REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB NO. 2051
(CTA Case No. 9101)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

- versus -

LEPANTO CONSOLIDATED MINING COMPANY,
Respondent.

Promulgated:
SEP 30 2020
1:30 p.m.

x - x

DECISION

BACORRO-VILLENA, J.:

Before the Court is a Petition for Review[1] pursuant to Rule 8, Section 3(b)[2] of the Revised Rules of the Court of Tax Appeals

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[1] Filed 16 May 2019, *Rollo*, pp. 6-20.

[2] **SEC. 3.** *Who may appeal; period to file petition.* –

...

(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

(RRCTA), filed by petitioner Commissioner of Internal Revenue (**petitioner/CIR**) seeking the reversal of the Decision dated 04 September 2018[3] and Resolution dated 11 April 2019[4], respectively, of the Court's First Division in CTA Case No. 9101, entitled *Lepanto Consolidated Mining Company v. Commissioner of Internal Revenue.*

FACTS OF THE CASE

Respondent Lepanto Consolidated Mining Company (**respondent/LCMC**) filed its annual Quarterly Value-Added Tax (**VAT**) Returns for taxable year (**TY**) 2013 on the following dates:

Period	Tax	Date of filing
1st Quarter	Quarterly VAT Return[5]	18 April 2013
	Amended Quarterly VAT Return[6]	16 October 2014
2nd Quarter	Quarterly VAT Return[7]	22 July 2013
	Amended Quarterly VAT Return[8]	16 October 2014
3rd Quarter	Quarterly VAT Return[9]	21 October 2013
	Amended Quarterly VAT Return[10]	20 January 2014
	Amended Quarterly VAT Return[11]	17 October 2014
4th Quarter	Quarterly VAT Return[12]	20 January 2014
	Amended Quarterly VAT Return[13]	22 April 2014
	Amended Quarterly VAT Return[14]	17 October 2014

On 18 February 2015, respondent filed its Applications for Tax Credits/Refunds[15] with the Bureau of Internal Revenue (**BIR**) for input VAT credits for TY 2013, amounting to ₱19,565,102.30, divided as follows:

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additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

3 Division Docket, pp. 495-530.
4 Id., pp. 582-590.
5 Exhibit "P-14".
6 Exhibit "P-14-1".
7 Exhibit "P-14-2".
8 Exhibit "P-14-3".
9 Exhibit "P-14-4".
10 Exhibit "P-14-5".
11 Exhibit "P-14-6".
12 Exhibit "P-14-7".
13 Exhibit "P-14-8".
14 Exhibit "P-14-9".
15 Exhibits "P-6" to "P-9", Division Docket, pp. 388-391.

Period	Amount
1st Quarter	₱4,749,783.49
2nd Quarter	₱4,906,683.44
3rd Quarter	₱5,954,485.22
4th Quarter	₱3,954,150.15
Total	₱19,565,102.30

On even date, respondent also submitted all the required documents in support of its applications.[16]

Thereafter, on 20 July 2015, respondent filed its Petition for Review (CTA Case No. 9101) before this Court, which was raffled eventually to this Court's First Division. There, respondent sought a tax credit of its unutilized input VAT in the amount of ₱19,565,102.30. In the alternative, to order petitioner to issue a tax credit certificate (**TCC**) in the same amount (representing its input VAT claims for the year 2013).

PROCEEDINGS BEFORE THE FIRST DIVISION

During trial, respondent presented as witnesses (1) Teofilo Sacpa (**Sacpa**); (2) Cherry H. Tan (**Tan**); and, (3) Katherine O. Constantino, the Independent Court-Appointed Certified Public Accountant (**ICPA**).

Both Sacpa[17] and Tan[18] were presented to identify respondent's pertinent documents while the ICPA testified to her findings as contained in her written report.[19]

On the other hand, petitioner manifested[20] that he would not be presenting any countervailing evidence. Consequently, after respondent submitted its Formal Offer of Evidence[21] (**FOE**) and

16 Exhibit "P-10", id., p. 413.
17 Exhibit "P-54", id., pp. 219-230.
18 Exhibit "P-56", id., pp. 262-267.
19 Exhibit "P-57", id., pp. 286-293.
20 Dated 20 September 2016, Minutes of the Hearing, id., pp. 296-297.
21 Dated 20 October 2016, id., pp. 305-316.

subsequently, its Motion to Re-offer Exhibit[22], the First Division ordered both parties to file their respective memoranda.[23]

Both parties complied with the Court's directive.[24] Thereafter, the case was submitted for decision.[25]

On 04 September 2018, the First Division promulgated its now assailed Decision, the dispositive portion of which read:

> ...
>
> **WHEREFORE,** in light of the foregoing considerations, the *Petition for Review* is **PARTIALLY GRANTED.** Accordingly, respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱17,592,729.68** representing the latter's unutilized input VAT attributable to its zero-rated sales for the four quarters of the year 2013.
>
> **SO ORDERED.**[26]
>
> ...

In disagreement with the First Division's action, petitioner filed his Motion for Partial Reconsideration[27] (**MPR**) but the same was denied in the similarly assailed Resolution dated 11 April 2019.[28]

Hence, the present petition.

<u>ISSUES</u>

Petitioner assigns the following errors[29] to the First Division's 04 September 2018 Decision and Resolution dated 11 April 2019:

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22 Dated 17 May 2017, id., pp. 410-412.
23 Resolution dated 03 August 2017, pp. 439-440.
24 Petitioner filed his Memorandum on 26 September 2017, Division Docket, supra, pp. 481-490. Respondent filed its Memorandum on 15 September 2017, id., pp. 451-474.
25 Resolution dated 02 October 2017, id., p. 493.
26 Supra at note 3; Emphasis in the original text.
27 Filed on 21 September 2018, Division Docket, pp. 535-549.
28 Supra at note 4.
29 *Rollo*, pp. 7-8.

I.
THE HONORABLE COURT IN DIVISION ERRED IN GIVING DUE COURSE TO THE ORIGINAL PETITION [CTA CASE NO. 9101] DESPITE FAILURE TO IMPLEAD A REAL PARTY IN INTEREST.

II.
THE HONORABLE COURT IN DIVISION ERRED IN RULING THAT RESPONDENT'S ALLEGED INPUT VALUE-ADDED TAX ATTRIBUTABLE TO ITS ZERO-RATED SALES FOR THE TAXABLE YEAR 2013 WERE NOT CARRIED OVER TO THE SUCCEEDING PERIODS.

III.
THE HONORABLE COURT IN DIVISION ERRED IN RULING THAT RESPONDENT'S ALLEGED INPUT VALUE-ADDED TAX IN THE AMOUNT OF ₱17,592,729.68 IS DIRECTLY ATTRIBUTABLE TO ITS ZERO-RATED SALES.

ARGUMENTS

In its bid to reverse the assailed Decision and Resolution, petitioner contends that, since respondent's input VAT arose out of importations and that the tax subject of the refund was paid to the Bureau of Customs (**BOC**), the Commissioner of Customs (**COC**) should have been impleaded as party; the latter being a "real party in interest". According to him, it is the COC who is authorized to issue the refund/tax credit that respondent claimed under Customs Memorandum Order No. 28-2014.[30]

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[30] **II. Coverage**
These rules shall cover all claims for refund on input VAT on importations attributable to zero-rated transactions under Section 112 of the NIRC, as amended.

III. Operational Provisions
A. Upon receipt of the docket from the BIR approving the claim of a particular importer for refund of the input VAT on his importation, the Tax Credit Secretariat (TCS) shall check that the following supporting documents are attached to the docket forwarded by the BIR:
...

B. If the supporting documents are found to be complete, the entire docket of the claim shall be endorsed to the Chief, Revenue Accounting Division (RAD) this Bureau for verification of payments of duties and taxes, using Tax Credit or if cash payments, it must have been remitted to the Bureau of Treasury (BTr).
...

D. Upon receipt of the docket from FMO with the corresponding Evaluation Report, the Secretariat shall determine whether the claimant will avail of cash refund or for issuance of TCC.

E. The Secretariat shall then prepare the corresponding endorsement for signature of the Commissioner or his duly designated Tax Credit Approving Authority authorizing payment of the

Petitioner further argues that respondent failed to prove that the input VAT claimed was not carried over to its subsequent returns. He cites Section 110(B)[31] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, to support this contention. According to petitioner, respondent had two options, either to: (1) carry-over unutilized input VAT to succeeding quarters or (2) apply for a refund or tax credit. He points out that, although respondent had opted for the latter, it failed to show that it did not utilize its excess input VAT for the quarters of TY 2014.

Lastly, petitioner maintains that respondent was not able to prove that its claimed input VAT is directly attributable to zero-rated or effectively zero-rated transactions as defined under Section 112[32]

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cash refund or issuance of Tax Credit Certificate based on the amount computed or recommended by the FMO. The signed resolution/endorsement authorizing payment shall be forwarded to the Accounting Division, FMO for the preparation of cash refund or issuance of TCC.

IV. Manner of Payment for Cash Refund

...

F . Within five (5) days from receipt of the Endorsement authorizing payment of the cash refund, the FMO shall prepare the request for issuance of Notice of Allocation (NCA) from the DBM, supported with a certification from BTr that the corresponding amount is available under BTr's trust liabilities account, including the following:

1) Endorsement signed by the Commissioner or his duly designated Tax Credit Approving Authority authorizing payment of the cash refund;

2) Copy of the claimant's application for VAT refund pursuant to Sec. 112 of the NIRC, as amended;

3) BIR endorsement to the BOC containing the BIR's determination of the validity of the claim for the VAT refunds on importation pursuant to Section 112 of the NIRC as amended, with the corresponding Authority for the BOC to issue the refund;

4) Certification of payments issued by RAD; and

5) Computation of the final amount of cash refund as computed by the Accounting Division, FMO.

G. Upon receipt of the NCA from the DBM, the Accounting Division, FMO shall prepare the Disbursement Voucher and forward the same to the BOC Cashier...

31 **Sec. 110.** *Tax Credits.-*

...

(B) *Excess Output or Input Tax.* - If at the end of any taxable quarter, the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. *Provided, however*, That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.

32 **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 and Section 110 of the NIRC of 1997, as amended. To be creditable, the input tax must come from purchases of goods that form part of the finished product of the taxpayer or it must be directly used in the chain of production. Moreover, after determining which input taxes are creditable, the law requires an evaluation to distinguish which "creditable" input taxes are "attributable". He insists that there is nothing in the assailed Decision showing respondent's compliance with the "direct attributability" requirement as enunciated in the cases of *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*[33] (**Atlas**).

Expectedly, respondent upholds the correctness of the assailed Decision and counters that petitioner is the proper party impleaded. Citing Section 4[34] and 112(C)[35] of the NIRC of 1997, as amended, it maintains that the NIRC clearly empowers herein petitioner to decide cases involving refunds of internal revenue taxes.

Respondent contends further that Section 21(c)[36] of the NIRC of 1997, as amended, considers VAT as an internal revenue tax and is thus, within petitioner's power to refund or issue a TCC therefor.

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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...

33 G.R. No. 159471, 26 January 2011 *and* G.R. Nos. 141104 & 148763, 08 June 2007.

34 **Sec. 4**. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases*. - The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals...

35 **Sec. 112**. *Refunds or Tax Credits of Input Tax*. –
(C) *Cancellation of VAT Registration*. - A person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 106(C) of this Code may, within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which may be used in payment of his other internal revenue taxes...

36 **Sec. 21**. *Sources of Revenue*. - The following taxes, fees and charges are deemed to be national internal revenue taxes:
...
(c) Value-added tax[.]

Respondent likewise argues that the COC is designated as the CIR's mere agent in the collection of internal revenue taxes under Section 12(a)[37] of the NIRC of 1997, as amended.

As regards the second and third assignment of errors, respondent maintains that it had completely proved and presented all pertinent documents to prove its claim for a refund or tax credit.

RULING OF THE COURT *EN BANC*

After a careful review of the records of the case and the parties' contrasting arguments, the Court *En Banc* finds the present petition to be lacking in merit.

PETITIONER IS THE
REAL PARTY IN INTEREST

Section 2, Rule 3 of the Rules of Court (**ROC**) provides:

> ...
> **Sec. 2.** *Parties in interest.* — A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.
> ...

With the above, this Court could not but agree with respondent's observation that the COC is but an agent of the CIR, making the perceived need to implead the former, unnecessary. Relevantly, in the case of *Lee, et al. v. Hon. Romillo, Jr., et al.*[38], the Supreme Court held:

> ...
> A real party in interest-plaintiff is one who has a legal right while a **real party in interest-defendant is one who has a**

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37 **Sec. 12.** *Agents and Deputies for Collection of National Internal Revenue Taxes.* - The following are hereby constituted agents of the Commissioner:
(a) The Commissioner of Customs and his subordinates with respect to the collection of national internal revenue taxes on imported goods[.](Emphasis supplied)

38 244 Phil. 606-618 (1988); Emphasis supplied.

correlative legal obligation whose act or omission violates the legal rights of the former.

...

In this case, the tax subject of the instant Petition for Review is the VAT imposed under the NIRC of 1997, as amended. Being an internal revenue tax, the power to collect the same is vested in petitioner. The COC is just a constituted agent of the CIR, tasked to collect from respondent VAT on importations, making the latter his principal. Therefore, there is no merit in petitioner's argument that it is the COC who is the real party in interest in the instant case.

THE INPUT VALUE-ADDED TAX CLAIMED WAS NOT CARRIED-OVER TO THE SUCCEEDING TAXABLE QUARTERS

Unquestionably, one of the requisites for a successful claim for refund of input VAT under Section 112 of the NIRC of 1997, as amended, is that the *"input tax has not been applied against [the] output tax"*. From the foregoing, respondent should have presented the succeeding Quarterly VAT Returns to show that the subject of the claim was not carried over to succeeding periods. However, as the ICPA[39] found and as ruled by the First Division[40], the claimed unutilized input VAT was not carried over or applied to the succeeding taxable quarters since the same was deducted as "VAT Refund/TCC claimed" in the Amended Third Quarterly VAT Returns of 2014[41] in the amount of ₱19,565,102.30, determined as follows:

Current Purchases:	**1st Quarter 2013**[42]	**2nd Quarter 2013**[43]	**3rd Quarter 2013**[44]	**4th Quarter 2013**[45]	**Total**
Importation of goods other than capital goods (a)	₱5,072,738.00	₱5,530,362.00	₱6,031,337.00	₱5,720,466.00	₱22,354,903.00
Purchase of capital goods	801,374.00	1,788,865.00	500,606.00	-	3,090,845.00

39 Exhibit "P-34".
40 Decision dated 04 September 2018, supra at note 3.
41 Exhibit "P-52-2".
42 Amended First Quarterly VAT Return, Exhibit "P-14-1".
43 Amended Second Quarterly VAT Return, Exhibit "P-14-3".
44 Amended Third Quarterly VAT Return, Exhibit "P-14-6".
45 Amended Fourth Quarterly VAT Return, Exhibit "P-14-9".

exceeding P1 Million					
Add: input tax deferred on capital goods exceeding P1 Million from previous quarter	5,113,251.76	5,472,067.65	6,759,141.45	6,712,704.87	24,057,165.73
Less: input tax on purchases of capital goods exceeding P1 Million deferred for the succeeding period	5,472,067.65	6,759,141.45	6,712,704.88	6,148,975.42	25,092,889.40
Input tax on capital goods in excess of P1 Million (b)	442,558.11	501,791.20	547,042.57	563,729.45	2,055,121.33
Total allowable input tax (a + b)	***5,515,296.11***	***6,032,153.20***	***6,578,379.57***	***6,284,195.45***	***24,410,024.33***
Less: output tax on vatable sales/receipt (c)	765,512.61	1,125,469.75	623,894.36	2,330,045.29	4,844,922.01
Claim amount (a + b - c)**	**₱4,749,783.50**	**₱4,906,683.45**	**₱5,954,485.21**	**₱3,954,150.16**	**₱19,565,102.32**

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 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:

> *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.
>
> ...
>
> (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.[46]
>
> ...

Likewise, Sections 18 and 19 of Revenue Regulations (**RR**) No. 4-2007 (Amending Certain Provisions of RR 16-2005, as amended, otherwise known as the Consolidated Value-Added Tax Regulations of 2005) provide as follows:

> ...
>
> **Sec. 18. Determination of the Output Tax and VAT Payable and Computation of VAT Payable or Excess Tax Credits.** – Sec. 4.110-6 of RR No. 16-2005 is hereby amended to read as follows:
>
> > '*SEC. 4.110-6. Determination of the Output Tax and VAT Payable and Computation of VAT Payable* or *Excess Tax Credits.* xxx xxx xxx
> >
> > There shall be allowed as a deduction from the output tax the amount of input tax deductible as determined under Sec. 4.110-1 to 4.110-5 of these Regulations to arrive at VAT payable on the monthly declaration and the quarterly VAT returns.'

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[46] Emphasis supplied.

> **Sec. 19. VAT Payable (Excess Output) or Excess Input Tax.** - Sec. 4.110-7 of RR No. 16-2005, as last amended by RR No. 2-2007, is hereby further amended to read as follows:
>
> > **"SEC. 4.110-7. VAT Payable (Excess Output) or Excess Input Tax.** —
> >
> > xxx xxx xxx
> >
> > (b.) **If the input tax inclusive of input tax carried over from the previous quarter exceeds the output tax, the excess input tax shall be carried over to the succeeding quarter or quarters; Provided, however, that any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or applied for a tax credit certificate which may be used in the payment of internal revenue taxes**, subject to the limitations as may be provided for by law, as well as, other implementing rules.
> >
> > Illustration:
> >
> > For a given taxable quarter, XYZ Corporation has output VAT of 110 and input VAT of 110. Since input tax exceeds the output tax for such taxable quarter, there is an excess input tax at the end of the quarter of 10 which may be carried over to the next quarter or quarters."[47]
>
> ...

It is further provided in Sections 4.110-1, 4.110-8, and 4.112-1 of RR 16-2005, as amended, that:

> ...
>
> *SEC. 4.110-1. Credits for Input Tax.* — "***Input Tax***" means the VAT due on or paid by a VAT-registered person on importation of goods or local purchases of goods, properties, or services, including lease or use of properties, in the course of his trade or business...
>
> ...

[47] Emphasis supplied and underscoring in the original text.

Any input tax on the following transactions evidenced by a VAT invoice or official receipt issued by a VAT registered person in accordance with Secs. 113 and 237 of the Tax Code shall be creditable against the output tax:

...

SEC. 4.110-8. __Substantiation of Input Tax Credits.__ —

(a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated by the following documents, and must be reported in the information returns required to be submitted to the Bureau:

1. For the importation of goods – import entry or other equivalent document showing actual payment of VAT on the imported goods.

...

SEC. 4.112-1. *__Claims for Refund/Tax Credit Certificate of Input Tax.__* —

(a) **Zero-rated and Effectively Zero-rated Sales of Goods, Properties or Services.**

A VAT-registered person whose sales of goods, properties, or services are zero-rated or effectively zero-rated may apply for the issuance of a tax credit certificate/refund of input tax attributable to such sales. The input tax that may be subject of the claim shall exclude the portion of input tax that has been applied against the output tax. The application should be filed within two (2) years after the close of the taxable quarter when such sales were made.

...

Where the taxpayer is engaged in both zero-rated or effectively zero-rated sales of goods, properties or services and in taxable (including sales subject to final withholding VAT) or exempt sales of goods, 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, only the proportionate share of input taxes allocated to zero-rated

> or effectively zero-rated sales can be claimed for refund or issuance of tax credit certificate.[48]
>
> ...

A perusal of the cited provisions of the NIRC of 1997, as amended, and its implementing rules and regulations on VAT will clearly show that petitioner's argument is bereft of legal basis.

As the First Division aptly put in its assailed 11 April 2019 Resolution[49], neither the law nor the implementing regulations provide that, in a claim for refund of input VAT, the Court needs to look further into the VAT Returns for TY 2015 to confirm whether the input VAT being claimed was carried over to the said year. What the law and the implementing regulations provide is that the subject input VAT being claimed for refund must exclude the portion that has been applied against the output tax.

It is also noteworthy that petitioner, although having access to respondent's Quarterly VAT Returns, opted to not present respondent's 2015 VAT Returns. Hence, the Court *En Banc* finds no good reason to deviate from the First Division's conclusion that the showing of the two (2) succeeding Quarterly VAT Returns (that is, Third[50] and Fourth[51] Quarterly VAT Returns of 2014) is sufficient to prove that the input VAT being claimed was not applied to respondent's output VAT.

RESPONDENT'S INPUT VALUE-ADDED TAX IS ATTRIBUTABLE TO ITS ZERO-RATED SALES

Lastly, We disagree with petitioner's contention that First Division erred in ruling that respondent failed to prove that the subject claim for refund amounting to ₱19,565,102.30 is "creditable and directly attributable" to its zero-rated sales. Section 110 of the NIRC of 1997, as amended, states:

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48 Emphasis supplied.
49 Supra at note 4.
50 Amended Third Quarterly VAT Return, Exhibit "P-52-2".
51 Amended Fourth Quarterly VAT Return, Exhibit "P-52-3".

...

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, except automobiles, aircraft and yachts.**

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

(2) The input tax on domestic purchase of goods or properties shall be creditable:

(a) To the purchaser upon consummation of sale and on importation of goods or properties; and

(b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.

However, in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.

(3) A VAT-registered person who is also engaged in transactions not subject to the value-added tax shall be allowed tax credit as follows:

(a) Total input tax which can be directly attributed to transactions subject to value-added tax; and

(b) A ratable portion of any input tax which cannot be directly attributed to either activity.

The term 'input tax' means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. It shall also include the transitional input tax determined in accordance with Section 111 of this Code.

The term 'output tax' means the value-added tax due on the sale or lease of taxable goods or properties or services by any person registered or required to register under Section 236 of this Code.[52]

...

The foregoing provision, when taken together with Section 112 of the NIRC of 1997, as amended, shows that petitioner stands on no solid ground in asserting that the subject claim for refund of input VAT must be *directly attributable* to or must *form part of* the finished product, the sale of which is zero-rated.

A plain reading of the foregoing provision would reveal that the law merely requires that the creditable input VAT should be *"attributable"* to the zero-rated or effectively zero-rated sales. In other words, nowhere is it stated in Section 112(A)[53] that the refundable creditable input VAT should be *"directly attributable"* to such sales. *Ubi lex non distinguit nec nos distingere debemos*, thus "where the law does not distinguish, none must be made".[54] With that said, there is no legal requirement on respondent's part to establish *"direct attributability"*.

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52 Emphasis supplied.
53 Supra at p. 10.
54 Statutory Construction, Ruben E. Agpalo, 1986, pp. 143-144; See also *Philippine British Assurance Co., Inc. v. Hon. Intermediate Appellate Court, et al.*, G.R, No. 72005, 29 May 1987, 150 SCRA 520.

We quote with approval the First Division's disquisition on the matter:

> ...
>
> The word "attribute", the adjective form of which is "attributable", is defined as "to explain as to cause or origin", or simply, to "ascribe". Thus, when Section 112(A) of the NIRC of 1997, as amended, states that the input VAT must be attributable to the zero-rated or effectively zero-rated sales, it simply means that **the input VAT must be regarded as being caused by such sales.**
>
> Correspondingly, since in this case, **it was established that [respondent] is not engaged in any other business, except mining, which results in its having zero-rated sales**, and considering that the subject purchased and imported goods, from which [respondent]'s input VAT arose, are for use in the course of its business or in its trade or business, such input VAT is attributable to the said zero-rated sales.[55]
>
> ...

Furthermore, petitioner's reliance on the *Atlas* cases is misplaced. These cases were decided under the earlier RR 5-87[56] (dated 01 September 1987), as amended by RR 3-88[57] (dated 07 April 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.**[58]
>
> ...

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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55 Supra at note 4, p. 589; Emphasis supplied.
56 SUBJECT: *Value-Added Tax.*
57 SUBJECT: *Revenue Regulations Amending Sections 16 and of Revenue Regulations No. 5-87.*
58 Emphasis supplied.

Section 23 of Republic Act (**RA**) No. 9337[59] reads:

> ...
>
> **SEC. 23.** *Implementing Rules and Regulations.* — The Secretary of Finance shall, upon the recommendation of the Commissioner of Internal Revenue, promulgate not later than June 30, 2005, the necessary rules and regulations for the effective implementation of this Act. Upon issuance of the said rules and regulations, **all former rules and regulations pertaining to value-added tax shall be deemed revoked.**[60]
>
> ...

As can be gleaned from the foregoing provision, rules and regulations pertaining to VAT issued before the effectivity of RA 9337, such as RR Nos. 5-87 and 3-88, shall be deemed revoked upon the issuance of the rules and regulations implementing the said law which should be done not later than 30 June 2005.

On 28 June 2005, the Secretary of Finance, upon the CIR's recommendation, issued RR 14-2005[61] which became effective on 01 July 2005. Subsequently, RR 16-2005[62], which took effect on 01 November 2005, superseded RR 14-2005. RR 16-2005, in turn, has undergone several amendments thereafter.

Correspondingly, all RRs pertaining to VAT, including RR Nos. 5-87 and 3-88, were deemed revoked as of 01 July 2005. Therefore, unless the provisions of the said RRs (pertaining to the requirement that the input VAT being claimed for refund should be *"directly and entirely attributable"* to the zero-rated sales) have been retained in RR 14-2005 and subsequent VAT regulations, the treatment of VAT under RR Nos. 5-87 and 3-88 is deemed repealed.

In herein case, the TY under consideration is 2013. Therefore, 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.

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59 AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

60 Emphasis supplied.

61 SUBJECT: *Consolidated Value-Added Tax Regulations of 2005.*

62 Supra.

A careful examination of the voluminous Import Entry and Internal Revenue Declarations (**IEIRDs**)[63] and Single Administrative Documents (**SADs**)[64] would show that respondent's imported goods are generally materials and supplies to be used in its business of mining of gold (e.g., mining drilling rods, grinding balls, drums, transmission control valve, protection sleeves, shock mounts, abrasive powder, diesel engines, etc.). Additionally, respondent's witness, Tan, testified that the importations of goods other than capital goods were intended to be used in mining gold. Her testimony is telling:

> ...
>
> Q8: How do you know which materials and equipment should be purchased or imported so as to enable Lepanto to conduct its mining operations?
>
> A8: **We purchase what is needed by the end-users of the company, such as our Mine Division and Mill Division.** They furnish our department a purchase requisition specifying the materials and equipment that they need. Upon receipt of the purchase requisition, we determine if such items or equipment are available locally. If none, we import the items or equipment.
>
> Q9: What are the functions of these Mine and Mill Divisions?
>
> A9: **The Mine Division extracts the gold ores from the underground mine.** They forward the extracted gold ores to the Mill Division for refining and processing into bullions.
>
> Q10: Are your familiar with the present case?
>
> A10: Yes.
>
> Q11: Why?
>
> A11: **I am familiar because it was I who took charge of the purchases and importations by Lepanto of the materials and equipment <u>in 2013</u>**, from which the input VAT being claimed as refund in this case arose.
>
> Q12: What constitute the said importations in **<u>2013</u>**?
>
> A12: **They are materials and equipment necessary in the mining operations of Lepanto in Mankayan, Benguet.** Specifically, the imported items are listed in a summary denominated as "Imports Transactions".[65]
>
> ...

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[63] Exhibits "P-24" to "P-24-157".

[64] Exhibits "P-26" to "P-26-156".

[65] Exhibit "P-56", Division Docket, pp. 263-264; Emphasis supplied and underscoring in the original text.

Based on the foregoing, the importations made by respondent, for which a claim for refund was based, were undoubtedly creditable and attributable to its zero-rated sales.

All told, the Court *En Banc* does not find any reversible error to warrant the reversal of the assailed Decision and Resolution, respectively, of the First Division. Particularly, when it partially granted respondent's Petition for Review (CTA Case No. 9101) in the reduced amount of ₱17,592,729.68.

WHEREFORE, the foregoing considered, petitioner Commissioner of Internal Revenue's Petition for Review filed on 16 May 2019 is **DENIED** for lack of merit. Accordingly, the First Division's assailed Decision dated 04 September 2018 and Resolution dated 11 April 2019, respectively, in CTA Case No. 9101, entitled *Lepanto Consolidated Mining Company v. Commissioner of Internal Revenue*, are hereby **AFFIRMED**.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
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