REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

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COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 2780** (CTA Case No. 10382)
	Present:
- versus -	**DEL ROSARIO,** *P.J.,* **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
OCEANAGOLD (PHILIPPINES), INC., *Respondent.*	Promulgated: AUG 30 2024 2:05

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DECISION

REYES-FAJARDO, *J.*:

Before the Court is the Petition for Review[1] filed by the Commissioner of Internal Revenue (CIR) on July 14, 2023, challenging the Decision[2] dated February 20, 2023 and the Resolution[3] dated June 26, 2023 in CTA Case No. 10382, whereby the Special Second Division of the Court (Court in Division) partially granted Oceanagold (Philippines), Inc.'s refund or tax credit of unutilized input value-added tax (VAT) attributable to its zero-rated sales for the 1st to 4th quarters of calendar year (CY) 2018, to the extent of ₱139,310,810.06.

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1 *Rollo,* pp. 1-16.
2 *Id.* pp. 24-55.
3 *Id.* pp. 57-62.

PARTIES

Petitioner is the duly appointed CIR with the power, among others, to abate tax liabilities and provide tax refunds.

Respondent is a corporation organized under the laws of the Philippines, engaged in large-scale exploration, development and utilization of mineral resources. It holds office at 2nd Floor Carlos J. Valdes Building, 108 Aguirre Street, Legaspi Village, 1229, Makati City, Philippines. It is a VAT-registered entity with Tax Identification Number No. 004-870-171-000 with the Bureau of Internal Revenue (BIR) Certificate of Registration No. OCN8RC0000048136.

FACTS

On December 16, 2011, the Board of Investments (BOI) issued to respondent a Certificate of Registration No. 2011-270 as "New Export Producer of Doré Bars and Copper Concentrate." On February 4, 2019, the BOI confirmed that respondent exported 100% of its total sales volume for the 1st to 4th quarters CY 2018 as indicated in Revenue Regulation No. 13-2018/BOI IS-Certificate No. 2019-036.

Respondent was engaged in zero-rated sales of minerals in CY 2018, out of which it had claimed an aggregate input VAT of ₱161,958, 657.30 (which remained unapplied to the same and succeeding quarters).

On June 26, 2020, respondent filed with the BIR VAT Credit Audit Division, an administrative claim for refund of its alleged unutilized input VAT in the amount of ₱161,958,657.30, for the 1st to 4th quarters CY 2018.

On October 23, 2020, respondent filed a Petition for Review before the Court of Tax Appeals (CTA) docketed as CTA Case No.10382. It sought the refund in the amount of ₱161,958,657.30, representing its alleged unutilized input VAT for the 1st to 4th quarters of CY 2018.

On February 20, 2022, the Court in Division rendered the challenged Decision, the dispositive portion of which reads:

> **WHEREFORE**, the foregoing premises considered, the Petition for Review filed by petitioner Oceanagold (Philippines), Inc. on 23 October 2020 is **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED** to issue a **REFUND** or **TAX CREDIT CERTIFICATE** in the amount of **₱139,310,810.06** in favor of petitioner.
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> **SO ORDERED.**

On March 1, 2023, petitioner filed a Motion for Reconsideration (Re: Decision promulgated 20 February 2023) with the Court in Division.

On June 26, 2023, the Court in Division rendered the challenged Resolution, denying petitioner's Motion for Reconsideration, the dispositive portion of which reads:

> **WHEREFORE**, the foregoing premises considered, the "Motion for Reconsideration (Re: Decision promulgated 20 February 2023)" filed by respondent (now petitioner) on 01 March 2023 is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**

On July 14, 2023, the CIR filed the present petition,[4] to which respondent filed its comment on August 17, 2023.[5]

Under Resolution dated August 31, 2023, CTA EB No. 2780 was submitted for decision.[6]

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[4] *Id.* pp. 1-16.
[5] *Id.* pp. 64-85.
[6] *Id.* unpaginated.

ISSUE

Did the Court in Division err in granting petitioner a partial refund of its unutilized input VAT attributable to zero-rated sales for the 1st to 4th quarters of CY 2018 amounting to ₱139,310, 810.06?

ARGUMENTS

Petitioner argues that respondent is not entitled to a partial refund amounting to ₱139,310,810.06 representing unutilized input VAT attributable to its zero-rated sales covering the 1st to 4th quarters of CY 2018 as respondent failed to demonstrate that there was direct attributability between the input tax on purchases and the zero-rated sales of respondent for said quarters. For petitioner, to be creditable, the input taxes on purchase of goods must be a factor in the chain of production.

Petitioner, too, claims that he rendered a decision denying respondent's administrative claim for input VAT refund. Due to the appellate nature of the Court in Division's jurisdiction over such decision, petitioner argues that the Court in Division may only review whether the decision he rendered is consistent with law, solely taking into account respondent's evidence submitted at the administrative level. Therefore, the Court in Division erred in considering respondent's evidence presented for the first time at the judicial level in the partial grant of its input VAT refund claim. In support thereof, petitioner invokes *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue* (*Pilipinas Total Gas*)[7] as authority.

Respondent contends that the present Petition for Review is a reiteration of the petitioner's arguments in his Answer and his Motion for Reconsideration, all of which have already been weighed, and found wanting by the Court in Division in the challenged Decision and Resolution.

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7 G.R. No. 207112, December 8, 2015, citing *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007.

Respondent counters that documents not submitted at the administrative level may be presented, formally offered, and submitted to the Court in Division, to support its case for tax refund.

Respondent further avers that Section 112(A) of the National Internal Revenue Code of 1997 (NIRC), as amended, does not require that only input taxes that are directly attributable or used in the chain of production to its zero-rated sales could be the subject of a claim for input VAT refund.

RULING

The Petition is denied.

The case is litigated anew before the Court. Hence, the Court may accept evidence that was not presented by respondent at the administrative level.

In an administrative claim for input VAT refund, *Pilipinas Total Gas*[8] envisioned two (2) scenarios, namely: (1) dismissal thereof by the BIR due to the taxpayer's failure to submit complete documents, despite the former's notice or request; or (2) inaction tantamount to a denial, or denial *other than* due to taxpayer's failure to submit complete documents despite notice or request.

In the *first* situation, the refund claimant must show the Court its entitlement to a VAT refund under substantive law, and submission of complete supporting documents at the administrative level, as requested by the BIR. In the *second* situation, the refund claimant may present all evidence to prove its entitlement to a VAT refund and the Court will consider all evidence offered even those not presented before respondent at the administrative level.[9]

Petitioner's denial of respondent's administrative claim for input VAT refund falls under the *second* situation. Specifically, the BIR did

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[8] *Id.*

[9] See *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*, G.R. No. 207112, December 8, 2015 citing *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007.

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not deny said administrative claim on account of respondent's failure to submit complete documents despite its express notice or request. Rather, respondent's judicial recourse was on account of respondent's inaction on its claim for refund.[10]

Following *Pilipinas Total Gas*, the Court may give credence to all evidence presented by respondent to support its prayer for refund, irrespective of whether such evidence was presented at administrative level.

Further, *Commissioner of Internal Revenue v. Philippine Bank of Communications (PBC)*[11] pronounced that in a judicial claim for refund, what is crucial is the evidence presented by the claimant before the Court:

> As applied in the instant case, since the claim for tax refund/credit was litigated anew before the CTA, the latter's decision should be solely based on the evidence formally presented before it, notwithstanding any pieces of evidence that may have been submitted (or not submitted) to the CIR....

PBC[12] citing *Commissioner of Internal Revenue v. Univation Motor Philippines (Univation)*,[13] likewise confirmed that:

> Cases filed in the CTA are litigated *de novo* as such, respondent should prove every minute aspect of its case by presenting, formally offering and submitting...to the Court of Tax Appeals all evidence...required for the successful prosecution of its administrative claim. Consequently, the CTA may give credence to all evidence presented by respondent, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance.[14]

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[10] Page 6 of the assailed Resolution, *Rollo*, p. 62.
[11] G.R. No. 211348, February 23, 2022.
[12] *Id.*
[13] G.R. No. 231581, April 10, 2019.
[14] Citations omitted.

Section 112(A) of the NIRC, as amended does not require that the input taxes subject of the claim for refund be directly attributable to zero-rated sales.

Commissioner of Internal Revenue v. Toledo Power Company[15] decreed:

> Contrary to petitioner's submission, creditable input taxes go beyond taxes on purchases of goods that form part of the finished product of the taxpayer or those which are directly used in the chain of production. The Tax Code did not limit creditable input taxes to those incurred on purchases which ultimately find its way to taxpayer's finished products for sale. Input taxes incurred on other purchases may still be credited against output tax liability. Despite not forming part of the finished goods, Section 110 treats as creditable those input tax due from or paid in the course of their trade or business on the importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. **Surely, even if the purchased goods do not find their way into the taxpayer's finished product, the input tax incurred therefrom can still be credited against the output tax if it is (1) incurred or paid in the course of the VAT-registered taxpayer's trade or business, and (2) supported by a VAT invoice issued in accordance with the invoicing requirements of the law.**
> ...
>
> **Still, the basic tenet remains: direct and entire attributability of the input taxes is not required in claims for tax refund and issuance of tax credit certificate**. Thusly, the only requisites for a claim of refund or issuance of tax credit certificate of unutilized input taxes, are as follows:
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> 1) The taxpayer-claimant is VAT-registered;
> 2) The claimant is engaged in zero-rated or effectively zero-rated sales;
> 3) There are creditable input taxes due or paid attributable to the zero--rated or effectively zero-rated sales;
> 4) The input taxes have not been applied against the output tax; and
> 5) The application and the claim for a refund or issuance of a tax credit certificate have been filed within the prescribed period.[16]

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15 G.R. Nos. 255324 & 255353, April 12, 2023.

16 Boldfacing supplied.

Here, respondent satisfactorily demonstrated, albeit partially, compliance with the requisites for the grant of refund or tax credit under Section 112(A) of the NIRC of 1997, as amended. Precisely, the Court in Division was correct in partially granting respondent's unutilized input VAT refund attributable to zero-rated sales for 1st to 4th quarters of CY 2018, to the extent of ₱139,310,810.06.

To conclude, "[a]lthough the burden of proof to establish entitlement to a refund is on the taxpayer-claimant, the Court has consistently held that once the minimum statutory requirements have been complied with, the claimant should be considered to have successfully discharged their burden to prove its entitlement to the refund. After the claimant has successfully established a *prima facie* right to the refund by complying with the requirements laid down by law, the burden is shifted to the opposing party, *i.e.*, the BIR, to disprove such claim."[17]

WHEREFORE, the Petition for Review filed by the Commissioner of Internal Revenue on July 14, 2023 is **DENIED**, for lack of merit. The Decision dated February 20, 2023 and the Resolution dated June 26, 2023, in CTA Case No. 10382 are **AFFIRMED**.

SO ORDERED.

Marian Ivy F Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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17 *Chevron Holdings, Inc. (Formerly Caltex Asia Limited) v. Commissioner of Internal Revenue,* G.R. No. 215159, July 5, 2022. Citations omitted.

CATHERINE T. MANAHAN
Associate Justice

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

HENRY S. ANGELES
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