REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 2528** (CTA Case No. 9592)
- versus -	Present: **DEL ROSARIO**, *PJ*, **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** and **ANGELES,** *JJ.*
CARMEN COPPER CORPORATION, *Respondent.*	Promulgated: OCT 12 2023 3:36 pm

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RESOLUTION

REYES-FAJARDO, *J.*:

On April 20, 2023, the Court rendered a Decision (assailed Decision),[1] the *fallo* of which reads:

> **WHEREFORE**, the Petition for Review filed on October 29, 2021, by the Commissioner of Internal Revenue is **DENIED**, for lack of merit. The Decision dated October 1, 2020, and the Resolution dated July 8, 2021 in CTA Case No. 9592 are **AFFIRMED** with **MODIFICATION**. Accordingly, the Commissioner of Internal Revenue is **DIRECTED** to refund Carmen Copper Corporation, the amount of **₱8,125,468.19**,

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1 *Rollo*, pp. 107 to 119.

representing the latter's excess and unutilized input VAT from importation of goods and from services rendered by non-residents attributable to its zero-rated sales for the 4th quarter of taxable year 2014.

SO ORDERED.

In the assailed Decision, the Court held that in determining petitioner's entitlement to its claim for refund, it may consider all evidence formally offered and admitted in this case, even if some of it has not been submitted at the administrative level. The Court found that the Court in Division did not err in partially granting respondent's VAT refund claim. It ruled that Section 112(A) does not require direct attributability for input taxes to be creditable or refundable as pronounced in the case of *Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Taganito HPAL Nickel Corporation.*[2]

In his *Motion for Reconsideration (re: Decision promulgated 20 April 2023]*,[3] filed on April 28, 2023, petitioner posits that the Court erred in granting respondent's claim for refund in the amount of ₱8,125,468.19, representing the latter's excess and unutilized input VAT from importation of goods and from services rendered by non-residents attributable to its zero-rated sales for the 4th quarter of taxable year (TY) 2014.

Petitioner argues that since he rendered a decision partly granting respondent's administrative claim for input VAT refund, the Court's jurisdiction becomes strictly appellate in nature. Hence, it may only review whether the decision is proper, solely considering respondent's evidence submitted at the administrative level. Additionally, petitioner contends that respondent failed to demonstrate that there was direct attributability between the input tax on purchases and the zero-rated sales covering the 4th quarter of TY 2014.

Through its *Comment (To Motion for Reconsideration) [Re: Decision promulgated 20 April 2023]*[4] filed *via* LBC on July 4, 2023, respondent reiterates the findings in the assailed Decision citing *Philippine Airlines,*

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2 G.R. No. 259024, September 28, 2022.
3 *Id.* at pp. 120-135.
4 *Id.* at pp. 151 to 156.

Inc. v. Commissioner of Internal Revenue[5] that the Court of Tax Appeals, as a court of record and in the exercise of its appellate jurisdiction is not precluded from considering evidence formally offered and admitted, even if the same has not been submitted in the administrative claim before the Bureau of Internal Revenue.

The *Motion* lacks merit.

After a careful evaluation of petitioner's *Motion*, it is clear that the grounds raised therein are mere reiterations of matters which have already been exhaustively considered and passed upon by the Court in the assailed Decision. As such, the Court finds no compelling reason to reconsider, modify or even reverse the assailed Decision. The pronouncement in *Social Justice Society (SJS) Officers, et al. v. Lim*,[6] is instructive:

> The grounds relied on being mere reiterations of the issues already passed upon by the Court, there is no need to "cut and paste" pertinent portions of the Decision or re-write the ponencia in accordance with the outline of the instant motion.
>
> As succinctly put by then Chief Justice Andres R. Narvasa in Ortigas and Co. Ltd. Partnership v. Judge Velasco on the effect and disposition of a motion for reconsideration:
>
>> The filing of a motion for reconsideration, authorized by Rule 52 of the Rules of Court, does not impose on the Court the obligation to deal individually and specifically with the grounds relied upon therefor, in much the same way that the Court does in its judgment or final order as regards the issues raised and submitted for decision. This would be a useless formality or ritual invariably involving merely a reiteration of the reasons already set forth in the judgment or final order for rejecting the arguments advanced by the movant; and it would be a needless act, too, with respect to issues raised for the first time, these being, as above stated, deemed waived because not asserted at the first opportunity. It suffices for the Court to deal generally and summarily with the motion for reconsideration, and merely state a legal ground for its denial (Sec. 14, Art. VIII, Constitution); i.e., the motion contains merely a reiteration or rehash of arguments already submitted to and pronounced without merit by the Court in its judgment, or the basic issues have already been passed upon, or the motion discloses no substantial argument or cogent reason to warrant reconsideration or modification of the

5 G.R. Nos. 206079-80, January 17, 2018.

6 G.R. Nos. 187836 & 187916, March 10,2015.

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> judgment or final order; or the arguments in the motion are too unsubstantial to require consideration, etc.

WHEREFORE, petitioner's *Motion for Reconsideration (Re: Decision promulgated 20 April 2023),* filed on April 28, 2023 is **DENIED,** for lack of merit.

SO ORDERED.

MARIAN IVY F. REYES-FAJARDO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

(With due respect, please see Dissenting Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

ON LEAVE
HENRY SUMAWAY ANGELES
Associate Justice

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EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2528** (CTA Case No. 9592)
	Present:
- versus -	**DEL ROSARIO**, *P.J.*, **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES**, *and* **ANGELES**, *JJ.*
CARMEN COPPER CORPORATION, Respondent.	Promulgated: OCT 12 2023

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DISSENTING OPINION

BACORRO-VILLENA, J.:

With all due respect to my esteemed colleague, Associate Justice Marian Ivy F. Reyes-Fajardo, it is my humble opinion that respondent Carmen Copper Corporation (**respondent/CCC**) is no longer entitled to any additional amount of refund for its alleged unutilized input value-added tax (**VAT**) attributable to zero-rated sales for the fourth (4^{th}) quarter of the taxable year (**TY**) 2014.

The records of the case reveal that out of respondent's Total Available Input Tax of ₱60,328,369.59[1], petitioner Commissioner of Internal Revenue (**petitioner/CIR**) disallowed ₱21,962,748.77, which is the subject of respondent's prior Petition for Review before the Third Division. Conversely,

[1] Exhibit "P-40", ICPA Report, p. 2.

petitioner deemed the input VAT amounting to ₱38,365,620.82[2] as valid and properly substantiated. As such, petitioner ruled that a Tax Credit Certificate (**TCC**) may be issued in favor of respondent in the amount of ₱38,195,441.97[3] (after deducting output VAT of ₱170,178.85).

On the other hand, during trial, the Third Division found that out of the disallowance of ₱21,962,748.77, ₱18,233,684.33 was validly supported by proper documents. Based on the foregoing, the total valid and substantiated input VAT for the entire 4th quarter of TY 2014 should be ₱56,599,305.15, computed as follows:

Input VAT found by petitioner as valid and substantiated	₱38,365,620.82
Input VAT additionally found by the Third Division as valid and substantiated	18,233,684.33
Total valid and substantiated input VAT	**₱56,599,305.15**

However, it is observable from the Court *En Banc*'s Decision promulgated on 20 April 2023 (**assailed Decision**) that the ratio of valid zero-rated sales to total reported sales was only applied to the input VAT additionally found by the Third Division as valid and substantiated (*i.e.*, ₱18,233,684.33), thereby disregarding the amount of input VAT found by petitioner as valid and substantiated at the administrative level (*i.e.*, ₱38,365,620.82) and already recommended for the issuance of a TCC (*i.e.*, ₱38,195,441.97, after deducting output VAT of ₱170,178.85).

With due respect, I submit that the said computation is inaccurate.

It must be noted that the amounts and the ratio of valid zero-rated sales to total reported sales pertains to the *entirety* of respondent's claim for the 4th quarter of TY 2014 and not just to the denied or disallowed amount of ₱21,962,748.77. Thus, to apply the said ratio only to the input VAT (which the Third Division additionally found to be valid and substantiated without considering the initial amount of input VAT that petitioner already approved) would resultantly overstate the total amount to be refunded to respondent. This is further bolstered by the language employed in Section 110 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, but prior to the amendments introduced by Republic Act (**RA**) No. 10963[4], otherwise known as Tax Reform for Acceleration and Inclusion (**TRAIN**), to wit:

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2 *Computed as follows:* Total Available Input VAT (₱60,328,369.59) less Disallowed Input VAT (₱21,962,748.77) = ₱38,365,620.82.

3 Supra at note 1; Petitioner issued TCC No. 121-17-00021 (Exhibit "P-9") for the refund of ₱429,455.27 while the ₱37,765,986.70 representing input tax paid to the Bureau of Customs (**BOC**) but without TCC yet.

4 AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174,

...

SEC. 110. ***Tax Credits.*** **–**

...

(B) *Excess Output or Input Tax.* – **<u>If at the end of any taxable quarter</u>** 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... *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...[5]

...

Consequently, I am of the humble opinion that the proper computation is to apply the ratio of valid zero-rated sales of ₱1,686,163,697.85 to total declared sales of ₱3,593,834,209.78 to the *total* valid and substantiated input VAT of ₱56,599,305.15 (which includes the amount of ₱38,195,441.97 already recommended for TCC). As such, the total amount refundable to respondent (prior to any deduction of input VAT attributable to zero-rated sales effectively applied to output VAT) should only be ₱26,555,396.85, computed as follows:

Valid zero-rated sales	₱1,686,163,697.85
Total declared sales	₱3,593,834,209.78
Total valid and substantiated input VAT	₱56,599,305.15
Amount of valid and substantiated input VAT attributable to valid zero-rated sales	₱26,555,396.85

As regards the computation of the refundable amount, I hereby outline what I deem to be the correct steps in computing the refundable amount of excess and unutilized input VAT attributable to zero-rated sales when the taxpayer-claimant is engaged in mixed transactions based on the recent Supreme Court decision in *Chevron Holdings, Inc. (formerly Caltex Asia Limited) v. Commissioner of Internal Revenue*[6] (**Chevron**):

1. Determine the amount of substantiated or valid input VAT;

175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT NO. 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

5 Emphasis and underscoring supplied.

6 G.R. No. 215159, 05 July 2022.

2. Deduct from the substantiated or valid input VAT any input VAT directly attributable to a specific activity to arrive at the substantiated or valid input VAT not attributable to any activity;

3. Multiply the substantiated or valid input VAT not attributable to any activity by the ratio of Valid Zero-Rated Sales over Total Sales to determine the amount of substantiated or valid input VAT attributable to valid zero-rated sales;

4. Add to the amount computed in no. 3 any substantiated or valid input VAT directly attributable to zero-rated sales to arrive at the total substantiated or valid input VAT attributable to zero-rated sales;

5. Determine the output VAT still due;

6. Deduct from the output VAT still due any input VAT carried over from previous period to arrive at the amount that may be deemed applied against substantiated or valid input VAT directly attributable to zero-rated sales;

7. Determine the amount of input VAT carried-over instead; and,

8. Deduct from the total substantiated or valid input VAT attributable to zero-rated sales the amount computed in nos. 6 and 7.

Applying the foregoing steps to this case, the amount of excess and unutilized input VAT attributable to valid zero-rated sales (or the refundable amount before deducting the amount already authorized for issuance of a TCC) should be **₱26,407,552.56**, as computed below:

Step 1. As earlier noted, the total valid and substantiated input VAT for the entire 4th quarter of TY 2014 should be ₱56,599,305.15 (inclusive of the ₱38,365,620.82 input VAT found by petitioner as valid and substantiated at the administrative level).

Step 2. No input VAT is directly attributable to a specific activity.

Step 3. The amount of substantiated or valid input VAT attributable to valid zero-rated sales is computed as follows:

Total Valid Zero-Rated Sales	₱1,686,163,697.85
Divided by Total Sales for the 4th Quarter of TY 2014	3,593,834,209.78
Multiplied by Total Valid Input VAT	56,599,305.15
Valid Input VAT Allocated to Total Valid Zero-Rated Sales	**₱26,555,396.85**

Step 4. No input VAT is directly attributable to a specific activity.

Step 5. Output VAT still due is:

Output VAT		₱170,178.85
Total VATable Sales	₱1,418,157.04	
Divided by Total Sales	3,593,834,209.78	
Multiplied by Total Valid Input VAT	56,599,305.15	
Less: Valid Input VAT Allocated to VATable sales		22,334.56
Output VAT Still Due		**₱147,844.29**

Step 6. The output VAT still due of ₱147,844.29 may be deemed applied against substantiated or valid input VAT directly attributable to zero-rated sales since there is no input VAT carried over from previous period that can cover the same, as shown below:

Output VAT Still Due	₱147,844.29
Less: Input VAT Carried Over from Previous Period[7]	-
Valid Input VAT attributable to Valid Zero-Rated Sales Effectively Applied Against Output VAT	**₱147,844.29**

Step 7. No input VAT deemed carried-over.

Step 8. The excess input VAT attributable to valid zero-rated sales (or the refundable amount before deducting the amount already authorized for issuance of a TCC) is:

Valid Input VAT allocated to Total Valid Zero-Rated Sales	₱26,555,396.85
Less: Valid Input VAT attributable to Valid Zero-Rated Sales Effectively Applied Against Output VAT	147,844.29
Less: Input VAT Deemed Carried-Over	-
Excess Input VAT attributable to Valid Zero-Rated Sales	**₱26,407,552.56**

Considering that the valid and substantiated input VAT found to be unutilized in the amount of ₱26,407,552.56 for the 4th Quarter of TY 2014 is less than ₱38,195,441.97 or the amount recommended by petitioner to be issued TCC in favor of respondent at the administrative level, I submit that there is no longer any additional amount to be refunded to respondent.

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7 No Input VAT Carried Over from Previous Period *per* 2nd to 4th Quarter VAT Returns for the Fiscal Year (FY) 2015 (Line Item 20A), Exhibits "P-5", "P-6" and "P-7", Division Docket, Volume I, pp. 399, 400 and 401, respectively.

In contrast, the Court *En Banc* computed the refundable input VAT attributable to valid zero-rated sales of ₱8,125,468.19 in the following manner:

Total *Valid* Zero-Rated Sales	₱1,686,163,697.85
Divided by Total Reported Sales	3,593,834,209.78
Multiplied by Total Valid Input VAT Not Directly Attributable to Any Activity	18,233,684.33
Refundable Input Tax attributable to Zero-Rated Sales	**₱8,554,923.46**
Less: TCC already issued in respondent's favor	429,455.27
Balance of Refundable Input Tax	**₱8,125,468.19**

The differences between the foregoing computations are:

(1) As earlier noted, the ratio of valid zero-rated sales to total reported sales was only applied to the input VAT additionally found by the Third Division as valid and substantiated (*i.e.*, ₱18,233,684.33), thereby disregarding the amount of input VAT found by petitioner as valid and substantiated at the administrative level (*i.e.*, ₱38,365,620.82) and already recommended for the issuance of a TCC (*i.e.*, ₱38,195,441.97, after deducting output VAT of ₱170,178.85); and,

(2) The input VAT paid to the Bureau of Customs (**BOC**) already recommended for TCC amounting to ₱37,765,986.70 was not considered in determining the balance of refundable input VAT.

It is clear from the ruling in *Chevron*[8] that for the input VAT to be refunded or issued a TCC, the same should not have been applied to output VAT, to wit:

> ...
>
> Thus, to be refunded or issued a tax credit certificate, the following must be complied with: (1) the input tax is a creditable input tax due or paid; (2) the input tax is attributable to the zero-rated sales; (3) the input tax is not transitional; (4) <u>the input tax was not applied against the output tax</u>; and (5) in case the taxpayer is engaged in mixed transactions, *i.e.*, VAT-able, exempt, and zero-rated sales and the input taxes cannot be directly and entirely attributable to any of these transactions, only the input taxes proportionately allocated to zero-rated sales based on sales volume may be refunded or issued a tax credit certificate.
>
> ...
>
> *First*, Section 112 (A) of the Tax Code merely requires that the input tax claimed for refund or the issuance of tax credit certificate "**<u>has not been applied against [the] output tax</u>**[.]" Section 4.112-1 (a) of RR No. 16-2005 states that **<u>"[t]he input tax that may be subject of the claim shall</u>**

[8] Supra at note 6; Citations omitted, emphasis and italics in the original text and underscoring supplied.

> **exclude the portion of input tax that has been applied against the output tax**."...
>
> ...

Here, the output VAT *per* 4th Quarter return for TY 2014 amounted to ₱170,178.85. However, the valid input VAT allocated to sales subject to 12% VAT is found to be only ₱7,195.16[9] *per* the Court *En Banc*'s computation and ₱22,334.56[10], as herein recomputed. Thus, it can be concluded that the remaining output VAT of ₱147,844.29 (₱170,178.85 less ₱22,334.56) was taken from the input VAT allocated to zero-rated sales and should therefore be further deducted from the refundable amount recomputed above of ₱26,555,396.85, as the same was effectively applied and charged against the remaining output VAT.

It must be highlighted that this deduction is *not* determinative of the "excess" input VAT (which, according to *Chevron*, has no basis in law and jurisprudence) but only because the same was already utilized and applied to output VAT.

Accordingly, the resulting refundable amount of ₱26,555,396.85 computed above should further be reduced by input VAT effectively applied against the output VAT in the amount of ₱147,844.29, resulting in the final refundable amount of ₱26,407,552.56, computed as follows:

Amount of valid and substantiated input VAT attributable to valid zero-rated sales	₱26,555,396.85
Input VAT attributable to zero-rated sales that was effectively applied against the output VAT	147,844.29
Valid and Substantiated Input VAT found to be Unutilized and Should Be Refundable	**₱26,407,552.56**

Again, since the valid and substantiated input VAT found to be unutilized in the amount of ₱26,407,552.56 for the 4th Quarter of TY 2014 is less than ₱38,195,441.97 or the amount that petitioner recommended to be issued TCC in respondent's favor at the administrative level, there is no longer any additional amount to be refunded to respondent.

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9 Computed in the assailed Decision, as follows:

Total VATable Sales *per* VAT Returns	₱1,418,157.04
Divided by the sum of Reported Sales *per* VAT Returns	3,593,834,209.78
Multiplied by Total Valid Input VAT	18,233,684.33
Valid input VAT allocated to sales subject to 12% VAT	**₱7,195.16**

10 Valid Input VAT Allocated to VATable sales, as recomputed, supra at p. 5.

Even if we follow the majority opinion's logic in computing the refundable amount, that is, completely disregarding the input tax paid to the BOC of ₱37,765,986.70[11] that was already recommended for TCC (since the subject of respondent's refund claim pertains only the portion that petitioner disallowed), the balance of refundable input VAT, as determined in the assailed Decision, would nonetheless be inaccurate given that the TCC already issued in respondent's favor amounting to ₱429,455.27 pertains to the allowed portion. Thus, for purposes of logical consistency, in computing for the additional amount to be refunded to respondent, the amount already subject of a TCC should no longer be offset against the refundable input VAT of ₱8,554,923.46, as found by the Court *En Banc*.

I note further that should the computation of refundable input VAT attributable to valid zero-rated sales in the assailed Decision be sustained, the sum adjudged by petitioner and this Court as refundable (to respondent) for the 4th quarter of TY 2014 would then be ₱46,320,910.16, which is considerably more than what respondent is entitled to, as shown below:

4th Quarter of TY 2014	*Per* assailed Decision	*Per* Recomputation
Total Amount Recommended by Petitioner for TCC	₱38,195,441.97	₱38,195,441.97
Additional Amount to be Refunded	8,125,468.19	-
Refundable Amount	**₱46,320,910.16**	**₱26,407,552.56**

All told, I vote to **GRANT** petitioner's Motion for Reconsideration and thereby reverse and set aside the assailed Decision and render a new one denying respondent's entire claim for refund based on the foregoing disquisitions.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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11 Supra at note 1.