REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2082** *(CTA Case No. 9496)*
-versus-	Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, FABON-VICTORINO, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
DEUTSCHE KNOWLEDGE SERVICES PTE. LTD., *Respondent.*	Promulgated: JUL 21 2020 1:10 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

This is a Petition for Review[1] under ***Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals ("RRCTA")***,[2] seeking to reverse and set aside the Decision promulgated on 12 February 2019 and the Resolution dated 28 May 2019 by the Special Second Division ("Court in Division") and to render another decision denying the entire claim for refund.

The Parties

Petitioner Commissioner of Internal Revenue ("CIR") is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR") who has the power to decide disputed assessments, refunds of internal revenue taxes,

1 See Petition for Review; *Rollo,* pp. 7-62, with annexes.
2 A.M. No. 05-11-07-CTA, November 22, 2005.

fees or other charges, penalties imposed in relation thereto, or other matters arising under the ***1997 National Internal Revenue Code, as amended*** (hereinafter referred to as "Tax Code") or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent Deutsche Knowledge Services Pte. Ltd. is established as a regional operating headquarters ("ROHQ") in the Philippines of a multinational company organized and existing under and by virtue of the laws of Singapore, with registered office address at One Raffles Quay, #17-10 South Tower, Singapore 048483.[3] It is registered with the BIR as a Value-added Tax ("VAT") taxpayer with Taxpayer Identification No. 238-763-115-000.

Respondent is licensed by the Securities and Exchange Commission to engage in general administration and planning; business planning and coordination; sourcing/procurement of raw materials and components; corporate finance advisory services; marketing control and sales promotion; training and personnel management; logistic services; research and development services and product development; technical support and maintenance; data processing; and communication and business development.

The Facts

In the second quarter of calendar year ("CY") 2014, respondent claims to have rendered services in the Philippines to persons engaged in businesses conducted outside the Philippines, the payments for which were made in Euro and other acceptable foreign currency and accounted for in accordance with the rules and regulations of Bangko Sentral ng Pilipinas ("BSP").[4]

Respondent filed its original VAT return for the second quarter of CY 2014 with the BIR through electronic filing and payment system ("eFPS") on 21 July 2014, alleging that it accumulated excess input tax in the total amount of ₱27,178,784.99,[5] and out of this total amount, ₱27,065,518.44 is purportedly attributable to its zero-rated sales, which remained unutilized and/or unapplied against its output VAT liability.[6]

On 24 June 2016, respondent filed with the BIR Large Taxpayers Regular Audit Division 3 ("LTRAD 3") an application for tax credit/refund ("BIR Form No. 1914") of its excess and unutilized input VAT for the second quarter of CY 2014 in the amount of ₱27,065,518.44.[7]

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[3] See The Facts on the Decision; Records, p. 330-331.
[4] *Id.*, p. 331.
[5] *Ibid.*
[6] *Ibid.*
[7] *Id.*, p. 332.

There being no action taken by the petitioner on respondent's administrative claim for refund, it filed a Petition for Review before the Court in Division on 21 November 2016.[8]

On 12 February 2019, the Court in Division promulgated the assailed Decision,[9] the dispositive portion thereof reads as follows:

> "**WHEREFORE,** premises considered, the instant Petition for Review is **PARTIALLY GRANTED.** Accordingly, [the CIR] is **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of ₱15,857,575.46, representing the latter's unutilized excess input VAT attributable to its zero-rated sales for the second quarter of CY 2014.
>
> **SO ORDERED."**

Aggrieved, respondent filed its Motion for Partial Reconsideration (Re: Decision promulgated 12 February 2019)[10] on 28 February 2019. In response, petitioner submitted its Comment (To Respondent's Motion for Partial Reconsideration dated February 28, 2019)[11] on 18 March 2019.

On 28 May 2019, the Court in Division promulgated its assailed Resolution denying the Motion for Reconsideration.[12]

On 18 June 2019, petitioner filed a Motion for Extension of Time to File Petition for Review,[13] which was granted by the Court *En Banc.*[14]

On 2 July 2019, petitioner filed the instant Petition for Review,[15] against which respondent submitted its Comment (Re: Petitioner's Petition for Review Dated July 1, 2019) on 15 August 2019.[16]

On 4 September 2019, the Court *En Banc* promulgated a Resolution submitting the case for decision.[17] Hence, this Decision.

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[8] *Id.*, p. 332.
[9] Records, p. 359; emphasis retained.
[10] *Id.*, pp. 361-372.
[11] *Id.*, pp. 375-379.
[12] *Id.*, pp. 381-386.
[13] *Rollo*, pp. 1-5.
[14] See Minute Resolution; *Rollo*, p. 6.
[15] *Rollo*, pp. 7-65, with annexes.
[16] *Id.*, pp. 66-74.
[17] *Id.*, pp. 76-77.

The Assigned Errors[18]

WHETHER THE COURT IN DIVISION ERRED IN RULING THAT THE AMOUNT OF ₱15,857,575.46 IS ATTRIBUTABLE TO THE VALID ZERO-RATED SALES; AND

WHETHER THE COURT IN DIVISION ERRED IN RULING THAT THE CLAIMED INPUT VAT SUBJECT OF THE INSTANT CASE REMAINED UNUTILIZED.

Arguments of the Parties

Petitioner's Arguments[19]

Petitioner avers that to be creditable, the input tax must come from purchases of goods that form part of the finished product of the taxpayer or is directly used in the chain of production. However, in the assailed Decision, there was no showing of "direct attributability" between the purchases resulting to the input tax vis-à-vis the finished product or zero-rated sales.

Further, petitioner claims that the information in respondent's VAT return for CY 2016 is not enough to prove that the amount claimed for refund was not utilized in the succeeding taxable quarters. He points out that the pertinent documents and records which were evaluated were those pertaining to CY 2015 only.

Lastly, the CIR states that a tax refund is in the nature of a tax exemption, which must be construed *strictissimi juris* against the taxpayer.

Respondent's Arguments[20]

Respondent counters that it has proven, by preponderance of evidence, that the input VAT being claimed is attributable to its zero-rated sales and remained unutilized.

The Ruling of the Court En Banc

The Court *En Banc* finds no merit in the instant Petition for Review, and sees no ample justification to reverse the assailed Decision and Resolution.

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[18] See Assignment of Errors in the Petition for Review; *Rollo*, pp. 9-10.
[19] See petitioner's Arguments/Discussions in the Petition for Review; *Rollo*, pp. 10-16.
[20] See respondent's Discussion in its Comment (Re: Petitioner's Petition for Review dated July 1, 2019); *Rollo*, pp. 63-73.

The Court in Division correctly ruled that an input tax need not be directly and entirely attributable to the zero-rated sales to be refundable or creditable.

The petitioner's claim that the assailed Decision and Resolution of the Court in Division are erroneous for having failed to establish the direct attributability between respondent's input tax on purchases and its zero-rated sales is bereft of merit.

Section 112(A) of the Tax Code provides for the grounds when input tax may be refunded or claimed as tax credit in cases of zero-rated sales, to wit:

> "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, <u>apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales,</u>** 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): **<u>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</u>**. 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."[21]

Contrary to the argument of the petitioner, there is nothing in the provision which states that the input tax needs to be directly attributable or a factor in the chain of production to the zero-rated sale in order for it to be creditable or refundable. In fact, the aforementioned provision allows as tax credit an allocable portion of a taxpayer's input tax that is not directly and entirely attributable to the zero-rated sales.

Further, ***Section 110(A) of the Tax Code***, which enumerates the transactions upon which creditable input tax may be claimed, only requires that the transaction was incurred or paid in connection with the taxpayer's trade or business whether directly or indirectly and that it is evidenced by a VAT invoice or official receipt, to wit:

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[21] Emphases supplied.

SEC. 110. Tax Credits. -

A. Creditable Input Tax. -

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions **shall be creditable** **against the output tax:**

(a) Purchase or importation of goods:

(i) For sale; or

(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or

(iii) For use as supplies in the course of business; or

(iv) For use as materials supplied in the sale of service; or

(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.

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

xxx xxx xxx

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

Clearly, based on the foregoing provisions, the Tax Code does not require the input tax to be directly attributable to zero-rated sales to be refundable or creditable.

In fact, this is not the first time the Court *En Banc* resolved the issue raised by the petitioner. In ***Deutsche Knowledge Services Pte. Ltd. V. Commissioner of Internal Revenue***,[22] this Court ruled, to wit:

"The CIR's insistence 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 chain of production" is not entirely consistent with the above-quoted Section 110. **This is so because the said provision, as clearly stated, did not limit itself 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; but also includes, inter alia, purchases or importation of goods for use as supplies in the course of business, or for use in trade**

[22] CTA *EB* Nos. 1917 and 1919, 5 February 2020.

> **or business for which deduction for depreciation or amortization is allowed; as well as purchase of services for which VAT has been actually paid.**
>
> **Accordingly, provided that the subject input tax is evidenced by a VAT invoice or official receipt issued in accordance with Section 113 of the NIRC of 1997, as amended, the same may be creditable against the output VAT.**
>
> We likewise do not find merit in the CIR's allegation that for an input tax to be attributable to zero-rated sales, it must be shown that "the connection between the purchases and finished product is 'concrete' and not 'imaginary' or 'remote'".
>
> xxx xxx xxx
>
> Based from the foregoing, **creditable input taxes which cannot be directly or entirely attributable to any sale transaction (i.e., zero- rated or effectively zero-rated sale and taxable or exempt sale of goods of properties or services), shall be allocated proportionally on the basis of the volume of sales. Evidently, contrary to the CIR's allegation, the attribution of the input VAT to the zero-rated sales need not always be direct**.
>
> Moreover, the word "attribute", the adjective form of which is "attributable", is defined as "to explain as to cause or origin", or simply, to "ascribe". Thus, when Section 112(A) of the NIRC of 1997, as amended, states that the input VAT must be attributable to the zero-rated or effectively zero-rated sales, it simply means that the input VAT must be regarded as being caused by such sales. Accordingly, We sustain the Court in Division's ruling that is it not required that the claimed input tax be directly attributable to zero- rated sales in order to be creditable."[23]

Moreover, we find that petitioner's reliance in the ***Atlas Cases***[24] is misplaced.

In the said cases, the Supreme Court decided the same under the defunct Revenue Regulations ("RR") No. 5-87 dated 1 September 1987, as amended by RR No. 3-88 dated 15 February 1988, Section 16 of which provides, to wit:

> "In all cases, the amount of refund or tax credit that may be granted shall be limited to the amount of value- added tax (VAT) paid **directly and entirely attributable to the zero-rated transaction** during the period covered by the application for credit or refund."

However, the requirement that the input tax being claimed for tax credit or refund should be directly and entirely attributable to the zero-rated sales, has not been retained in RR No. 14-2005 and in its amendments, which is the applicable VAT regulation in the present case.[25]

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[23] Emphasis supplied.
[24] G.R. Nos. 141104 and 148763, 8 June 2007, and G.R. No. 159471, 26 January 2011.
[25] Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership, CTA *EB* Case Nos. 1777 and 1779, 1 August 2019.

Given the foregoing, we affirm the assailed Decision and Resolution and find that the input tax need not be directly attributable to the zero-rated sales in order for it to be refunded or claimed as tax credit.

The Court in Division correctly found that the claimed input tax remained unutilized.

Petitioner's insistence that the respondent's VAT Return for 2016 and documents and records for 2015 are insufficient to prove that the amount claimed for refund remained unutilized in the succeeding taxable quarters is without merit.

Contrary to petitioner's argument, the Court *En Banc* considers the succeeding Quarterly VAT Returns filed by the taxpayer as sufficient evidence to show that the subject claim for tax credit or refund remained unutilized and has not been applied against the taxpayer's output tax. The case of ***Commissioner of Internal Revenue v. CBK Power Company Limited***[26] illustrates this point, to wit:

> "Undoubtedly, one of the requisites for a successful claim for refund of input VAT under Section 112 of the NIRC of 1997, as amended, is that the **"input tax has not been applied against [the] output tax". Thus, CBK must have presented the succeeding Quarterly VAT Returns to show that the subject of the claim was not carried over to succeeding periods**."

A perusal of respondent's VAT returns shows, although the input tax was carried over in its succeeding Quarterly VAT Returns, it remained unutilized until it was deducted as "VAT Refund/TCC Claimed" in its amended Quarterly VAT Return for the second quarter of CY 2016.

Accordingly, the subject claim no longer formed part of the excess input tax of ₱164,806,025.92 as of the end of the 2nd quarter of 2016. Such being the case, the claimed input VAT could not have been carried over or utilized in the succeeding quarters.

All told, the Court En Banc sees no reason to overturn the subject assailed Decision and Resolution.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Court in Division's Decision promulgated on 12 February 2019 and Resolution dated 28 May 2019 are hereby **AFFIRMED.**

[26] CTA *EB* Case No. 1791, 14 May 2019.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen M. Ringpis-Liban
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
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