REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CARMEN COPPER CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 2568
(CTA Case No. 9954)

x- -x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

CARMEN COPPER CORPORATION,
Respondent.

CTA *EB* NO. 2642
(CTA Case No. 9954)

Present:
DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, *and*
FERRER-FLORES, *JJ.*

Promulgated:
SEP 19 2023 2:35pm.

x- -x

DECISION

CUI-DAVID, J.:

Before the Court *En Banc* are the consolidated ***Petitions for Review*** separately filed by Carmen Copper Corporation[1] ("**CCC**") and the Commissioner of Internal Revenue[2] ("**CIR**"),

[1] Dated February 24, 2022, received by the Court on March 14, 2022; *EB* Docket (CTA *EB* No. 2568), pp. 8-31.
[2] Dated June 22, 2022, received by the Court on June 24, 2022; *EB* Docket (CTA *EB* No. 2642), pp. 1-22.

under Section 3(b), Rule 8,[3] in relation to Section 2(a)(1), Rule 4[4] of the Revised Rules of the Court of Tax Appeals[5] ("**RRCTA**"), both assailing the *Decision* dated February 2, 2021[6] ("**assailed Decision**"), *Amended Decision* dated December 16, 2021[7] ("**assailed Amended Decision**") and *Resolution* dated May 31, 2022 ("**assailed Resolution**") all rendered by the Court's First Division ("**Court in Division**") in CTA Case No. 9954 entitled *Carmen Copper Corporation v. Commissioner of Internal Revenue.*

THE PARTIES

CCC is a corporation duly organized and existing under the laws of the Philippines, with principal office at Five E-Com Center, Palm Coast Ave. corner Pacific Drive, Mall of Asia Complex, Pasay City 1300 Metro Manila.[8] It is registered with the Bureau of Internal Revenue ("**BIR**") as a VAT taxpayer under Taxpayer Identification Number 233-903-100-00000;[9] and with the Board of Investments ("**BOI**") as a "New Producer of Copper Concentrate" under Certificate of Registration No. 2006-158.[10]

The CIR has 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 the National Internal Revenue Code ("**NIRC**"), or other laws or portions thereof administered by the BIR.[11] He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

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[3] Section 3. Who May Appeal; Period to File Petition. — (a) 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.

[4] Section 2. Cases Within the Jurisdiction of the Court *En Banc*. — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies — Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture.

[5] A.M. No. 05-11-07-CTA.

[6] *EB* Docket (CTA *EB* No. 2568), pp. 38-83; penned by Presiding Justice Roman G. Del Rosario, with Associate Justice Jean Marie A. Bacorro-Villena, concurring, and with Associate Justice Catherine T. Manahan's Concurring and Dissenting Opinion.

[7] *Id.*, pp. 89-110, with Associate Justice Catherine T. Manahan and Associate Justice Jean Marie A. Bacorro-Villena, concurring.

[8] Exhibit "P-1", Division Docket, pp. 377 to 392.

[9] Exhibits "P-2" and "P-3", Division Docket, pp. 393 to 395.

[10] Exhibit "P-4", Division Docket, pp. 396 to 405.

[11] Section 4, NIRC, as amended.

THE FACTS

The following are the undisputed facts as narrated in the assailed *Decision*, to wit:[12]

> On June 26, 2018, [CCC] filed with the BIR-VAT Credit Audit Division (BIR-VCAD) an Application for Tax Credits/Refunds (BIR Form No. 1914) for the refund or tax credit of input VAT under Section 112 of the [NIRC] of 1997, as amended, in the amount of ₱42,170,457.85, for the period covering April 1, 2016 to June 30, 2016.
>
> On September 28, 2018, [CCC] received the Letter dated September 19, 2018 from Ms. Erlinda A Simple, Assistant Commissioner of Internal Revenue (ACIR) for the BIR's Assessment Service, informing [CCC] that the total amount of input VAT allowable on local purchases and importations is P20,041,479.05.
>
> As aforestated, [CCC] filed the present Petition for Review before the Court on October 18, 2018.
>
> Within the extended period granted by the Court, [CIR] filed his Answer on February 12, 2019, interposing the following special and affirmative defenses, to wit:
>
> ... ...
>
> In compliance with the Court's directive to transmit the BIR Records of this case, [CIR] submitted the same on February 15, 2019.
>
> [CIR]'s Pre-Trial Brief was filed on March 1, 2019, while [CCC]'s Pre-Trial Brief was filed on March 4, 2019. The Pre-Trial Conference was held on March 7, 2019.
>
> The parties filed their Joint Stipulation of Facts & Issues on March 22, 2019. The Court approved the same in the Resolution dated March 29, 2019.
>
> Subsequently, on April 3, 2019, [CCC] filed a Motion for Leave to File and Admit Attached Amended Joint Stipulation of Facts & Issues. In the Resolution dated April 16, 2019, said Motion for Leave was granted, and the Amended Joint Stipulation of Facts and Issues was admitted. Thereafter, the Court issued the Pre-Trial Order dated May 2, 2019, thereby terminating the Pre-Trial.
>
> Trial ensued.

[12] *Supra* at note 6.

During trial, [CCC] presented its documentary and testimonial evidence. As for its testimonial evidence, [CCC] offered the testimonies of the following witnesses, namely: (1) Mr. Fernando A. Rimando, Chief Finance Officer; and (2) Mr. Emmanuel Y. Mendoza, the Court-commissioned Independent Certified Public Accountant (ICPA).

The ICPA Report was submitted on May 30, 2019.

On June 24, 2019, [CCC] filed its Formal Offer of Evidence, to which [CIR] interposed no objection. In the Resolution dated September 25, 2019, the Court admitted all of [CCC]'s exhibits.

For his part, [CIR] manifested his intention not to present any testimonial or documentary evidence as he was of the position that the case involves a pure question of jurisdiction.

The Memorandum for [CCC] was filed on December 4, 2019; while [CIR]'s Memorandum was filed on December 5, 2019.

The present case was submitted for decision on January 14, 2020.

The case was initially raffled to Associate Justice Catherine T. Manahan for study and report on January 20, 2020. On January 4, 2021, Associate Justice Manahan submitted her written report with her draft ponencia for deliberation. On January 7, 2021, Presiding Justice Roman G. Del Rosario issued a dissenting opinion.

Considering that the required affirmative votes of at least two (2) justices for the rendition of the decision on the present case cannot be obtained, Associate Justice Jean Marie A. Bacorro-Villena was designated as Special Member of the First Division to participate in the deliberation thereof, including other pending incidents involved in the case.

On January 13, 2021, Associate Justice Villena joined the Dissenting Opinion of Presiding Justice Del Rosario.

Acting on the Memorandum dated January 13, 2021 of Associate Justice Manahan requesting for an extension of thirty (30) days from January 14, 2021 or until February 13, 2021 within which to resolve the case, the same was granted by Presiding Justice Del Rosario on January 14, 2021.

The case was thereafter assigned to Presiding Justice Del Rosario as a regular member of the First Division for the writing of the majority opinion.

On February 2, 2021 the Court in Division partially granted CCC's *Petition for Review.*[13] The dispositive portion of the assailed *Decision* reads:

> **WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **PARTIALLY GRANTED**.
>
> [...] Commissioner of Internal Revenue is hereby **ORDERED TO REFUND** to [...] Carmen Copper Corporation the total amount of P28,912,016.82, representing [its] excess and unutilized input VAT on importations attributable to zero-rated sales for the 2nd quarter of taxable year 2016, broken down as follows:
>
> (i) P20,041,479.05, granted per Letter dated September 19, 2018 of Ms. Erlinda A. Simple, Assistant Commissioner of Internal Revenue; and,
>
> (ii) P8,870,537.77, pertaining to the difference between the amount of P28,912,016.82, representing the duly substantiated excess and unutilized input VAT on [CCC's] importation of goods attributable to [CCC's] zero-rated sales for the 2nd quarter of taxable year 2016 as found by the Court, and the amount of P20,041,479.05 as indicated in (i).
>
> **SO ORDERED**.

On March 11, 2021, CCC filed a *Motion for Reconsideration (With Motion for Leave of Court to Reopen the Case for the Recall of a Witness),* to which the CIR did not file a comment, despite due notice.

On December 16, 2021, the Court in Division promulgated the assailed *Amended Decision* with the following dispositive portion:

> **WHEREFORE**, in light of the foregoing considerations, [CCC's] Motion for Leave of Court to Reopen the Case for the Recall of a Witness, is **DENIED** for lack of merit.
>
> However, [CCC's] Motion for Reconsideration is **PARTIALLY GRANTED**. Accordingly, the Court's Decision dated February 2, 2021, is hereby amended to read as follows:

[13] *Supra* at note 6.

> **WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **PARTIALLY GRANTED**.
>
> [...] Commissioner of Internal Revenue is hereby **ORDERED TO REFUND** to [...] Carmen Copper Corporation the total amount of P28,927,621.59 representing [its] excess and unutilized input VAT on importations attributable to zero-rated sales for the 2nd quarter of taxable year 2016, broken down as follows:
>
> (i) P20,041,479.05, granted per Letter dated September 19, 2018 of Ms. Erlinda A. Simple, Assistant Commissioner of Internal Revenue; and,
>
> (ii) P8,886,142.54, pertaining to the difference between the amount of P28,927,621.59, representing the duly substantiated excess and unutilized input VAT on [CCC's] importation of goods attributable to [CCC's] zero-rated sales for the 2nd quarter of taxable year 2016 as found by the Court, and the amount of P20,041,479.05 as indicated in (i).
>
> **SO ORDERED**.

SO ORDERED.

CCC filed a *Motion for Extension of Time to File Petition for Review* with the Court *En Banc* on February 24, 2022.[14]

The CIR filed a *Motion for Partial Reconsideration (Re: Amended Decision* promulgated 16 December 2021) on February 24, 2022.

CCC filed its *Petition for Review* with the Court *En Banc* on March 14, 2022,[15] to which CIR failed to file a comment based on *Records Verification Report* dated May 5, 2022.[16]

[14] *EB* Docket (CTA *EB* No. 2568), pp. 1-5
[15] *Supra* at note 1.
[16] *EB* Docket (CTA *EB* No. 2568), p. 117.

After being ordered to comment on the CIR's *Motion for Partial Reconsideration* in a *Resolution* dated March 9, 2022,[17] CCC filed its *Comment (To Respondent's Motion for Partial Reconsideration) [Re: Amended Decision promulgated 16 December 2021]* on March 28, 2022.

The Court in Division denied the CIR's *Motion for Partial Reconsideration* in its *Resolution* dated May 31, 2022. We quote the decretal portion:

> **WHEREFORE**, in light of the foregoing considerations, [CIR's] **MOTION FOR PARTIAL RECONSIDERATION (Re: Amended Decision promulgated 16 December 2021)** is **DENIED** for lack of merit.
>
> **SO ORDERED**.

The CIR filed his *Petition for Review* on June 24, 2022,[18] which was then consolidated with CCC's *Petition for Review* in a *Minute Resolution* dated June 28, 2022.

After being ordered by the Court *En Banc* in a *Resolution* dated July 29, 2022, CCC filed its *Comment (To Petitioner's (CIR's) Petition for Review) [Re: CTA EB No. 2642]*, posted on August 15, 2022. [19]

The case was submitted for decision on September 20, 2022.

THE ISSUES

CCC assigns the following errors allegedly committed by the Court in Division:

> A. THE DIVISION ERRED IN NOT HOLDING THAT THE RESPONDENT IS REQUIRED BY LAW AND THE CONSTITUTION TO PROVIDE SUFFICIENT EXPLANATION AND SPECIFIC LEGAL BASES FOR ITS DENIAL OF CLAIM FOR VAT REFUND IN COMPLIANCE WITH DUE PROCESS.
>
> B. THE DIVISION ERRED IN HOLDING THAT A BOI-REGISTERED ENTERPRISE MUST PROVE THAT ITS EXPORT SALES OF GOODS MUST BE PAID FOR IN ACCEPTABLE FOREIGN CURRENCY INWARDLY REMITTED BEFORE THE

[17] Division Docket, p. 624.
[18] *Supra* at note 2.
[19] *Id.*, pp. 125-128.

SAME COULD BE TREATED AS ZERO-RATED SALES FOR VAT PURPOSES.

C. THE DIVISION ERRED IN NOT GIVING DUE CREDENCE TO THE RECOGNITION OF SALES IN THE BOOKS AND IN THE TAX RETURN EVEN WITHOUT SALES INVOICES PURSUANT TO ACCOUNTING STANDARDS.

D. THE DIVISION ERRED IN DISALLOWING ALL INPUT TAXES ON LOCAL PURCHASES ON THE GROUND THAT PETITIONER IS A BOI-REGISTERED ENTERPRISE.

E. THE DIVISION EXCEEDED ITS JURISDICTION WHEN IT RULED ON AN ISSUE THAT WAS NEITHER BROUGHT UP BY THE PARTIES NOR THE BASIS FOR THE ADMINISTRATIVE DECISION APPEALED FROM.

F. THE DIVISION, BY NOT RECALLING THE ICPA TO TESTIFY AND EXPLAIN HIS FINDINGS WITH RESPECT TO THE EXPORT SALES, VIOLATED THE PETITIONER'S RIGHT TO DUE PROCESS BECAUSE THE ICPA WAS NEVER GIVEN THE CHANCE TO EXPLAIN HIS FINDINGS.

On the other hand, the CIR raises the following issues:

WHETHER OR NOT THE FIRST DIVISION OF THE HONORABLE COURT ERRED IN RULING THAT THE LAW DOES NOT REQUIRE THAT THE INPUT VAT SUBJECT OF THE CLAIM BE DIRECTLY ATTRIBUTABLE TO ZERO-RATED SALES.

CCC'S ARGUMENTS

CCC argues that due process requires it must be informed of the factual and legal bases supporting the administrative decision of the CIR, citing Section 1, Article III of the Bill of Rights,[20] and Section 228 of the NIRC of 1997,[21] as amended. According to CCC, the denial letter "hardly complies with the due process requirement,"[22] considering that it is impossible to ascertain "which input taxes from which transactions were denied."[23]

CCC argues that sales of BOI-registered enterprises are zero-rated for VAT purposes by the mere fact of actual exportation and that they do not have to be paid in foreign

[20] *Petition for Review*, CTA *EB* No. 2568, par. 19.
[21] *Id.*, par. 21.
[22] *Id.*, par. 23.
[23] *Id.*, par. 25.

currency to be considered zero-rated for value-added tax ("**VAT**") purposes.[24] CCC cites Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, which according to it, allows that the consideration be in goods or services,[25] and Article 23 of Executive Order ("**EO**") No. 226, which allegedly does not mention payment in acceptable foreign currency.[26] CCC further argues that the Court in Division's requirement that the sale of goods must be to an entity entitled to BOI incentives only applies to indirect exports.[27] It avers that the fundamental principle underlying the zero-rating of VAT on exports is not the payment of foreign currency but the nature of VAT as a consumption tax.[28] CCC cites Revenue Memorandum Circular ("**RMC**") No. 42-2003[29] and RMC No. 57-1997[30] to support its argument that payment in foreign currency is not required for VAT zero-rating. Petitioner posits that the certification from the BOI that petitioner exported 100% of its production "cannot be taken for granted."[31]

Anent the difference in the date indicated in the accounting records of CCC, it argues that it must report "as sales in its books even if the goods are not covered by the invoice under Philippine Accounting Standards No. 18."[32]

CCC further alleges that the disallowances of all of its input taxes on the ground of application of the doctrine in *Coral Bay* are improper, considering that it only applies to PEZA-registered enterprises and not to BOI-registered enterprises.[33]

CCC likewise questions the Court in Division in denying its claim for refund on another ground. According to it, "when the Division denied the claim on another ground ... that was not brought up by any of the parties, the Division effectively supplanted the [CIR's] original jurisdiction to decide the tax refund at the very first instance." According to CCC, this is violative of its right to due process.[34] As support, CCC cites *Chinatrust (Phils.) Commercial Bank v. Philip Turner.*[35]

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[24] *Id.*, par. 32.
[25] *Id.*, par. 38.
[26] *Id.*, pars. 39-40.
[27] *Id.*, par. 43.
[28] *Id.*, par. 45.
[29] *Id.*, par. 51.
[30] *Id.*, par. 50.
[31] *Id.*, par. 56.
[32] *Id.*, par. 63.
[33] *Id.*, par. 68.
[34] *Id.*, par. 76.
[35] *Id.*, par. 77; G.R. No. 191458, July 3, 2017.

Finally, CCC argues that the recall of the Independent Certified Public Accountant ("**ICPA**") was necessary since the proceedings were based on the issues stipulated by the parties.[36]

THE CIR'S ARGUMENTS

In his *Petition for Review*, the CIR argues that the law requires that only "creditable input taxes" that are "directly attributable" may be refunded. Relying on the European VAT system, he argues that only the VAT paid for supplies in the business is creditable as input tax of a VAT-registered person. Thus, purchases must relate to the supplies, *i.e.,* goods/services.

The CIR adds that 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 production chain. Further, there must be a showing of the direct attributability of the purchases or input tax to the finished product whose sale is zero-rated.

Having failed to establish direct attributability between the input tax on purchases vis-à-vis its zero-rated sales, the CIR insists that CCC fell short of proving the veracity of its claim for refund.

CIR also posits that CCC cannot submit documents it did not present at the administrative level. According to CIR, the Court in Division is limited to whether the denial was proper given the evidence submitted at the administrative level.

THE COURT *EN BANC's* RULING

Before proceeding to the merits of the case, We shall first determine whether the instant *Petitions* were timely filed.

The right to appeal is neither a natural nor a part of due process. It is merely a statutory privilege, and it may be exercised *only* in the manner and in accordance with the provisions of the law.[37]

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[36] *Id.*, pars. 88-92.
[37] *Commissioner of Internal Revenue v. Fort Bonifacio Development Corp.*, G.R. No. 167606, August 11, 2010.

While every litigant must be given the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities, the failure to perfect an appeal in accordance with the rules of procedure is not a mere technicality. It raises a **jurisdictional** problem as it **deprives** the appellate court of jurisdiction over the appeal.[38] Hence, the rules, particularly on the statutory requirement for perfecting an appeal, must be **strictly** followed.[39]

Accordingly, appeals from the decisions of the Court in Division to the Court *En Banc* must be in accordance with the applicable laws and the rules.

The right to appeal to the Court *En Banc* from the Court in Division is by virtue of Section 18 of Republic Act ("**RA**") No. 1125, as amended, which provides:

> "SEC. 18. Appeal to the Court of Tax Appeals *En Banc*. — No civil proceeding involving matter arising under the National Internal Revenue Code, the Tariff and Customs Code, or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.
>
> **A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial may file a petition for review with the CTA *en banc*.**" [*Emphasis and underscoring supplied.*]

Relatedly, the RRCTA, as amended, pertinently reads, *viz.*:

> RULE 8
> PROCEDURE IN CIVIL CASES
>
> Sec. 1. Review in cases in the Court en banc.— In cases falling under the exclusive appellate jurisdiction of the Court *en banc*, **the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely** motion for reconsideration or new trial with the Division.
>
> ... ...

[38] *Id.*
[39] *Id.*

> 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 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. [*Emphasis and underscoring supplied.*]

From the foregoing, appeals from the decision or resolution of the Court in Division **must be preceded by filing a timely motion for reconsideration or a new trial with the Division**.

Indeed, the filing of a motion for reconsideration or new trial is mandatory — not merely directory — as indicated by the word "must."[40]

CTA *EB* No. 2568
CCC's Petition for Review

The Court En Banc has no jurisdiction over CCC's Petition for Review.

On February 2, 2021, the Court in Division partially granted CCC's *Petition for Review*,[41] against which CCC filed a *Motion for Reconsideration (With Motion for Leave of Court to Reopen the Case for the Recall of a Witness).*

On December 16, 2021, the Court in Division promulgated the assailed *Amended Decision.* [42]

On February 24, 2022, CCC filed a *Motion for Extension of Time to File Petition for Review* with the Court *En Banc* without first filing a *Motion for Reconsideration* of the *Amended Decision.*

[40] *City of Manila v. Cosmos Bottling Corp.*, G.R. No. 196681, June 27, 2018.
[41] *Supra* at note 6.
[42] *Supra* at note 7.

On March 14, 2022, CCC filed a *Petition for Review* with the Court *En Banc.*

As stated, the CTA *En Banc* has appellate jurisdiction over resolutions of its divisions.

To reiterate, Section 1, Rule 8 of the RRCTA, as amended, states that the filing of a timely motion for reconsideration or new trial with the CTA Division must precede an appeal to the CTA *En Banc.*[43] This rule likewise applies to *amended decisions* issued by the CTA Division. [44]

In *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue* ("*Asiatrust*"), [45] the Supreme Court emphasized that failure to move for a reconsideration of the CTA Division's Amended Decision is a ground for the dismissal of its Petition for Review before the CTA *En Banc, viz.*:

> Section 1, Rule 8 of the Revised Rules of the CTA states:
>
> ... ...
>
> Thus, in order for the CTA *En Banc* to take cognizance of an appeal via a petition for review, a timely motion for reconsideration or new trial must first be filed with the CTA Division that issued the assailed decision or resolution. Failure to do so is a ground for the dismissal of the appeal as the word "**must**" indicates that the filing of a prior motion is mandatory, and not merely directory.
>
> **The same is true in the case of an *amended decision*.** Section 3, Rule 14 of the same rules defines an amended decision as "[a]ny action **modifying or reversing a decision of the Court en banc or in Division.**" As explained in *CE Luzon Geothermal Power Company, Inc. v. Commissioner of Internal Revenue*, **an amended decision is a different decision, and thus, is a proper subject of a motion for reconsideration**.

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[43] SECTION 1. *Review of cases in the Court en banc.* — In cases falling under the exclusive appellate jurisdiction of the Court *en banc*, the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.
[44] *Commissioner of Internal Revenue v. Missouri Square, Inc.*, G.R. No. 238574 (Notice), July 11, 2018, citing *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue*, G.R. Nos. 201530 & 201680-81, April 19, 2017.
[45] G.R. Nos. 201530 & 201680-81, April 19, 2017, 809 SCRA 152-168.

> In this case, **the CIR's failure to move for a reconsideration of the Amended Decision of the CTA Division is a ground for the dismissal of its Petition for Review before the CTA En Banc. Thus, the CTA En Banc did not err in denying the CIR's appeal on procedural grounds**.
>
> Due to this procedural lapse, the Amended Decision has attained finality insofar as the CIR is concerned. The CIR, therefore, may no longer question the merits of the Case before this Court. Accordingly, there is no reason for the Court to discuss the other issues raised by the CIR. [*Emphasis and underscoring supplied.*]

In *Commissioner of Internal Revenue v. Commission on Elections (COMELEC),*[46] the Supreme Court clarified its ruling in *Asiatrust* in this wise:

> ... *We clarify.*
>
> In *Asiatrust,* ... The CTA Division denied the CIR's motion for reconsideration, but it partly granted Asiatrust Bank's motion and set the case for hearing the reception of the originals of the documents attached to the motion. On March 16, 2010, the CTA Division issued an **Amended Decision** modifying its original decision. ... Only Asiatrust Bank moved for reconsideration of the Amended Decision, and both parties filed a petition for review before the CTA *En Banc.* When the case reached this Court, **we upheld the CTA *En Banc* in denying the CIR's appeal on procedural grounds because the CIR failed to secure reconsideration of the Amended Decision of the CTA Division**, in violation of Section 1, Rule 8 of the RRCTA.
>
> The Court, in *Asiatrust,* cited the case of *CE Luzon Geothermal Power Co., Inc. v. Commissioner of Internal Revenue (CE Luzon).* In *CE Luzon,* we held that the CIR correctly filed a motion for reconsideration of the CTA Division's Amended Decision because it was a **different decision**. The amended decision **modified and increased** CE Luzon Geothermal Power Co., Inc.'s (CELG) entitlement to a refund or tax credit certificate from P14,879,312.65 to P17,277,938.47; hence, the proper subject of a motion for reconsideration anew on the part of the CIR. Notably, while the CIR moved for reconsideration of the CTA Division's Amended Decision, CELG did not. ...

[46] G.R. Nos. 244155 & 247508, May 11, 2021.

> It will be observed in *Asiatrust and CE Luzon* that the amended decision of the CTA Division is entirely **new**. The amended decision is based on a re-evaluation of the parties' allegations or reconsideration of new and/or existing evidence that were not considered and/or previously rejected in the original decision. In *Asiatrust, the case was set for hearing, and the Court allowed Asiatrust Bank to submit* **additional evidence,** which became the foundation of the amended decision. In *CE Luzon,* the Court **re-evaluated** the pieces of documentary evidence supporting CELG's claim for refund of unutilized input Value-Added Tax and found it meritorious, thereby increasing the amount it granted CELG for refund. In both cases, we held that the amended decisions are proper subjects of motions for reconsideration. [*Emphasis and underscoring supplied.*]

In this case, while the CIR moved for a reconsideration of the Court in Division's *Amended Decision,* CCC did not. After receiving the Court in Division's *Amended Decision* on February 9, 2022, CCC already moved for an extension of time to file a *Petition for Review* and eventually filed the instant *Petition for Review* with the Court *En Banc.* Thus, the doctrine in the *Asiatrust* case squarely applies.

Similar to *Asiatrust,*[47] the assailed *Amended Decision* was a different decision. It modified and increased CCC's entitlement to a refund, even if small. It elucidated and categorically ruled that petitioner failed to justify its *Motion for Leave of Court to Reopen the Case for the Recall of a Witness*; that its exports sales of US$18,701,088.48 or ₱866,024,428.16 were not traced to the inward remittances per bank certifications; that its zero-rated sales of US$3,974,660.71 or ₱188,200,311.43 were not fully compliant with the substantiation and invoicing requirements; and that its input taxes on domestic purchases were disallowed since it is a BOI-registered enterprise. Hence, the assailed *Amended Decision* is a proper subject of a motion for reconsideration.

It has been ruled that the **perfection of an appeal** in the manner and within the period laid down by law is **not only mandatory but also jurisdictional**. The failure to perfect an appeal as required by the rules defeats the right to appeal of a party and precludes **the appellate court** from acquiring jurisdiction over the case.[48]

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[47] Citing *CE Luzon Geothermal Power Co., Inc. v. Commissioner of Internal Revenue,* G.R. No. 200841-42, August 26, 2015.
[48] *Commissioner of Internal Revenue v. Fort Bonifacio Development Corp.*, G.R. No. 167606, August 11, 2010.

Indeed, CCC's failure to move for reconsideration has rendered the *Amended Decision* final and executory insofar as it is concerned and precluded the Court *En Banc* from acquiring jurisdiction over the instant *Petition.*

Nevertheless, even if a relaxation of the rule on appeal is justified under the circumstances, or even if the Court *En Banc* has jurisdiction over the case, CCC's *Petition* will still be denied for lack of merit.

A painstaking review of the issues and arguments raised in CCC's *Petition for Review* reveals that the same have been carefully evaluated, considered, and passed upon by the Court in Division in its 46-page *Decision* and 22-page *Amended Decision.*

Hence, We find no reversible error in the Court in Division's ruling in the assailed *Amended Decision* that CCC is entitled to the additional input VAT refund in the amount of ₱8,886,142.54 (₱28,927,621.59 less ₱20,041,479.05), instead of the amount of ₱8,870,537.77, as determined in the assailed *Decision,* viz.:

> Correspondingly, considering that only the zero-rated sale of P1,391,070.87 was reconsidered resulting to the valid zero-rated sales in the increased amount of P2,578,723,607.38, the said adjusted valid zero-rated sales of P2,578, 723,607.38 shall be incorporated in the computation of the refundable input VAT in the assailed Decision, all else being the same.
>
> Petitioner's remaining input VAT of P40,738,105.61 can be attributed to the total zero-rated sales of P3,631,557,276.11. Consequently, only the input VAT of P28,927,621.59 is attributable to the valid zero-rated sales of P2,578,723,607.38, computed as follows:

Excess Input VAT allocated to Total Zero-Rated Sales	₱ 40,738,105.61
Divided by Total Zero-Rated Sales	3,631,557,276.11
Multiplied by Valid Zero-Rated Sales	2,578,723,607.38
Excess Input VAT attributable to Valid Zero-Rated Sales	**₱ 28,927,621.59**

> Thus, petitioner is entitled to VAT refund in the amount of P28,927,621.59, representing the latter's excess and unutilized input VAT on importation of goods attributable to its zero-rated sales for the 2nd quarter of taxable year 2016.

> However, considering that respondent had already approved in favor of petitioner, the amount of P20,041,479.05 as net allowable VAT Refund, which entirely pertains to petitioner's input VAT on importations, per Letter dated September 19, 2018, 17 issued by Assistant Commissioner of Internal Revenue (ACIR), Ms. Erlinda A. Simple, the said amount of P20,041,479.05 shall be offset against the refundable input VAT of P28,927,621.59, as found by this Court, to properly account for the remaining input VAT refund that must be rightfully accorded to petitioner for the 2nd quarter of TY 2016.
>
> Accordingly, **petitioner is entitled to the additional input VAT refund in the amount of P8,886,142.54 (P28,927,621.59 less P20,041,479.05), instead of the amount of P8,870,537.77,** as determined in the assailed Decision. [*Emphasis supplied.*]

On the strength of the above legal and jurisprudential pronouncements, the Court *En Banc* is left with no recourse but to dismiss CCC's *Petition for Review* for lack of jurisdiction. Further, We deem it unnecessary to discuss the other issues raised by CCC.

We now turn to the CIR's *Petition.*

CTA *EB* No. 2642
CIR's *Petition for Review*

The Court En Banc has jurisdiction over the CIR's Petition for Review.

On February 2, 2021, the Court in Division partially granted CCC's *Petition for Review.*[49]

On March 12, 2021, CCC filed a *Motion for Reconsideration (With Motion for Leave of Court to Reopen the Case for the Recall of a Witness).*

On December 16, 2021, the Court in Division promulgated the assailed *Amended Decision.* [50]

[49] *Supra* at note 6.
[50] *Supra* at note 7.

On February 24, 2022, the CIR filed a *Motion for Partial Reconsideration (Re: Amended Decision promulgated 16 December 2021)*, which the Court in Division denied in its *Resolution* dated May 31, 2022. The CIR received the Resolution on June 9, 2022.

Accordingly, under Section 3(b), Rule 8[51] of RRCTA, the CIR had fifteen (15) days from receipt of said *Resolution*, or until June 24, 2022, to file his *Petition for Review*. The CIR timely filed his *Petition for Review* on June 24, 2022.[52]

Having settled that the CIR's *Petition* was timely and properly filed, We likewise rule that the CTA *En Banc* has jurisdiction to take cognizance of the CIR's *Petition* under Section 2(a)(1), Rule 4[53] of RRCTA.

We now discuss the merits.

Creditable input taxes need not be directly attributable to the zero-rated sales to be refundable or creditable.

The CIR posits that the law requires that only "creditable input taxes" that are "directly attributable" may be refunded; since CCC failed to establish direct attributability between the input tax on purchases *vis-à-vis* its zero-rated sales, CCC's claim for refund must fail.

Section 112 of the NIRC of 1997, as amended, states:

> 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

[51] *Supra* at note 3.
[52] *Supra* at note 2.
[53] Section 2. Cases Within the Jurisdiction of the Court *En Banc*. — The Court *En Banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on
(b) motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies — Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture.

> transitional input tax, to the extent that such input tax has not been applied against output tax: Provide, 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. [*Emphasis and underscoring supplied*]

In *Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Taganito HPAL Nickel Corporation*, [54] the Supreme Court squarely debunked petitioner's position that input taxes must be directly attributable to the claimant's zero-rated sales. The Supreme Court thus discussed:

> Tellingly, **Section 112(A) does not require direct attributability for input tax to be creditable or refundable**. In sooth, **the law allows as tax credit an allocable portion of a taxpayer's input tax that is not directly and entirely attributable to their zero-rated sales**. In such instance, what the law requires is for the creditable input tax to be attributable to the zero-rated or effectively zero-rated sales.
>
> At any rate, creditable input tax does not arise solely from purchases that form part of the finished goods. A plain reading of Section 110 of the Tax Code readily reveals that it did not limit creditable input tax to purchases or importation of goods which are to be converted into or intended to form part of a finished product for sale, or to be used in the chain of production. In particular, Section 110(A) also treats as input tax all VAT due from or paid by a VAT-registered person 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. Corollary thereto, 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 as long as it is (1) incurred or paid in the course of the VAT-registered taxpayer's trade or business, and (2) supported by a VAT

[54] G.R. No. 259024, September 28, 2022.

> invoice issued in accordance with the invoicing requirements of the law. [*Emphases added.*]

Contrary to the CIR's position, there is nothing in the afore-quoted Section 112 (A) of the NIRC of 1997, as amended, which requires that the input taxes subject of a claim for refund be directly attributable to zero-rated sales or effectively zero-rated sales. Input taxes that bear a direct or indirect connection with a taxpayer's zero-rated sales satisfy the requirement of the law.[55]

The Court can consider evidence not introduced at the administrative level.

Under Section 1, Rule 14 of the RRCTA, this Court, whether sitting in Division or *En Banc*, is not precluded from ruling on issues not raised that are necessary for an orderly disposition of the case.

The Supreme Court, in *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*,[56] affirmed the authority of this Court to rule on issues not raised by the parties under the mentioned section, *viz.*:

> On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.
>
> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. ... ...
>
> The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda. The CTA *En Banc* was likewise correct in sustaining the CTA Division's view concerning such matter.

[55] *CIR v. Maersk Global Service Centres (Philippines) Ltd.*, CTA *EB* No. 2260, July 29, 2021.
[56] G.R. No. 183408, July 12, 2017.

Further, the failure of the administrative claim does not necessarily result in the failure of the judicial claim. In *Commissioner of Internal Revenue v. Philippine Bank of Communications*,[57] the Supreme Court ruled:

> In the case of *Commissioner of Internal Revenue v. Manila Mining Corporation*, this Court held that **cases before the CTA are litigated *de novo* where party litigants should prove every minute aspect of their cases**, to wit:
>
> > Under Section 8 of Republic Act No. 1125 (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. No evidentiary value can be given the purchase invoices or receipts submitted to the BIR as the rules on documentary evidence require that these documents must be formally offered before the CTA.
>
> 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**. Thus, what is vital in the determination of a judicial claim for a tax credit/refund of CWT is the evidence presented before the CTA, **regardless of the body of evidence found in the administrative claim**. [*Emphases and underscoring supplied*]

This was further explained by the Supreme Court in *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc.*,[58] to wit:

> The law creating the CTA specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence. The paramount consideration remains the ascertainment of truth. **Thus, the CTA is not limited by the evidence presented in the administrative claim in the Bureau of Internal Revenue**. **The claimant may present new and additional evidence to the CTA to support its case for tax refund.**
>
> 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

[57] G.R. No. 211348, February 23, 2022.
[58] G.R. No. 231581, April 10, 2019.

> 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**. [*Emphases and underscoring supplied*]

These jurisprudential pronouncements belie the CIR's arguments that this Court can only consider evidence introduced at the administrative level.

From the foregoing, We see no cogent reason to depart from the disquisition of the Court in Division.

WHEREFORE, premises considered, the *Petition for Review* filed by Carmen Copper Corporation in CTA *EB* No. 2568 is **DISMISSED** for lack of jurisdiction, while the *Petition for Review* filed by the Commissioner of Internal Revenue in CTA *EB* No. 2642 is **DENIED** for lack of merit.

Accordingly, the *Decision* dated February 2, 2021, the *Amended Decision* dated December 16, 2021, and the *Resolution* dated May 31, 2022, of the Court's First Division in CTA Case No. 9954 are **AFFIRMED**.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

(With Separate Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

(I join PJ's Separate Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(I join PJ's Separate Concurring Opinion)
CATHERINE T. MANAHAN
Associate Justice

(With Separate Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(I join PJ's SO)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CORAZON G. FERRER-FLORES
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 cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

CARMEN COPPER CORPORATION, Petitioner,	**CTA EB No. 2568** (CTA Case No. 9954)
- versus -	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	

x- -x

COMMISSIONER OF INTERNAL REVENUE Petitioner,	**CTA EB No. 2642** (CTA Case No. 9954)
	Present:
- versus -	**DEL ROSARIO,** ***P.J.***, **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID,** and **FERRER-FLORES,** *JJ.*
CARMEN COPPER CORPORATION, Respondent.	Promulgated: SEP 19 2023 2:35p.m.

x- -x

SEPARATE OPINION

DEL ROSARIO, P.J.:

I concur in the *ponencia* in: (i) denying the Petition for Review filed by the Commissioner of Internal Revenue (CIR) in CTA EB No. 2642; and, (ii) affirming the Decision dated February 2, 2021, the Amended Decision dated December 16, 2021, and the Resolution

dated May 31, 2022, of the Court's First Division in CTA Case No. 9954.

I also concur in the **dismissal of Carmen Copper Corporation (CCC)'s Petition for Review in CTA EB No. 2568**, albeit on a different ground. I am of the view that CCC's Petition for Review should be **dismissed for being belatedly filed**.

An examination of the records shows that CCC received the assailed Amended Decision on February 9, 2022.[1] Counting fifteen (15) days therefrom, petitioner had until February 24, 2022 within which to file its Petition for Review with the CTA *En Banc*. On February 24, 2022, CCC filed a Motion for Extension of Time to File Petition for Review.[2] In the Minute Resolution dated February 28, 2022,[3] petitioner was granted a final and non-extendible period of fifteen (15) days from February 24, 2022, or until **March 11, 2022**, within which to file its Petition for Review. CCC's Petition for Review, though filed via LBC Express on March 11, 2022, was received by the Court only on **March 14, 2022**.

The date of actual receipt by the Court of pleadings filed through a private letter-forwarding agency (which is not a Supreme Court-accredited courier) is deemed the date of filing of that pleading. In *Exequiel Sigre, et al. vs. Provincial Government of Zamboanga Del Sur, represented by Antonio H. Cerilles*,[4] the Supreme Court held:

> "**The established rule is that the date of delivery of pleadings to a private letter-forwarding agency is not to be considered as the date of filing thereof in court; in such cases, the date of actual receipt by the court, and not the date of delivery to the private carrier, is deemed the date of filing of that pleading.** As correctly found by the CA, petitioners filed their petition via LBC, a private courier, which delivered the pleading to the CA only on December 14, 2017, a day after the last day of filing. Clearly, the petition was filed out of time. Further, as pointed out by the CA, its receipt of the deficient amount in the docket fees will not cure the defect in the belated filing of the petition." *(Boldfacing supplied)*

LBC Express, Inc., a private courier, was only approved as an accredited courier by the Supreme Court on February 1, 2023.[5] Thus,

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[1] CTA Case No. 9954 Docket, p. 704.
[2] CTA EB No. 2568 Docket, pp. 1-5.
[3] CTA EB No. 2568 Docket, p. 7.
[4] G.R No. 241362, February 3, 2020.
[5] OCA Circular No. 54-2023, February 13, 2023.

the date of receipt by the Court of CCC's Petition for Review on March 14, 2022 is considered as the date of filing thereof.

Since the present Petition for Review was filed beyond the fifteen (15)-day reglementary period to appeal, the CTA *En Banc* is without jurisdiction to take cognizance of the case. Thus, the Court cannot decide the case on the merits[6] as the only power left with it is to dismiss the case.

All told, I VOTE for the Court to DISMISS CCC's Petition for Review in CTA EB No. 2568 for being belatedly filed.

ROMAN G. DEL ROSARIO
Presiding Justice

[6] *Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue*, G.R. No. 185666, February 4, 2015.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

<u>EN BANC</u>

CARMEN COPPER CORPORATION,
Petitioner,

CTA EB No. 2568
(CTA Case No. 9954)

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x---x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 2642
(CTA Case No. 9954)

- versus -

Present:

DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, *and*
FERRER-FLORES, *JJ.*

CARMEN COPPER CORPORATION,
Respondent.

Promulgated:
SEP 19 2023 2:35 p.m.

x - x

SEPARATE OPINION

BACORRO-VILLENA, J.:

I concur with the *ponencia* of our esteemed colleague Associate Justice Lanee S. Cui-David in dismissing Carmen Copper Corporation's (**CCC**'s)

Petition for Review in CTA EB No. 2568 although on a different ground. On this note, I join our Presiding Justice Roman G. Del Rosario in his Separate Concurring Opinion, therein stating that the said petition should instead be dismissed for being belatedly filed.

Records indeed show that CCC received the First Division's Amended Decision dated 16 December 2021 (**Assailed Amended Decision**) on 09 February 2022. Counting fifteen (15) days therefrom, CCC had until 24 February 2022 within which to file its Petition for Review with the Court *En Banc*. After being granted a final and non-extendible period of 15 days from 24 February 2022 (or **until 11 March 2022**)[1], CCC filed its Petition for Review *via* LBC on 11 March 2022. However, the Court received the same only on **14 March 2023**. Since the Supreme Court approved LBC as an accredited courier only on 01 February 2023[2], the date of the Court *En Banc*'s receipt of CCC's Petition for Review on 14 March 2023 should be considered as the date of filing thereof. Hence, CCC's Petition for Review should be dismissed for being filed beyond the 15-day reglementary period to appeal.

I also concur in the denial of the Commissioner of Internal Revenue's (**CIR**'s) Petition for Review in CTA EB No. 2642 for lack of merit. *However*, with due respect, I espouse a different view as regards the computation of the amount of excess and unutilized input value-added tax (**VAT**) attributable to zero-rated sales (or the refundable amount before deducting the amount of ₱20,041,479.05 already granted *per* Assistant CIR Erlinda A. Simple's [**ACIR Simple**'s] Letter dated 19 September 2018).

As can be deduced from the recent Supreme Court decision in *Chevron Holdings, Inc. (formerly Caltex Asia Limited) v. Commissioner of Internal Revenue*[3] (**Chevron**), the 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 are as follows:

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

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

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1 See Minute Resolution dated 28 February 2022, *Rollo* (CTA EB No. 2568), p. 7.
2 OCA Circular No. 54-2023, 13 February 2023.
3 G.R. No. 215159, 05 July 2022.

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 of ₱20,041,479.05 already granted *per* ACIR Simple's Letter dated 19 September 2018) should be **₱28,837,638.82**, as computed below:

Step 1. It is observable from the First Division's assailed Decision dated 02 February 2021 (**Assailed Decision**) that the amount of substantiated or valid input VAT is ₱41,103,398.52.

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	₱2,578,723,607.38
Divided by Total Sales for the 2nd Quarter of TY 2016 (as adjusted)	3,636,415,498.15
Multiplied by Total Valid Input VAT	41,103,398.52
Valid Input VAT Allocated to Total Valid Zero-Rated Sales	**₱29,148,017.92**

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

Step 5. Output VAT still due is:

Output VAT		₱342,655.14
Total VATable Sales	₱2,855,459.54	
Divided by Total Sales (as adjusted)	3,636,415,498.15	
Multiplied by Total Valid Input VAT	41,103,398.52	
Less: Valid Input VAT Allocated to VATable sales		32,276.04
Output VAT Still Due		**₱310,379.10**

Step 6. The output VAT still due of ₱310,379.10 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	₱310,379.10
Less: Input VAT Carried Over from Previous Period[4]	-
Valid Input VAT attributable to Valid Zero-Rated Sales Effectively Applied Against Output VAT	**₱310,379.10**

Step 7. No input VAT deemed carried-over.

Step 8. The excess input VAT attributable to valid zero-rated sales is:

Valid Input VAT allocated to Total Valid Zero-Rated Sales	₱29,148,017.92
Less: Valid Input VAT attributable to Valid Zero-Rated Sales Effectively Applied Against Output VAT	310,379.10
Less: Input VAT Deemed Carried-Over	-
Excess Input VAT attributable to Valid Zero-Rated Sales	**₱28,837,638.82**

In contrast, the Court's First Division, as affirmed by the Court *En Banc* through the *ponencia*, computed an excess input VAT attributable to valid zero-rated sales of ₱28,927,621.59 in the following manner:

Output VAT	₱342,655.14
Less: Valid Input VAT allocated to sales subject to 12% VAT	32,276.04
Output VAT Still Due	**₱310,379.10**
Valid input VAT allocated to *total* zero-rated sales (as adjusted)	₱41,048,484.71
Less: Output VAT Still Due	310,379.10

[4] No Input VAT Carried Over from Previous Period *per* 2nd Quarter VAT Return for FY 2016 (Line Item 20A), Exhibit "P-6", Division Docket, p. 406.

Excess Input VAT allocated to *total* zero-rated sales (as adjusted)	**₱40,738,105.61**
Excess input VAT allocated to *total* zero-rated sales (as adjusted)	₱40,738,105.61
Divided by total zero-rated sales (as adjusted)	3,631,557,276.11
Multiplied by *valid* zero-rated sales	2,578,723,607.38
Excess input VAT attributable to *valid* zero-rated sales	**₱28,927,621.59**

The key difference between the foregoing computations is the treatment of the resulting "Output VAT Still Due" amounting to **₱310,379.10**. Applying *Chevron*, I submit that it should be deducted from the valid input VAT allocated to **total *valid* zero-rated sales** and *not* from the valid input VAT allocated to **total zero-rated sales (as adjusted)**.

As elucidated in *Chevron*[5], it is not for the Court of Tax Appeals (**CTA**) to determine and rule in a judicial claim for refund under Section 112(A)[6] of the NIRC of 1997, as amended, that the taxpayer had insufficient or unsubstantiated input VAT to cover or pay its output VAT and, for this reason, it is not proper to charge the taxpayer's substantiated or valid input VAT against its output VAT first and use the resultant amount as basis for computing the allowable amount for refund, *viz*:

> ...
>
> *Fourth*, that the taxpayer failed to prove that it had sufficient creditable input taxes to cover or "pay" its output tax liability in a given period, hence, there is no refundable "excess" input tax, which is an issue distinct, separate, and independent from a claim for refund or issuance of tax credit certificate of **unutilized** input VAT attributable to zero-rated sales. For one, the taxpayer-claimant is not asking to refund the "excess" creditable input taxes from the output tax. To be sure, the "excess" input tax may only be carried over to the succeeding period and cannot be refunded. But, on the other hand, **the taxpayer is asking to refund the unutilized or unused input tax from zero-rated sales.**
>
> Next, the substantiation of input taxes that can be credited against the output tax is an issue relevant to the assessment for potential deficiency output VAT liability. In turn, it is not for the CTA and the Court to determine and rule in a judicial claim for refund under Section 112(A) of the Tax Code that the taxpayer had insufficient or unsubstantiated input taxes to cover its output tax liability. This is for the BIR to determine in an administrative proceeding for assessment of deficiency taxes.
>
> ...

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5 Supra at note 3; Citations omitted, emphasis and italics in the original text and supplied.

6 **Sec. 112**. *Refunds or Tax Credits of Input Tax.* –
A. *Zero-rated or Effectively Zero-rated Sales.* – ...

> **All told, it was erroneous for the CTA to charge the validated and substantiated input taxes against Chevron Holdings' output taxes first and use the resultant amount as the basis for computing the allowable amount for refund. The CTA also erred in requiring Chevron Holdings to substantiate its excess input tax carried over from the previous quarter as it is not a requirement for entitlement to a refund of unused or unutilized input VAT from zero-rated sales.**
>
> We reiterate that although 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. Otherwise, we would unduly burden the taxpayer-claimant with additional requirements which have no statutory nor jurisprudential basis. In the present case, Chevron Holdings sufficiently proved compliance with all the requisites for entitlement to a refund or credit of unutilized input tax allocable to zero-rated sales under Section 112(A) of the Tax Code.
>
> ...

From the foregoing, when a taxpayer-claimant has excess input VAT carried over from previous period, it need not substantiate the same for purposes of establishing its entitlement to a refund of excess input VAT from zero-rated sales. The declared excess input tax carried over from previous period is presumed correct and is used to cover or pay for the output VAT still due in the period of claim. It is only when there is no such input tax carried over from previous period, as in this case, or the amount thereof is less than or insufficient to cover the output VAT still due that the difference or the remaining output VAT may be deducted from or charged against the substantiated or valid input VAT attributable to zero-rated sales.

Furthermore, it must be noted that the option of a VAT-registered taxpayer on whether to charge against output tax from regular 12% VATable sales and any unutilized or "excess" input tax may be claimed for refund or the issuance of a tax credit certificate (**TCC**), or whether to claim for refund or tax credit in its entirety, *only* applies to substantiated input tax attributable to **valid zero-rated sales**. This can be gleaned from the following

computation of the Supreme Court in *Chevron*[7], citing Section 4.110-4[8] of RR No. 16-2005[9], as amended by RR No. 4-2007[10]:

> ...
>
> Thus, **the refundable input VAT is computed by getting the percentage of valid zero-rated sales over total reported sales (taxable, zero-rated, and exempt)** multiplied by the properly substantiated input taxes not directly attributable to any of the transactions.
>
> ...
>
> Accordingly, Chevron Holdings is entitled to the refund of unutilized input tax allocable to its zero-rated sales for January 1 to December 31, 2006, in the total amount of ₱1,140,381.22, computed as follows:

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Valid zero-rated sales	5,762,011.70	4,669,743.23	66,091,331.71	79,131,661.58

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7 Supra at note 3; Citation omitted, emphasis in the original text and supplied.

8 SEC. 4.110-4. *Apportionment of Input Tax on Mixed Transactions.* — . . .

. . .

Illustration: ERA Corporation has the following sales during the month:

Sale to private entities subject to 12%	₱ 100,000.00
Sale to private entities subject to 0%	100,000.00
Sale of exempt goods	100,000.00
Sale to gov't. subjected to 5% final VAT Withholding	100,000.00
Total Sales for the month	₱ 400,000.00

The following input taxes were passed on by its VAT suppliers:

Input tax on taxable goods 12%	₱ 5,000.00
Input tax on zero-rated sales	3,000.00
Input tax on sale of exempt goods	2,000.00
Input tax on sale to government	4,000.00
Input tax on depreciable capital good **not attributable** to any specific activity (monthly amortization for 60 months)	**20,000.00**

. . .

B. **The input tax attributable to zero-rated sales for the month shall be computed as follows:**

Input tax directly attributable to zero-rated sale — ₱ 3,000.00

Ratable portion of the input tax not directly attributable to any activity:

Taxable sales (0%) / Total Sales x **Amount of input tax not directly attributable to any activity**

P100,000.00 / 400,000.00 x P20,000.00 — ₱ 5,000.00

Total input tax attributable to zero-rated sales for the month ₱ 8,000.00

9 Consolidated Value-Added Tax Regulations of 2005.

10 Amending Certain Provisions of Revenue Regulations No. 16-2005, As Amended, Otherwise Known as the Consolidated Value-Added Tax Regulations of 2005.

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Divided by: Total reported sales	313,164,583.06	272,400,438.61	299,500,840.65	501,152,183.16
Multiplied by: Valid input tax not directly attributable to any activity	1,276,656.14	1,650,503.65	1,860,385.53	4,294,269.68
Input tax attributable to zero-rated sales	**23,489.59**	**28,294.48**	**410,534.26**	**678,062.88**
TOTAL				**₱1,140,381.22**

...

Notably, the First Division would have arrived at the same amount of excess and unutilized input VAT attributable to valid zero-rated sales (or the refundable amount before deducting the amount of ₱20,041,479.05 already granted *per* ACIR Simple's Letter dated 19 September 2018) had it *first* separated or excluded the "disallowed" portion of the input VAT allocated to total zero-rated sales (*i.e.*, ₱1,052,833,668.73) and deducted the output VAT still due (*i.e.*, ₱310,379.10) only against the "valid" portion thereof (*i.e.*, ₱29,148,017.92), as follows:

Table 1. Input VAT Allocation	**Amount (a)**		**Allocation Factor (c) = (a) / (b)**	**Allocated Input VAT (e) = (c) x (d)**	
Valid Zero-Rated Sales	₱2,578,723,607.38		70.91%	₱29,148,017.92	
Disallowed Zero-Rated Sales	1,052,833,668.73		28.95%	11,900,466.79	
VATable Sales	2,855,459.54		0.08%	32,276.04	
Exempt Sales	1,488,700.00		0.04%	16,827.18	
Sales to Government	514,062.50		0.01%	5,810.59	
Total Reported Sales[11]	**₱3,636,415,498.15**	**(b)**	**100.00%**	**₱41,103,398.52**	**(d)**

Table 2. Computation of Output VAT Still Due

Output VAT	₱342,655.14
Less: Valid Input VAT allocated to VATable Sales	32,276.04
Output VAT Still Due	**₱310,379.10**

Table 3. Refundable Excess Input VAT Attributable to *Valid* Zero-Rated Sales

Valid Input VAT allocated to *Valid* Zero-Rated Sales	₱29,148,017.92
Less: Output VAT Still Due	310,379.10
Excess Input VAT attributable to *Valid* Zero-rated sales	**₱28,837,638.82**

The principle of *stare decisis et non quieta movere* (to adhere to precedents and not to unsettle things which are established), as ordained in

[11] Exhibit "P-6", supra at note 4.

Article 8[12] of the Civil Code, enjoins adherence by this Court to doctrinal rules established by the Supreme Court in its final decisions, such as the recent pronouncement in *Chevron* regarding the proper formula for computing the refundable input tax.[13] This principle is based on the notion that once a question of law has been examined and decided, it should be considered settled and closed to further argument.[14] The High Court's interpretation of a statute becomes part of the law as of the date it was originally passed because such interpretation simply establishes the contemporaneous legislative intent that the interpreted law carries into effect.[15]

Accordingly, the CIR should be ordered to refund to CCC the total amount of **₱28,837,638.82** (comprising of **₱20,041,479.05** granted *per* ACIR Simple's Letter 19 September 2018 and **₱8,796,159.77** for the difference). This refundable amount is lower than that granted in the Assailed Amended Decision by ₱89,982.77.

All told, I vote to: (1) **DISMISS** CCC's Petition for Review in CTA EB No. 2568 for being belatedly filed; (2) **DENY** the CIR's Petition for Review for lack of merit; and, (3) **AFFIRM with MODIFICATION** the Assailed Amended Decision by reducing the refundable amount from ₱28,927,621.59 to ₱28,837,638.82 based on the Supreme Court's computation in *Chevron*.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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12 ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines.

13 See *Benjamin G. Ting v. Carmen M. Velez-Ting*, G.R. No. 166562, 31 March 2009.

14 Id.

15 *Philippine Long Distance Telephone Company v. Abigail R. Razon Alvarez, et al.*, G.R. No. 179408, 05 March 2014.