REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SPECIAL SECOND DIVISION

NIPPON EXPRESS PHILIPPINES CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. **10450**

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:
JAN 29 2024 3:02 pm

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RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is petitioner Nippon Express Philippines Corporation's (**petitioner**'s/**NEPC**'s) "Motion for Reconsideration" (**MR**) filed on 03 November 2023[1], with respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) "Comment (Re: Petitioner's Motion for Reconsideration)"[2] (**Comment**) filed on 23 November 2023. The present MR assails the Court's Decision dated 28 September 2023[3] (**assailed Decision**) in the above-captioned case.

The dispositive portion of the assailed Decision reads:

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1 Division Docket, Volume II, pp. 919-929.
2 Id., pp. 933-936.
3 Id., pp. 851-918.

> ...
>
> **WHEREFORE,** the foregoing premises considered, the Petition for Review filed by petitioner Nippon Express Philippines Corporation on 15 January 2021 is hereby **DENIED** for lack of merit.
>
> ...

In its MR, petitioner argues that it had substantially complied with the minimum requirements of Section 112(A)[4] of the National Internal Revenue Code (**NIRC**) of 1997, as amended. It claims that its compliance established a *prima facie* case of its entitlement to the refund claimed, and the burden to prove it had no right to a tax refund should have shifted to respondent. Petitioner also claims that the Court erred in charging a portion of its unutilized excess input value-added tax (**VAT**) resulting from zero-rated sales to its output tax as it maintains that the same is not a condition for the grant of a tax refund of its allegedly excess input VAT following the case of *Chevron Holdings, Inc. (Formerly Caltex Asia Limited) v. Commissioner of Internal Revenue*[5] (**Chevron**).

On the other hand, respondent in his or her Comment echoes and maintains the conclusions reached in the assailed Decision and denial of petitioner's claim for refund.

We resolve.

A perusal of the assailed Decision shows that, to a certain extent, petitioner indeed complied with the requirements of Section 112(A) of the NIRC of 1997, as amended. Petitioner was even found to have aptly substantiated zero-rated sales/receipts in the amount of ₱59,548,809.56. Clearly, compliance with the aforementioned provision of the NIRC of

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[4] **SEC. 112.** *Refunds or Tax Credits of Input Tax.* -
(A) Zero-rated or Effectively Zero-rated Sales. - Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales. Provided, finally, That for a person making sales that are zero-rated under Section 108(B) (6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

[5] G.R. No. 215159, 05 July 2022.

1997, as amended or the Court's appreciation of petitioner's evidence is not in dispute.

It appears that petitioner merely finds issue with the Court's charging of its valid input VAT against its output VAT which, resulted in the denial of its petition (considering that the input VAT was not enough to cover the output VAT remaining). Simply put, given the amount of petitioner's output VAT liability, there was no excess input VAT that could be refunded to petitioner.

The Court is not unaware of the fact that in *Chevron*, the Supreme Court made it clear that when a taxpayer claims for a refund of unutilized input VAT resulting from zero-rated sales, the said amount itself is the subject of the refund and not the excess thereof after being applied to the output. Thus, the Supreme Court explained:

> ...
>
> Third, to call the refundable input tax in Section 110 (B), in relation to Section 112 (A), "excess" input tax is a misnomer since what is being applied for a refund or tax credit is the unutilized or unused input VAT from zero-rated sales. As a matter of fact, there is no "excess" input tax attributable to zero-rated sales as there is no related output tax from which the input tax may be charged against. For context, in zero-rated transactions, the tax rate is set at zero percent. Consequently, the seller charges zero output tax. However, the seller may have incurred input taxes from its purchases of goods and/or services related to its sales. The input taxes previously charged by suppliers remain unutilized or unused until charged against the output tax from the non-zero-rated sale transactions in the same quarter that the input taxes were incurred or applied for a refund or the issuance of tax credit certificate within two (2) years from the close of the taxable quarter when the related sales were made.[6]
>
> ...

However, the Supreme Court explains that this option of charging input tax attributable to zero-rated sales to the outstanding output VAT liability remains with the taxpayer alone according to *Chevron*. Thus, as explained in the assailed Decision, petitioner is given two (2) options, to either have such input VAT: "(1) charged against output tax from regular 12% VAT-able sales, and any unutilized or "excess" input tax may be

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6 Supra at note 5; Citations omitted.

claimed for refund or the issuance of tax credit certificate; or (2) claimed for refund or tax credit in its entirety".[7]

Considering that petitioner partially applied its input VAT attributable to zero-rated sales in the amount of ₱59,548,809.56 against its reported output VAT liability to the extent of ₱16,480,557.02, the Court deemed that petitioner had chosen the first option. It must also be stressed at this point that it was petitioner who alleged in its own petition that it was claiming the "excess" input VAT attributable to zero-rated sales in the amount of ₱43,068,252.54. However, upon review of the evidence presented, the Court found that petitioner's output VAT deficiencies exceeded the amount ₱45,138,464.44 (the amount valid input VAT allocated to vatable sales/receipts), to wit:

...

Following the same computation, since petitioner's valid input VAT of ₱45,138,464.44 allocated to VATable sales/receipts fails to cover its output VAT liability of ₱78,681,331.72 for the said sales/receipts, the valid input VAT of ₱3,171,796.58 allocated to valid zero-rated sales/receipts shall be utilized. Notwithstanding the same, the valid input VAT allocated to valid zero-rated sales/receipts is still not enough to offset petitioner's "Output VAT Still Due", as computed below:

Output Tax Due on Vatable Sales/Receipts	₱78,681,331.72
Less: Valid Input VAT Allocated to Vatable Sales/Receipts	45,138,464.44
Output VAT Still Due	**₱33,542,867.28**
Valid Input VAT Allocated to Total Zero-Rated Sales/Receipts	₱3,171,796.58
Less: Output VAT Still Due	33,542,867.28
(Output VAT Still Due)	**(₱30,371,070.70)**

On a final note, the Court reiterates its consistent ruling that actions for tax refund or credit, 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 the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven. The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit. Since taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented as

[7] Supra at note 5.

> they are not intended to be liberally construed. Thus, in view of petitioner's failure to prove, to the satisfaction of the Court, its entitlement to the grant of tax refund or issuance of tax credit of input VAT in the amount of ₱43,068,252.54, the Court is constrained to deny the same.[8]
>
> ...

With the above disquisitions, the Court finds no cogent reason to reverse or modify the assailed Decision considering that the manner in which petitioner claim for refund was adjudged remains consistent with the principles laid down in *Chevron.*

WHEREFORE, the foregoing premises considered, petitioner's "Motion for Reconsideration" filed on 03 November 2023 is **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice

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8 Supra at note 3; Citations omitted.