business outside the Philippines. Only those not doing business in the Philippines can be required under BSP rules to pay in acceptable foreign currency for their purchase of goods or services from the Philippines. In a domestic transaction, where the provider and recipient of services are both doing business in the Philippines, the BSP cannot require any party to make payment in foreign currency.

Services covered by Section 102(b) [now 108(B)] (1) and (2) are in the nature of export sales since the payer-recipient of services is doing business outside the Philippines. Under BSP rules, the proceeds of export sales must be reported to the Bangko Sentral ng Pilipinas. Thus, there is reason to require the provider of services under Section 102(b) [now 108(B)] (1) and (2) to account for the foreign currency proceeds to the BSP. The same rationale does not apply if the provider and recipient of the services are both doing business in the Philippines since their transaction is not in the nature of an export sale even if payment is denominated in foreign currency.

Further, when the provider and recipient of services are both doing business in the Philippines, their transaction falls squarely under Section 102(a) [now 108(A)] governing domestic sale or exchange of services. Indeed, this is a purely local sale or exchange of services subject to the regular VAT, unless of course the transaction falls under the other provisions of Section 102(b) [now 108(B)].

Thus, when Section 102(b)(2) [now 108(B)(2)I speaks of [s]ervices other than those mentioned in the preceding subparagraph, the legislative intent is that only the services are different between subparagraphs 1 and 2. The requirements for zero-rating, including the essential condition that the recipient of services is doing business outside the Philippines, remain the same under both subparagraphs.

Significantly, the amended Section 108([B]) [previously Section 102 (b)] of the present Tax Code clarifies this legislative intent. Expressly included among the transactions subject to 0% VAT are [s]ervices other than those mentioned in the [first] paragraph [of Section 108(b)] **rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in**

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> **business who is outside the Philippines** when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP.
>
> xxx xxx xxx
>
> **The Court recognizes the rule that the VAT system generally follows the destination principle (exports are zero-rated whereas imports are taxed). However, as the Court stated in American Express, there is an exception to this rule. This exception refers to the 0% VAT on services enumerated in Section 102 [now 108] and performed in the Philippines. For services covered by Section 102(b)(1) and (2) [now 108(B)(2)(1) and (2)], the recipient of the services must be a person doing business outside the Philippines. Thus, to be exempt from the destination principle under Section 102(b)(1) and (2) [now 108(B)(2)(1) and (2)], the services must be (a) performed in the Philippines; (b) for a person doing business outside the Philippines**; and (c) paid in acceptable foreign currency accounted for in accordance with BSP rules. (Emphases supplied)"

Simply stated, the afore-stated provision and jurisprudence contemplates of two (2) situations wherein sales can be regarded as zero-rated for VAT purposes, to wit:

1) **Services were rendered to a person engaged in business conducted outside the Philippines**, and the consideration for which is paid for in foreign currency and accounted for in accordance with the rules and regulations of the Banko Sentral ng Pilipinas (BSP); or

2) **Services were rendered to a non-resident person not engaged in business who is outside the Philippines when the services are performed**, and the consideration for which is paid for in foreign currency and

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accounted for in accordance with the rules and regulations of the BSP.

In this regard, the Court En Banc believes that when the Supreme Court extended the requirement under the second paragraph of Section 108(B)(2) (*i.e. that the recipient of such services is doing business outside the Philippines*) to the first paragraph, it had the intention to give effect to all provisions of the law.

The cardinal rule in statutory construction requires the Court to give effect to the general legislative intent if that can be discovered within the four comers of the Act. **When the object intended to be accomplished by the statute is once clearly ascertained, general words may be restrained to it and those of narrower import may be expanded to embrace it, to effectuate the intent. Along with this fundamental principle is another, equally well-established, that such a construction is, if possible, to be adopted, as will give effect to all provision of the statute**.[16]

A review of the records of this case shows that as proof in showing that CHI's client-affiliates are non-resident foreign corporations doing business outside the Philippines, it presented the following documents:

1) Certification of Non-Registration of Company issued by the SEC;

2) Articles/ Certificate of Incorporation/ Registration and or/ other similar documents;

3) Tax Residence Certificates;

4) Screenshot of Chevron Subsidiary Governance Website;

5) Screenshot of US SEC Website; and

6) Service Agreements.

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[16] Andres Borromeo vs. Fermin Mariano, G.R. No. L-16808, January 3, 1921; *citing* 2 Lewis Sutherland, Statutory Construction, pp. 662, et., seq.; In re Allen [1903], 2 Phil., 630; Code of Civil Procedure, sec. 287.

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As correctly held by the Court in Division, each of the aforesaid documents, standing alone, is inadequate proof that CHI's clients are non-resident foreign corporations doing business outside the Philippines. Furthermore, while the named entities are not registered nor incorporated/organized in the Philippines, these documents do not necessarily establish that such entities are not doing business in the Philippines.

Therefore, the Court En Banc finds no reason to reverse the Court in Division's finding that, along with the requirement that the consideration was paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP, to be entitled to zero-rating under the first paragraph of Section 108(B)(2) of the 1997 NIRC, each entity must be supported at the very least by **BOTH**:

1) SEC Certificate of Non-Registration of Corporation/ Partnership; **AND**

2) Proof of Certificate/ Articles of Foreign Incorporation/ Association or printed screenshots of the US SEC Website showing the state/province/country where the entity was organized.

The presentation of the above stated documents is indispensable. The SEC's negative certification establishes that the recipient of the service has no registered business in the Philippines *(i.e., not engaged in trade or business within the Philippines*). On the other hand, the Certificate/ Articles of incorporation/ Association prove two things:

1) That the recipient of the service is indeed foreign; and

2) It is engaged in business in the country of incorporation/ association (*i.e., a showing of a continuity of commercial dealings and intention to establish a continuous business*).

Contrary to CHI's stance, the service agreements and printed screenshot of the corporate profile are not sufficient to establish that its service recipients are non-resident foreign corporations doing business outside the Philippines.

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As already discussed by the Court in Division, the service agreements only show the names of CHI's customers to whom it rendered services, but do not, in any way, establish that the service recipients are engaged in business outside the Philippines. Likewise, the printed screenshot of the corporate profile is self-serving and lacks credibility considering that it can be easily manipulated to favor CHI in view of its affinity with the entity that maintains or keeps the said database.

From this conclusion, We agree with the findings of the Court in Division that only the following clients of CHI shall be considered as non-resident foreign corporations doing business outside the Philippines, to wit:

1) Asia Pacific Marine Services (EF) B.V.
2) Chevron Corporation
3) Chevron (China) Investment Co., Ltd.
4) Chevron Hong Kong Limited
5) Chevron International Limited
6) Chevron International Pte., Ltd.
7) Chevron Iraq (Sarta) Limited- Branch
8) Chevron Liberia Limited
9) Chevron Lubricants Lanka PLC
10) Chevron Malaysia Limited
11) Chevron Marine Products LLC- Int'l
12) Chevron Neftegaz Inc.
13) Chevron New Zealand
14) Chevron North Sea Limited
15) Chevron Oronite Company LLC
16) Chevron Oronite Pte., Ltd.
17) Chevron Overseas Services Corporation
18) Chevron Pakistan Limited
19) Chevron Products UK Limited
20) Chevron Shipping Company
21) Chevron Singapore Pte., Ltd.
22) Chevron South Africa (Pty) Limited
23) Chevron (Thailand) Limited
24) Chevron Thailand Exploration and Production Ltd.
25) Chevron (Tianjin) Lubricants Co., Ltd.
26) PT Chevron Oil Products
27) Chevron Asia South Ltd.
28) UESCL- Chuandongbei Branch
29) Chevron Bangladesh Blk Thirteen/ Fourteen

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30) Chevron Asia Pacific Holdings Branch
31) Chevron USA Inc. (Singapore Branch)

In this regard, the Court in Division correctly held that CHI's valid VAT zero-rated sales for the four quarters of CY 2013 amounts P720,308,940.84. The rest of petitioner's declared zero-rated sales in the amount of P2,374,506,151.14 shall be denied VAT zero-rating for its failure to prove that the entities to whom it rendered services are non-resident foreign corporations doing business outside the Philippines.

Anent the contention that the input tax carry-over in the amount of P141,688,758.557 should not have been disallowed in the instant case, We find no reason to deviate from the Court in Division's ruling.

Pursuant to Section 110(A)(1) and (B) of the 1997 NIRC, as amended, any input VAT shall be creditable against the output VAT only if the same is evidenced by a VAT invoice or official receipt issued in accordance with Section 113 of the 1997 NIRC[17], as amended, as implemented by Sections 4.113-1(A)(2), (8)(1) and (2)(c) of Revenue Regulations (RR) No. 16-05[18].

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[17] Section 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* -

(A) ***Invoicing Requirements.*** - A VAT-registered person shall issue:

(1) A VAT invoice for every sale, barter or exchange of goods or properties; and

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(B) ***Information Contained in the VAT Invoice or VAT Official Receipt.*** - The following information shall be indicated in the VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN); and

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax. Provided, That:

xxx xxx xxx

(c) If the sale is subject to zero percent (0%) value-added tax, the term **"zero-rated sale"** shall be written or printed prominently on the invoice or receipt.

xxx xxx xxx

(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and

xxx xxx xxx

[18] *Section. 4.113-1.* ***Invoicing Requirements***. -

(A) A VAT-registered person shall issue:-

(1) A VAT invoice for every sale, barter or exchange of goods or properties; and

xxx xxx xxx

It bears stressing that in claiming excess or unutilized input VAT from zero-rated transactions, it is the excess over the output VAT which should be refunded to the taxpayer or credited against other internal revenue taxes. Hence, it is important for the taxpayer to prove that it has enough prior year's excess input VAT credits to cover its output VAT liability for the current taxable year.

The basic rule is that mere allegation is not evidence and is not equivalent to proof.[19] In *Commissioner of Internal Revenue vs. Manila Mining Corporation*,[20] the Supreme Court ruled this wise:

> "For a judicial claim for refund to prosper, however, respondent must not only prove that it is a VAT registered entity and that it filed its claims within the prescriptive period. It must **substantiate** the input VAT paid by **purchase invoices or official receipts**." (emphasis and underlining in the original)

Applying the foregoing, since CHI failed to present its VAT invoices or official receipts to prove the existence of its input VAT carried over from previous year in the amount of P141,688,758.557, the said amount cannot be validly applied against its output VAT.

Actions for tax refund, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also

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Only VAT-registered persons are required to print their TIN followed by the word 'VAT' in their invoice or official receipts. Said documents shall be considered as a 'VAT invoice' or 'VAT Official Receipt.' All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

(B) Information contained in VAT invoice or VAT
official receipt. - The following information shall be indicated in VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his TIN;

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; Provided, That:

xxx xxx xxx

(c) If the **sale is subject to zero percent (0%) VAT, the term "zero-rated sale"** shall be written or printed prominently on the invoice or receipt;

[19] ECE Realty and Development, Inc. vs. Rachel G. Mandap, G.R. No. 196182, September 1, 2014.
[20] G.R. 153204, August 31, 2005.

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the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven,[21] it must be shown indubitably to exist. At the outset, every presumption is against it. A well-founded doubt is fatal to the claim.[22]

Where the taxpayer claims a refund before the CTA, the taxpayer is required to prove every minute aspect of the claim.[23] In the assailed Decision, petitioner has proven its entitlement to the refund sought, albeit in a reduced amount, after the Court considered the pieces of evidence presented. CHI sufficiently established its entitlement to a refund or tax credit in the amount of P20,250,968.78, representing excess and unutilized input VAT attributable to zero-rated transactions for the four quarters of calendar year 2013.

All told, there is no error in the disquisition of judgment rendered by the Court in Division, the same being in accord with the evidence on record and with the applicable law and jurisprudence.

WHEREFORE, premises considered, the Petitions for Review are **DENIED** for lack of merit. The Decision dated February 5, 2018, and the Resolution dated June 29, 2018 rendered by the Second Division of this Court are hereby **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

(See Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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[21] Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue/ G.R. No. 159490, February 18, 2008.
[22] Philippine Long Distance Telephone Company, Inc. vs. Province of Laguna, eta/., G.R. No. 151899, August 16, 2005.
[23] Kepco Philippines Corporation v. Commissioner of Internal Revenue, G.R. No. 179356, December 14, 2009.

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 1886** (CTA Case No. 9021)
- versus -	
CHEVRON HOLDINGS, INC., Respondent.	

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CHEVRON HOLDINGS, INC., Petitioner,	**CTA EB NO. 1887** (CTA Case No. 9021)
	Present:
- versus -	**DEL ROSARIO**, P.J., **CASTAÑEDA, JR.**, **UY**, **FABON-VICTORINO**, **MINDARO-GRULLA**, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, and **MODESTO-SAN PEDRO**, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated:
	JAN 2 1 2020 3:43p.m.,

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CONCURRING OPINION

DEL ROSARIO, P.J.:

For lack of merit, I concur in the denial of the Petitions for Review.

In cases previously decided by the Court involving the same issue, I took the position that Service Agreements between the taxpayer-claimant and its foreign clients are sufficient to establish that foreign clients are doing business outside the Philippines as they specify the nature of services that the taxpayer-claimant renders in support of its foreign clients' business.

The Supreme Court, however, eventually declared in *Sitel Philippines Corporation (formerly Clientlogic Phils., Inc.) vs. Commissioner of Internal Revenue,*[1] that Service Agreements between the taxpayer-claimant and its foreign clients are not sufficient to prove that the foreign clients are doing business outside the Philippines.

It is by virtue of this pronouncement in *Sitel* that I am constrained to modify my earlier position.

All told, I **VOTE** to concur with the *ponencia*.

ROMAN G. DEL ROSARIO
Presiding Justice

[1] G.R. No. 201326, February 8, 2017.