

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF
INTERNAL REVENUE,
Petitioner,

CTA EB NO. 2764
(CTA Case No. 9154)

Present:

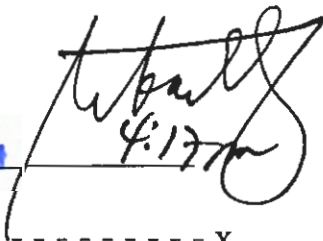
DEL ROSARIO, P.J.,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and,
ANGELES, JL.

- versus -

DEUTSCHE KNOWLEDGE
SERVICES PTE. LTD.,
Respondent.

Promulgated:

OCT 04 2024



X - - - - - X

DECISION

BACORRO-VILLENA, J.:

Before the Court *En Banc* is a Petition for Review¹ pursuant to Section 3(b)², Rule 8 of the Revised Rules of the Court of Tax Appeals 

¹ Rollo, pp. 1-14.

² 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 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.

(RRCTA), filed by petitioner Commissioner of Internal Revenue (petitioner/CIR) on 15 June 2023. It seeks to reverse and set aside the Amended Decision dated 24 March 2023³ (**assailed Amended Decision**) and Resolution dated 23 May 2023⁴ (**assailed Resolution**) of the Court's Special Third Division⁵ in CTA Case No. 9154, entitled *Deutsche Knowledge Services Pte., Ltd. v. Commissioner of Internal Revenue*. The assailed Amended Decision and assailed Resolution partially granted respondent Deutsche Knowledge Services Pte., Ltd.'s (**respondent's**) prayer for refund in the amount of ₱14,619,389.11, representing excess and unutilized value-added tax (VAT) for the third (3rd) quarter of calendar year (CY) 2013.

PARTIES OF THE CASE

Petitioner is the head of the Bureau of Internal Revenue (BIR) who is vested with authority to carry out the functions and duties of his or her office, including, among others, the duty to act on and approve claims for refund or issuance of a tax credit certificate (TCC) pursuant to the pertinent provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and other tax laws, rules and regulations, with office address at the BIR National Office Building, Diliman, Quezon City.

Respondent, on the other hand, is the Philippine branch 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.⁶ It is licensed to do business as a regional operating headquarter (ROHQ) in the Philippines by the Securities and Exchange Commission (SEC) 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

³ Rollo, p. 21-64.

⁴ Id., pp. 66-71.

⁵ Penned by Associate Justice Erlinda P. Uy (Ret.) and concurred in by Associate Justice Ma. Belen M. Ringpis-Liban and Associate Justice Maria Rowena Modesto-San Pedro.

⁶ Paragraph 2, Joint Stipulation of Facts and Issues (JSFI), Division Docket, Volume IV, p. 1873.

development.⁷ It is VAT-registered with the BIR with Tax Identification Number (TIN) 238-763-115-000.⁸

FACTS OF THE CASE

On 18 October 2013, respondent filed its Original Quarterly VAT Return (BIR Form No. 2550-Q) for the 3rd quarter of CY 2013⁹ with the BIR through the electronic filing and payment system (eFPS).

Almost two (2) years after or on 01 June 2015, respondent filed with the BIR-Large Taxpayers Regular Audit Division 3 (LTRAD 3) an Application for Tax Credits/Refunds (BIR Form No. 1914)¹⁰ and a letter-request of even date¹¹ for the refund of its alleged excess and unutilized input VAT attributable to its zero-rated sales for the period 01 July 2013 to 30 September 2013 in the aggregate amount of ₱28,938,050.29. Even after the lapse of the 120-day expiration period, petitioner allegedly failed to act on respondent's claim for refund.

PROCEEDINGS BEFORE THE COURT

On 30 September 2015 and within thirty (30) days from the expiration of the 120-day period within which respondent must decide the claim under Section 112(C)¹² of the NIRC of 1997, as amended, respondent (as then petitioner) filed its prior Petition for Review¹³ before this Court to appeal the inaction of petitioner (as then respondent). The case was raffled to the Third Division¹⁴ and docketed as CTA Case No. 9154. 

⁷ Exhibit "P-1", id., Volume V, p. 2343.

⁸ Exhibit "P-2", id., p. 2361.

⁹ Exhibit "P-3", id., p. 2362.

¹⁰ Exhibit "P-4", id., Volume VIII, p. 3768.

¹¹ Exhibit "P-4-a", id., pp. 3769-3772.

¹² **SEC. 112. Refunds or Tax Credits of Input Tax.** –

...
(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.

¹³ Division Docket, Volume I, pp. 10-17.

¹⁴ The Third Division was then composed of Hon. Associate Justice Lovell R. Bautista (Ret.), as Chairperson, Hon. Associate Justice Esperanza R. Fabon-Victorino (Ret.), and Hon. Associate Justice Ma. Belen M. Ringpis-Liban, as Members.

After summons¹⁵ was served, petitioner filed his or her Answer¹⁶ on 27 October 2015.

On 16 February 2016, the case was set for Pre-Trial Conference¹⁷ but later on cancelled and reset.¹⁸ Prior to the actual Pre-Trial Conference, petitioner and respondent filed their respective Pre-Trial Briefs.¹⁹

At the Pre-Trial Conference proper, the Third Division granted both parties ten (10) days, or until 13 May 2016, within which to submit their Joint Stipulation of Facts and Issues (JSFI)²⁰ and the same was filed on 02 June 2016.²¹ Later, the Pre-Trial Order²² was issued on 12 July 2016, adopting the parties' JSFI, terminating the pre-trial, and setting the dates for the commissioning of the Independent Certified Public Accountant (ICPA) and the initial presentation of respondent's evidence.

In the hearing of 08 August 2016²³, Katherine O. Constantino (**Constantino**) was appointed as the Court-commissioned ICPA and she was directed to submit her report within 30 days therefrom.

In the trial that subsequently ensued, respondent presented its witnesses, namely: (1) Rachel Concepcion (**Concepcion**), respondent's Legal Entity Controller; and, (2) Constantino, the Court-commissioned ICPA.

On the witness stand, Concepcion identified her Judicial Affidavit²⁴ where she declared that: (1) respondent is an ROHQ in the Philippines which acts as shared services center and handles:

¹⁵ Division Docket, Volume I, p. 50.

¹⁶ Id., pp. 51-58.

¹⁷ See Notice of Pre-Trial Conference dated 28 October 2015, id., pp. 61-62.

¹⁸ See Resolution dated 15 February 2016, id., p. 79.

¹⁹ Petitioner's Pre-Trial Brief, id, pp. 64-66; Respondent's Pre-Trial Brief, id., Volume IV, pp. 1845-1854.

²⁰ See Resolution dated 11 May 2016, id., pp. 1859-1860.

²¹ Id., pp. 1873-1881.

²² Id., pp. 1893-1899.

²³ See Order dated 08 August 2016, id., pp. 1971-1972.

²⁴ Exhibit "P-11", Sworn Statement of Ms. Rachel Concepcion to Questions Propounded by Atty. Dikki Jean Y. Sian, id., Volume I, pp. 105-143.

(i) accounting and related controlling processes; (ii) developing and operating intercompany clearing house; and, (iii) accounting and head office reporting for non-regulated entities and product control; (2) respondent is engaged in zero-rated sales of services to nonresident foreign corporations (NRFCs), which are all part of the Deutsche Bank Aktiengesellschaft Group (**DB Group**); (3) as proof of the DB Group's NRFC status, respondent presented various service agreements, Company Profile Fact Sheets from AMInet (Deutsche Bank's own database), and SEC Certifications; (4) respondent incurred expenses for goods and services used in its zero-rated sales of services which resulted in the excess and/or unutilized input VAT of ₱28,938,050.29 arising from the 3rd quarter of CY 2013; (5) respondent filed an application for VAT refund or issuance of a TCC before BIR LTRAD 3 for the excess input VAT; and, (6) BIR failed to act on the administrative claim within the 120-day period.

On cross-examination²⁵, Concepcion declared that the AMInet, being an internal database of the DB Group, is updated semi-annually by the respective legal vehicle controllers of NRFCs (who are part of the DB Group). She also clarified that she has the authority to revise or amend petitioner's information (in the AMInet) and that she is the only one authorized (from the petitioner's company) to print the Company Profile Fact Sheets from AMInet. No redirect examination was conducted.

ICPA Constantino assumed the witness stand next. In her Judicial Affidavit²⁶ which was adopted as her direct testimony, she declared therein that: (1) she verified the composition of respondent's claim for input VAT refund; (2) she examined the supporting documents for the purchases, zero-rated sales, and the related inward remittances; (3) her findings are summarized in the ICPA Report²⁷ of 07 September 2016 filed before this Court; and, (4) based on the ICPA Report²⁸, out of ₱28,938,050.29 (claimed for refund), she recommended ₱18,003,985.42 as the allowable input VAT attributable to zero-rated sales.

²⁵ TSN dated 17 October 2016, pp. 12-18.

²⁶ Exhibit "P-13", Sworn Statement of Ms. Katherine O. Constantino to Questions Propounded by Atty. Bon Jeffrey M. Caluag, Division Docket, Volume V, pp. 2269-2279.

²⁷ Exhibit "P-14", id., pp. 1973-2263.

²⁸ Id., p. 1997.

No cross-examination was conducted.²⁹

After respondent had presented its testimonial evidence and upon being granted an extension of time³⁰, respondent filed its Formal Offer of Evidence³¹ (FOE) consisting of Exhibits “P-1” to “P-754”, inclusive of sub-markings on 22 December 2016. Upon receipt of petitioner’s Comment³², the Third Division issued a Resolution³³ denying some of the offered exhibits for failure to submit the originals, failure of the offered exhibits to correspond with the documents actually marked, for not being found in the records, and failure of the witnesses to identify them.³⁴

Dissatisfied, respondent filed an Omnibus Motion³⁵ wherein it prayed: (1) for another commissioner’s hearing; (2) for the recall of a witness to identify the exhibits; and, (3) to file a Supplemental FOE. After Third Division allowed the recall of petitioner’s witness and a commissioner’s hearing³⁶, respondent filed its Supplemental FOE³⁷ on 20 March 2018. With the comment of petitioner³⁸, the Third Division resolved to admit some of the previously denied exhibits.³⁹

²⁹ TSN dated 17 October 2016, p. 26.

³⁰ See Resolution dated 13 January 2017, Division Docket, Volume VIII, pp. 3679-3680.

³¹ Id., Volume V, pp. 2304-2342.

³² Filed on 03 January 2017, id., Volume VIII, pp. 3674-3676.

³³ Dated 16 May 2017, id., pp. 3683-3688.

³⁴ However, the admission of the following exhibits is DENIED:

1. Exhibits “P-3.8”, “P-3.12”, “P-3.17”, “P-5.11”, “P-5.57”, “P-6”, “P-6.19”, “P-9.20”, “P-9.26”, “P-9.40”, “P-107”, “P-128”, and “P-196”, for failure to submit the originals for comparison;
2. Exhibit “P-9.38”, for failure to submit the originals for comparison and failure of the exhibits formally offered and identified to correspond with the documents actually marked;
3. Exhibits “P-4”, “P-4-a”, “P-5.2”, “P-5.46”, “P-6.28”, “P-8.1”, “P-8.6”, “P-8.9”, “P-8.10”, “P-8.11”, “P-8.16”, “P-8.43”, “P-8.48”, “P-8.49”, “P-8.51”, “P-8.52”, “P-9.10”, “P-9.11”, “P-9.12”, “P-9.57”, and “P-18”, for failure of the exhibits formally offered and identified to correspond with the documents actually marked;
4. Exhibits “P-5.47”, “P-5.49”, “P-6.3”, “P-6.30”, “P-6.33”, “P-6.34”, “P-6.35”, “P-6.36”, “P-6.39”, “P-6.40”, “P-6.43”, “P-6.53”, and “P-9”, for not being found in the records; and,
5. Exhibits “P-6.54”, “P-6.55”, “P-6.56”, and “P-6.57”, for failure to identify and for not being found in the records.

³⁵ Filed on 05 June 2017, Division Docket, Volume VIII, pp. 3690-3696.

³⁶ See Commissioner’s Report for the hearing on 22 August 2017, id., pp. 3707-3710; Order dated 05 March 2018, id., pp. 3759-3760.

³⁷ Id., pp. 3761-3767.

³⁸ Filed on 21 March 2018, id., pp. 3895-3897.

³⁹ See Resolution dated 04 May 2018, id., pp. 3900-3904.

The Court admitted Exhibits “P-5.2”, “P-6.28”, “P-8.1”, “P-8.11”, “P-8.16”, “P-8.49”, “P-8.51”, “P-8.52” and “P-18”.

Later or during the hearing conducted on 14 August 2018, petitioner, through counsel, manifested that he or she will no longer present any evidence due to the BIR's failure to submit a report of investigation on the administrative claim.⁴⁰ Consequently, the Court ordered the parties to file their respective memoranda.

On 07 September 2018, petitioner filed his or her Memorandum⁴¹ while respondent filed its Memorandum⁴² on 15 October 2018. Subsequently, the Third Division submitted the case for decision.⁴³

On 04 October 2019, the Third Division rendered the Decision⁴⁴ denying respondent's Petition for Review. Originally, the Third Division found that respondent failed to prove that the sales of services were rendered and performed in the Philippines. Even after respondent filed its Motion for Reconsideration⁴⁵ (MR), the Third Division denied the same.⁴⁶

Aggrieved, respondent (as then petitioner) filed a Petition for Review⁴⁷ on 30 June 2020 before the Court *En Banc* to contest the Third Division's ruling in CTA Case No. 9154. The same was docketed as CTA EB No. 2249 entitled *Deutsche Knowledge Services Pte., Ltd. v. Commissioner of Internal Revenue*. Ultimately, the Court *En Banc* rendered the assailed Amended Decision of 01 June 2022⁴⁸ which found that Concepcion's un rebutted testimony sufficiently established that respondent's services are "other than processing, manufacturing, or repacking of goods", and these were rendered in the Philippines. Thus, the Court *En Banc* ordered the remand of the case to the Third Division for the determination of the other requisites for input VAT refund.

⁴⁰ See Order dated 14 August 2018, id., p. 3907.

⁴¹ Id., pp. 3908-3916.

⁴² Id., pp. 3923-3945.

⁴³ See Resolution dated 19 October 2018, id., p. 3947.

⁴⁴ Id., pp. 3950-3967.

⁴⁵ Filed on 28 October 2019, id., pp. 3986-3999.

⁴⁶ See Resolution dated 14 February 2020, id., pp. 4015-4023.

⁴⁷ Dated 30 June 2020, id., pp. 4028-4051.

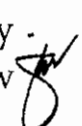
⁴⁸ Id., pp. 4094-4099.

In the *interim*, the Court reorganized the members of the Second and the Third Divisions pursuant to Administrative Circular No. 01-2022⁴⁹ dated 21 June 2022.

On 24 March 2023, the Special Third Division rendered the assailed Amended Decision⁵⁰ and ruled that: (1) respondent is a VAT-registered entity; (2) it timely filed its administrative and judicial claims for refund; (3) it is engaged in zero-rated sales of services to NRFCs; (4) however, out of the zero-rated sales of ₱1,931,914,361.46, only the amount of ₱1,377,347,640.67 is considered to have been derived from valid zero-rated sales; (5) the substantiated input VAT amounted to ₱21,433,670.06; and, (6) after attribution of the substantiated input VAT between VAT-able sales and zero-rated sales, deduction of the Output VAT still due, and the allocation of the remaining input VAT between valid zero-rated sales over total zero-rated sales, respondent (as petitioner) is entitled to the refund of ₱14,619,389.11.

Petitioner sought reconsideration of the assailed Amended Decision but to no avail.⁵¹ In its similarly assailed Resolution of 23 May 2023⁵², the Special Third Division denied petitioner's argument that the input VAT from purchases had to be directly attributable to the zero-rated sales to be considered as creditable and be available for refund.

Unsatisfied with the Special Third Division's rulings, petitioner filed the instant Petition for Review⁵³ before the Court *En Banc*.

In the Minute Resolution dated 04 July 2023⁵⁴, the Court *En Banc* ordered respondent to file comment to the said petition. On 26 July 2023, respondent filed his or her Comment (Re: Petition for Review 

⁴⁹ Reorganizing the Second and Third Divisions of the Court.

⁵⁰ Supra at notes 3 and 5.

⁵¹ See Petitioner's Motion for Partial Reconsideration (Re: Amended Decision promulgated 24 March 2023) filed on 02 May 2023, Division Docket, Volume VIII, pp. 4148-4157; Respondent filed its Comment (Re: Motion for Reconsideration dated April 28, 2023) on 16 May 2023, *id.*, pp. 4160-4169.

⁵² Supra at note 4.

⁵³ Supra at note 1.

⁵⁴ *Rollo*, p. 72.

dated June 2, 2023)⁵⁵ (**Comment**) thereto. On 07 August 2023, the Court *En Banc* submitted the instant case for decision.⁵⁶

ISSUE

Based on the arguments presented, the central issue for the Court *En Banc*'s resolution is —

WHETHER THE SPECIAL THIRD DIVISION ERRED IN PARTIALLY GRANTING RESPONDENT DEUTSCHE KNOWLEDGE SERVICES PTE. LTD.'S REFUND IN THE AMOUNT OF ₱14,619,389.11, REPRESENTING ITS EXCESS AND/OR UNUTILIZED INPUT VALUE-ADDED TAX (VAT) ATTRIBUTABLE TO ITS ZERO-RATED SALES FOR THE THIRD QUARTER (3rd) OF CALENDAR YEAR (CY) 2013.

ARGUMENTS

In support of its present petition, petitioner reiterates his or her previous argument in the Motion for Partial Reconsideration (**MPR**)⁵⁷ and declares that the law requires that creditable input taxes (subject of the refund) must be directly attributable to the zero-rated sales. However, as respondent's evidence fails to show the said direct attribution, the claim for refund must be denied.

Petitioner further elaborates that the input taxes on the purchases of good and services should undergo the chain of production and eventually be converted or at least form part of the finished products. Hence, the input taxes on unrelated purchases such as business entertainments, corporate events, and outside office meetings, must be excluded from the refund claim.

On the other hand, respondent counters that petitioner's arguments are a mere rehash of those raised in the MPR which were already addressed in the assailed Resolution. Thus, the instant petition 

⁵⁵ Id., pp. 73-82.

⁵⁶ See Minute Resolution dated 07 August 2023, id., p. 83.

⁵⁷ Supra at note 51.

does not warrant the reversal or modification of the Special Third Division's assailed Amended Decision.

Moreover, as regards the requirement of direct attribution, respondent posits that under Section 110(B)⁵⁸ of the NIRC of 1997, as amended, it only requires the excess input tax to be related to a zero-rated activity. Moreover, in Revenue Regulations (RR) No. 16-2005⁵⁹, a taxpayer-claimant is allowed to determine the proportionate share of input taxes between VAT-able, zero-rated and exempt sales if it cannot be ascertained which of the input taxes are directly attributable to the specific kind of sales.

RULING OF THE COURT EN BANC

Before going into the merits of the case, We deem it propitious to first determine whether the Court *En Banc* has jurisdiction over the present petition.

THE COURT EN BANC HAS
JURISDICTION OVER THE PRESENT
PETITION.

The Special Third Division issued the assailed Resolution denying petitioner's MPR on 23 May 2023. Petitioner received the said assailed Resolution on 02 June 2023.⁶⁰

Under Section 2(a)(1)⁶¹, Rule 4 in relation to Section 3(b)⁶², Rule 8 of the RRCTA, petitioner had 15 days from 02 June 2023, or until 

⁵⁸ SEC. 110. *Tax Credits.* –

...
(B) *Excess Output or Input Tax.* – ...

⁵⁹ Consolidated Value-Added Tax Regulations of 2005.

⁶⁰ See Notice of Resolution dated 25 May 2023, *rollo*, p. 65.

⁶¹ SEC. 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 Division 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[.] (Emphasis supplied)

⁶² *Supra* at note 2.

17 June 2023, within which to file its appeal before this Court. Accordingly, the petitioner timely filed this petition on 15 June 2023.⁶³

Given that the Court *En Banc* has jurisdiction over the present petition, We shall now proceed to discuss the merits thereof.

THE LAW DOES NOT REQUIRE
DIRECT ATTRIBUTABILITY OF THE
INPUT VALUE-ADDED TAX (VAT)
FROM THE PURCHASES TO THE
ZERO-RATED SALES.

Petitioner's lone argument on the alleged requirement of direct attributability of the input VAT on purchases to the zero-rated sales had already been addressed in the recent case of *Commissioner of Internal Revenue v. Cargill Philippines, Inc.*⁶⁴, where the Supreme Court explicitly declared that *no* such requirement exists under the law. The relevant portions state –

...

The jugular legal issue cast in this instant Petition is whether or not respondent, in its claim for refund of excess/unutilized input VAT, is required by law to prove *direct* attributability of its purchases or the input VAT to its zero-rated sales.

Petitioner posits that input VAT must be *directly* attributable to the zero-rated sales of the respondent in order to be refundable. Along this grain, it argues that the input VAT 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.

Petitioner is clutching at straws.

Section 112(A) of the Tax Code elucidates:

SECTION 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

⁶³ Supra at note 1.

⁶⁴ G.R. Nos. 255470-71, 30 January 2023; Citations omitted, emphasis, italics and underscoring in the original text.

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**: x x x *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.

Evidently, contrary to petitioner's contention, **the law does not require direct attributability** of the input VAT from the purchase of goods to the finished product whose sale is zero-rated, in order for such input VAT to be refundable. *Ubi lex non distinguit nec nos distinguere debemos*. When the law has made no distinction, the courts ought not to recognize any distinction.

Thence, it suffices that the purchase of goods, properties, or services upon which the input VAT is based, **can be attributed to the zero-rated sales**. This conclusion is further bolstered by Section 110(A)(1) of the Tax Code, which explicitly sets forth the sources of creditable input VAT:

SECTION 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, except automobiles, aircraft and yachts.

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

Verily, the law does not limit itself to purchases 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 a last-ditch effort to convince this Court to rule in its favor, petitioner zeroes in on its previous pronouncements in the 2007 and 2011 cases of *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue* —

The formal offer of evidence of the petitioner failed to include photocopy of its export documents, as required. There is no way therefore, in determining the kind of goods and actual amount of export sales it allegedly made during the quarter involved. This finding is very crucial when we try to relate it with the requirement of the aforementioned regulations that the input tax being claimed for refund or tax credit must be shown to be *entirely* attributable to the zero-rated transaction, in this case, export sales of goods. Without the export documents, the purchase invoice/receipts submitted by the petitioner as proof of its input taxes cannot be verified as being *directly* attributable to the goods so exported.

The foregoing cases, however, were decided on the basis of **Revenue Regulations No. 5-87, as amended by RR No. 3-88**, which *limited* the amount of refund or tax credit to the amount of VAT paid *directly and entirely* attributable to the zero-rated transaction during the period covered by the application for credit or refund.

Nevertheless, the Secretary of Finance, upon the recommendation of herein petitioner, issued **Revenue Regulations No. 14-2005** on June 22, 2005, which was later superseded by **Revenue Regulations No. 16-2005**. This latter BIR issuance has undergone a series of amendments, the most recent of which is **Revenue Regulations No. 21-2021**.

A meticulous study of these latter-day revenue regulations reveals that **the requirement for input VAT being claimed for refund to be *directly and entirely* attributable to the zero-rated sales was not retained**. The pertinent portion of the relevant regulation, **Revenue Regulations No. 16-2005**, is plain as day —

SEC. 4.106-5. *Zero-Rated Sales of Goods or Properties.*
— A zero rated sale of goods or properties (by a VAT-registered person) is a taxable transaction for VAT purposes, but shall not result in any output tax. However, the input tax on purchases of goods, properties, or services, **related to such zero-rated sale**, shall be available as tax credit or refund in accordance with these Regulations.



DECISION

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x ----- x

x x x

SEC. 4.108-5. *Zero-Rated Sales of Services.* —

(a) *In general.* — A zero-rated sale of service (by a VAT-registered person) is a taxable transaction for VAT purposes, but shall not result in any output tax. However, the input tax on purchases of goods, properties or services **related to such zero-rated sale** shall be available as tax credit or refund in accordance with these Regulations.

This Court **cannot** be bound by Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88, requiring *direct* attributability of input VAT *vis-à-vis* zero-rated sales.

All told, the CTA *En Banc* committed no reversible error in affirming the CTA Division's findings that respondent is entitled to the amount of PHP 1,779,377.16 representing its unutilized excess input VAT for the period covering March 1, 2003 to August 31, 2004 *attributable to its zero-rated sales* for the same period.

...

RECOMPUTATION OF THE
REFUNDABLE AMOUNT IS
WARRANTED AND IN ORDER.

While the Court *En Banc* agrees with the Special Third Division's disquisitions in the assailed Amended Decision⁶⁵ and assailed Resolution⁶⁶, We are, however, constrained to nonetheless rule that respondent is entitled to a *slightly higher* refundable amount of excess and unutilized input VAT attributable to valid zero-rated sales. We essay the reasons below.

In the assailed Amended Decision⁶⁷ promulgated on 24 March 2023, the Special Third Division computed the refundable amount of excess and unutilized input VAT attributable to valid zero-rated sales of **P14,619,389.11** in the following manner: 

⁶⁵ Supra at note 3.

⁶⁶ Supra at note 4.

⁶⁷ Supra at note 3.

Table 1. Substantiated or Valid Input VAT Allocation to VAT-able Sales

Total VAT-able Sales <i>per 3rd Quarterly VAT Return for CY 2013</i>	P7,733,505.67
Divided by Total Sales <i>per 3rd Quarterly VAT Return for CY 2013</i>	1,939,647,867.13
Multiplied by Substantiated or Valid Input VAT	21,433,670.06
Substantiated or Valid Input VAT allocated to VAT-able Sales	P85,457.47

Table 2. Substantiated or Valid Input VAT Allocation to Declared Zero-Rated Sales

Total Zero-Rated Sales <i>per 3rd Quarterly VAT Return for CY 2013</i>	P1,931,914,361.46
Divided by Total Sales <i>per 3rd Quarterly VAT Return for CY 2013</i>	1,939,647,867.13
Multiplied by Substantiated or Valid Input VAT	21,433,670.06
Substantiated or Valid Input VAT allocated to Declared Zero-Rated Sales	P21,348,212.58

Table 3. Computation of Output VAT Still Due

Output VAT	P928,020.68
Less: Substantiated or Valid Input VAT allocated to VAT-able Sales	85,457.47
Output VAT Still Due	P842,563.21

Table 4. Refundable Excess and Unutilized Input VAT Attributable to Valid Zero-Rated Sales

Substantiated or Valid Input VAT allocated to Declared Zero-Rated Sales	P21,348,212.58
Less: Output VAT Still Due	842,563.21
Excess and Unutilized Substantiated or Valid Input VAT allocated to Declared Zero-Rated Sales	P20,505,649.37
Divided by Declared Zero-Rated Sales	1,931,914,361.46
Multiplied by Valid Zero-Rated Sales	1,377,347,640.67
Excess and Unutilized Substantiated or Valid Input VAT attributable to Valid Zero-Rated Sales	P14,619,389.11

However, prior to the promulgation of the assailed Amended Decision, specifically on 05 July 2022, the Supreme Court issued its decision in *Chevron Holdings, Inc. (formerly Caltex Asia Limited) v. Commissioner of Internal Revenue*⁶⁸ (**Chevron**). In this case, the High Court provided pivotal guidelines for computing the refundable excess and unutilized input VAT attributable to zero-rated sales when the taxpayer-claimant is engaged in mixed transactions.

Fundamentally, the Supreme Court definitively held in *Chevron* that a VAT-registered taxpayer has two (2) options with respect to its input VAT attributable to zero-rated sales, it may: (1) charge the same

⁶⁸ G.R. No. 215159, 05 July 2022.

against output VAT from VAT-able sales, and claim for refund or issuance of a TCC any unutilized or "excess" input VAT; or, (2) claim the same for refund or issuance of a TCC in its entirety, viz:

...

[T]he input tax attributable to zero-rated sales may, at the option of the VAT-registered taxpayer, be: (1) charged against output tax from regular 12% VAT-able sales, and any unutilized or "excess" input tax may be claimed for refund or the issuance of tax credit certificate; or (2) claimed for refund or tax credit in its entirety. It must be stressed that the remedies of charging the input tax against the output tax and applying for a refund or tax credit are alternative and cumulative. Furthermore, the option is vested with the taxpayer-claimant. It goes without saying that the CTA, and even the Court, may not, on its own, deduct the input tax attributable to zero-rated sales from the output tax derived from the regular twelve percent (12%) VAT-able sales first and use the resultant amount as the basis in computing the allowable amount for refund. The courts cannot condition the refund of input taxes allocable to zero-rated sales on the existence of "excess" creditable input taxes, which includes the input taxes carried over from the previous periods, from the output taxes. These procedures find no basis in law and jurisprudence.

...

First, Section 112 (A) of the [NIRC of 1997, as amended] merely requires that the input tax claimed for refund or the issuance of tax credit certificate "has not been applied against [the] output tax[.]" Section 4.112-1 (a) of RR No. 16-2005 states that "[t]he input tax that may be subject of the claim shall exclude the portion of input tax that has been applied against the output tax." ...

...

The law and rules are clear and need no interpretation. The taxpayer only needs to prove *non-application or non-charging of the input-VAT subject of the claim*. There is nothing in the law and rules that mandate the taxpayer to deduct the input tax attributable to zero-rated sales from the output tax from regular twelve percent (12%) VAT-able sales first and only the "excess" may be refunded or issued a tax credit certificate. To reiterate, these remedies accorded by law to the taxpayer are alternatives. Requiring taxpayers to prove that they did not charge the input tax claimed for refund against the output tax is one thing; requiring them to prove that they have "excess" input tax after offsetting it from output tax is another. The former is essential to the entitlement of the refund under Section 112 (A); the latter is not. The reason is that a taxpayer who enjoyed a



lower (or zero) output tax payable because it deducted the input tax from zero-rated sales from the output tax cannot benefit twice by applying for the refund or tax credit of the same input tax used to reduce its output tax liability. Proof of non-charging the input tax subject to the refund or credit against the output tax is to avert double recovery.

...

...[B]efore the input tax from zero-rated sales may even form part of the total allowable or creditable input taxes to be charged against the output taxes and undergo the computation of "excess output or input tax" in Section 110 (B), it may already be removed from the formula once the taxpayer opted to claim the entire amount for refund.

These were echoed by Associate Justice Japar B. Dimaampao, opining that "nowhere in Section 112 (A) does it require that the taxpayer must first offset its input tax with any output tax before its claim for refund may prosper. Notably, the word "excess" does not even appear in this section. Instead, what recurs is the refundability of input tax that has not been applied against output tax or that has simply remained unused."

Moreover, the crediting of input taxes, including input tax attributable to zero-rated sales, from the output tax should be discretionary to the taxpayer as it is the taxpayer who is more interested in reducing its output tax payable. In fact, the legislature put a cap on the input tax that may be deducted from the output tax to generate cash flow for the government. Therefore, to require entities engaged in zero-rated transactions to charge their input tax from zero-rated sales against their output VAT from regular twelve percent (12%) VAT-able sales would defeat the very object of the tax measure, which is to generate more income for the government.

Second, Congress referred to "any input tax" in the proviso of Section 110 (B), which could mean one, some, or all input tax from zero-rated sales. Had the legislature intended the charging of the input tax attributable to zero-rated sales against the output tax as a preliminary step to the refund or issuance of a tax credit certificate, it would have used the phrase "excess input tax" in the provision.

To be sure, the lawmakers had contemplated the input tax attributable to zero-rated sales as an amount that will be refunded or credited and not offset against the output tax. ... 

...

If the Congress intended the crediting of input tax against the output tax as a condition precedent to the refund or issuance of a tax credit certificate, they could have stressed this during the deliberations. They did not. **Instead, it was clarified that when the taxpayer is engaged in both regular and zero-rated transactions, as in Chevron Holdings' case, the ratable portion allocable to zero-rated sales is "immediately refundable" or creditable.**

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.

...

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.**⁶⁹

...

Clearly from the foregoing, a VAT-registered taxpayer has the discretion to decide whether to charge its input VAT attributable to zero-rated sales against output VAT. The CTA cannot impose its own

⁶⁹

Supra at note 68; Citations omitted, italics in the original text, emphasis in the original text and supplied, and underscoring supplied.

methods for calculating the refund, such as compelling the crediting of input VAT against output VAT as a condition precedent to the refund or issuance of a TCC. This is especially true when the taxpayer-claimant opts to claim the input VAT attributable to zero-rated sales for a refund or issuance of a TCC in its entirety.

Furthermore, regardless of which option the taxpayer-claimant chooses, the Supreme Court's ruling in *Chevron* clarifies that since the taxpayer-claimant is requesting a refund of unutilized or unused input VAT from zero-rated sales (as opposed to the "excess" creditable input VAT from the output VAT), this amount is inherently immediately refundable, given that there is no related output VAT to offset it against. Therefore, the CTA's proper preliminary step in determining the refundable excess and unutilized input VAT attributable to valid zero-rated sales should be computing the ratable portion of the taxpayer-claimant's input VAT allocable to zero-rated sales, assuming the input VAT cannot be directly attributed to zero-rated activities.

It is only when the taxpayer-claimant chooses the first option, *i.e.*, to charge the input VAT attributable to zero-rated sales against output VAT from VAT-able sales, and claim for refund or issuance of a TCC any unutilized or "excess" input VAT, as what herein respondent opted for in this case, that the CTA may require the offsetting of such ratable portion of the taxpayer-claimant's input VAT attributable to zero-rated sales against "Output VAT Still Due" as a condition precedent to the refund or issuance of a TCC.

Besides clarifying the nature of a taxpayer-claimant's claim for a refund of input VAT attributable to zero-rated sales—that the option to choose either of the two (2) remedies belongs to the taxpayer-claimant and that the method for calculating the refundable amount depends on the chosen option—in *Chevron*, the Supreme Court also appears to have introduced a fresh perspective on the substantiation requirement for input VAT that can be credited against output VAT. It established that delving into input tax substantiation pertains to the assessment of potential deficiency output VAT, which is not within the Court's authority in a judicial claim for refund under Section 112(A) of the NIRC of 1997, as amended, *viz:* 

...

[T]he 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 [NIRC of 1997, as amended] 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.

It is true, in several cases, the Court has ruled that it will not grant a refund if the taxpayer has pending tax liability to the government because “[t]o award the refund despite the existence of deficiency assessment is an absurdity and a polarity in conceptual effects” and that “to grant the refund without determination of the proper assessment and the tax due would inevitably result in a multiplicity of proceedings or suits.” We explained in *Commissioner of Internal Revenue v. Court of Appeals*, to wit:

... If the deficiency assessment should subsequently be upheld, the Government will be forced to institute anew a proceeding for the recovery of erroneously refunded taxes which recourse must be filed within the prescriptive period of ten years after [the] discovery of the falsity, fraud[,] or omission in the false or fraudulent return involved. This would necessarily require and entail additional efforts and expenses on the part of the Government, impose a burden on a drain of government funds, and impede or delay the collection of much-needed revenue for governmental operations.

Thus, to avoid multiplicity of suits and unnecessary difficulties or expenses, it is both logically necessary and legally appropriate that the issue of the deficiency tax assessment against Citytrust be resolved jointly with its claim for [the] tax refund, to determine once and for all in a single proceeding the true and correct amount of tax due or refundable.

But in these cases, the taxpayer’s liability for deficiency taxes is related to and intertwined with the resolution of the claim for refund. Such a situation is not present here. The records do not show that Chevron Holdings is delinquent for output VAT or that it is being assessed for deficiency output tax in the first, second, third, and fourth quarters of the taxable year 2006.⁷⁰

...

Without qualifying as to the option chosen by the taxpayer-claimant, the Supreme Court held that it is not for the CTA, nor even the High Court, to rule on the sufficiency or substantiation of input taxes in a refund claim under Section 112(A) of the NIRC of 1997, as amended. The authority to determine and assess deficiency taxes rests with the BIR; hence, courts cannot substitute their judgment for that of the BIR (in assessing tax deficiencies) in judicial proceedings.

The foregoing declaration aligns with the ruling in *SMI-ED Philippines Technology, Inc. v. Commissioner of Internal Revenue*⁷¹ (SMI-ED), where the Supreme Court explained that, as a rule, the CTA has no power to make an assessment, directly or indirectly, as its jurisdiction over matters such as tax collection, tax refund, and others related to the national internal revenue taxes is appellate in nature. This implies that the BIR must have had a prior determination of the taxpayer-claimant's deficiency tax liability before the Court can adjudicate the same in a judicial proceeding for a refund claim. The relevant portions of the ruling in *SMI-ED* are quoted below:

...
The term "assessment" refers to the determination of amounts due from a person obligated to make payments. In the context of national internal revenue collection, it refers the determination of the taxes due from a taxpayer under the National Internal Revenue Code of 1997.

The power and duty to assess national internal revenue taxes are lodged with the BIR. ...

...

The Court of Tax Appeals has no power to make an assessment at the first instance. On matters such as tax collection, tax refund, and others related to the national internal revenue taxes, the Court of Tax Appeals' jurisdiction is appellate in nature.

...

Thus, the BIR first has to make an assessment of the taxpayer's liabilities. When the BIR makes the assessment, the taxpayer is allowed to dispute that assessment before the BIR. If the BIR issues a decision that is unfavorable to the taxpayer or if the BIR fails to act on a dispute brought by the taxpayer, the BIR's decision or

⁷¹ G.R. No. 175410, 12 November 2014; Citations omitted, emphasis and underscoring supplied.

inaction may be brought on appeal to the Court of Tax Appeals. The Court of Tax Appeals then acquires jurisdiction over the case.

When the BIR's unfavorable decision is brought on appeal to the Court of Tax Appeals, the Court of Tax Appeals reviews the correctness of the BIR's assessment and decision. **In reviewing the BIR's assessment and decision, the Court of Tax Appeals had to make its own determination of the taxpayer's tax liabilities. The Court of Tax Appeals may not make such determination before the BIR makes its assessment and before a dispute involving such assessment is brought to the Court of Tax Appeals on appeal.**

...

As earlier established, the Court of Tax Appeals has no assessment powers. In stating that petitioner's transactions are subject to capital gains tax, however, the Court of Tax Appeals was not making an assessment. It was merely determining the proper category of tax that petitioner should have paid, in view of its claim that it erroneously imposed upon itself and paid the 5% final tax imposed upon PEZA-registered enterprises.

The determination of the proper category of tax that petitioner should have paid is an incidental matter necessary for the resolution of the principal issue, which is whether petitioner was entitled to a refund.

The issue of petitioner's claim for tax refund is intertwined with the issue of the proper taxes that are due from petitioner. A claim for tax refund carries the assumption that the tax returns filed were correct. If the tax return filed was not proper, the correctness of the amount paid and, therefore, the claim for refund become questionable. In that case, the court must determine if a taxpayer claiming refund of erroneously paid taxes is more properly liable for taxes other than that paid.

...

Any liability in excess of the refundable amount, however, may not be collected in a case involving solely the issue of the taxpayer's entitlement to refund. **The question of tax deficiency is distinct and unrelated to the question of petitioner's entitlement to refund.** Tax deficiencies should be subject to assessment procedures and the rules of prescription. **The court cannot be expected to perform the BIR's duties whenever it fails to do so either through neglect or oversight. Neither can court processes be used as a tool to circumvent laws protecting the rights of taxpayers.**

...

In the subsequent case of *Commissioner of Internal Revenue v. Toledo Power Company*⁷² (**Toledo**), where *SMI-ED* was cited, the Supreme Court reiterated that courts do not possess assessment powers. Therefore, when the accuracy of VAT returns is not in question—such as in a claim for tax refund or credit under Section 112 of the NIRC of 1997, as amended, where the issue to be resolved is whether the taxpayer is entitled to a refund or credit of its unutilized input VAT—courts cannot issue assessments against taxpayers; they can only review the CIR's assessments. The relevant portion of the ruling states:

...

But while TPC's sales of electricity to CEBECO, ACMDC, and AFC are not zero-rated, we cannot hold it liable for deficiency VAT by imposing 10% VAT on said sales of electricity as what the CIR wants us to do.

As a rule, taxes cannot be subject to compensation because the government and the taxpayer are not creditors and debtors of each other. However, we are aware that in several cases, we have allowed the determination of a taxpayer's liability in a refund case, thereby allowing the offsetting of taxes.

In *Commissioner of Internal Revenue v. Court of Tax Appeals*, we allowed offsetting of taxes in a tax refund case because there was an existing deficiency income and business tax assessment against the taxpayer. We said that "[t]o award such refund despite the existence of that deficiency assessment is an absurdity and a polarity in conceptual effects" and that "to grant the refund without determination of the proper assessment and the tax due would inevitably result in multiplicity of proceedings or suits."

Similarly, in *South African Airways v. Commissioner of Internal Revenue*, we permitted offsetting of taxes because the correctness of the return filed by the taxpayer was put in issue.

In the recent case of *SMI-ED Philippines Technology, Inc. v. Commissioner of Internal Revenue*, we also allowed offsetting because there was a need for the court to determine if a taxpayer claiming refund of erroneously paid taxes is more properly liable for taxes other than that paid. We explained that the determination of the proper category of tax that should have been paid is not an assessment but is an incidental issue that must be resolved in order

⁷² G.R. Nos. 196415 & 196451, 02 December 2015; Citations omitted, italics in the original text and emphasis and underscoring supplied.

to determine whether there should be a refund. However, we clarified that while offsetting may be allowed, the BIR can no longer assess the taxpayer for deficiency taxes in excess of the amount claimed for refund if prescription has already set in.

But in all these cases, we allowed offsetting of taxes only because the determination of the taxpayer's liability is intertwined with the resolution of the claim for tax refund of erroneously or illegally collected taxes under Section 229 of the NIRC. A situation that is not present in the instant case.

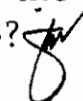
In this case, TPC filed a claim for tax refund or credit under Section 112 of the NIRC, where the issue to be resolved is whether TPC is entitled to a refund or credit of its unutilized input VAT for the taxable year 2002. And since it is not a claim for refund under Section 229 of the NIRC, the correctness of TPC's VAT returns is not an issue. Thus, there is no need for the court to determine whether TPC is liable for deficiency VAT.

Besides, it would be unfair to allow the CIR to use a claim for refund under Section 112 of the NIRC as a means to assess a taxpayer for any deficiency VAT, especially if the period to assess had already prescribed. As we have said, the courts have no assessment powers, and therefore, cannot issue assessments against taxpayers. The courts can only review the assessments issued by the CIR, who under the law is vested with the powers to assess and collect taxes and the duty to issue tax assessments within the prescribed period.

...

Indeed, since the CTA is precluded from making a judicial assessment for deficiency tax, it cannot determine and rule in a judicial claim for a refund under Section 112(A) of the NIRC of 1997, as amended, that the taxpayer-claimant had insufficient or unsubstantiated input VAT to cover its output VAT liability. This pronouncement inevitably impacts the Court's formula for calculating: (1) the "Output VAT Still Due", which is the net amount of output VAT payable after deducting the ratable portion of input VAT allocable to VAT-able sales; and, (2) ultimately, the "Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales."

The impact thus begs the question: what should be the proper basis for allocating input VAT—is it the "Declared Input VAT" (or the "Total Available Input VAT" for the period of claim) or the "Substantiated or Valid Input VAT" (after deducting disallowances)?



i. *The apportionment of input VAT for purposes of computing the “Output VAT Still Due” should be based on the “Declared Input VAT.”*

As regards the computation of “Output VAT Still Due”, the ‘no judicial assessment rule’ necessarily prevents the Court from reducing the ratable portion of input VAT allocable to VAT-able sales for failure of substantiation. Thus, instead of the “Substantiated or Valid Input VAT”, which is what the Court typically uses in apportioning input VAT based on sales volume, it should be the “Declared Input VAT” for the period of claim.

To reiterate, as held in *Chevron*, “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.” Given that the ratable portion of input VAT allocable to VAT-able sales is credited against output VAT to arrive at “Output VAT Still Due,” the Court is bound to apportion the taxpayer-claimant’s declaration of “Total Available Input VAT” in the relevant VAT Return for the period of claim. Reducing this amount to only the substantiated portion would be tantamount to an indirect judicial assessment for deficiency VAT.

On this note, since the Special Third Division used the “Substantiated or Valid Input VAT” (which is lower than the “Total Declared Input VAT” for the 3rd Quarter of CY 2013, after removing the unsubstantiated portion) in determining the ratable portion of input VAT allocable to VAT-able sales, there is an indirect judicial assessment for deficiency VAT to the extent of the difference of ₱34,082.41 as against the “should be” ratable portion of input VAT allocable to VAT-able sales using the “Declared Input VAT”, as shown below:

Table 1. Input VAT Allocation	Amount		Allocation Factor (c) = (a) / (b)	Allocated Declared Input VAT (e) = (c) x (d)		Allocated Substantiated Input VAT (g) = (c) x (f)		Difference (h) = (e) - (g)
Zero-Rated Sales	₱1,931,914,361.46		99.60%	₱29,862,370.89		₱21,348,212.59		₱8,514,158.30
VAT-able Sales	7,733,505.67		0.40%	119,539.88		85,457.47		34,082.41
Total Sales	₱1,939,647,867.13	(b)	100.00%	₱29,981,910.77	(d)	₱21,433,670.06	(f)	₱8,548,240.71

Table 2. Computation of Output VAT Still Due

Output VAT	₱928,020.68
Less: Declared Input VAT allocated to VAT-able Sales	119,539.88
Output VAT Still Due	₱808,480.80

Accordingly, the “Output VAT Still Due” (against which the ratable portion of input VAT allocable to zero-rated sales will be offset to arrive at the unutilized input VAT attributable to zero-rated sales) in this case should only be **₱808,480.80**, compared to ₱842,563.21 as computed by the Special Third Division.

In this case, the difference of ₱34,082.41, representing the amount of indirect judicial assessment for deficiency VAT, is somehow insignificant since respondent’s VAT-able sales constitute just 0.40% of the total sales, and the total disallowed input VAT is only about 28.51%⁷³ of the “Declared Input VAT.” However, it is important to note that this difference could potentially be significant if respondent had more VAT-able transactions and the Court had disallowed a larger portion of the “Declared Input VAT.”

Recognizing the fact that the Court’s longstanding practice of using the “Substantiated or Valid Input VAT,” which is typically lower than the “Declared Input VAT,” in apportioning input VAT for purposes of calculating the portion allocable to VAT-able sales inevitably leads to an indirect assessment for deficiency VAT without prior determination from the BIR (through an assessment or any other tax collection effort), the Court must conscientiously change its approach. This is particularly relevant in refund cases where the ratable portion of input VAT allocable to VAT-able sales is insufficient to cover the output VAT on VAT-able sales for the period of claim or where there is an “Output VAT Still Due.”

This impact is exacerbated when the amounts involved corresponding to VAT-able sales are significant and the disallowed input VAT, ascertained during judicial proceedings, is substantial. To avoid the risk of reducing the amount of creditable input VAT, which

⁷³ (Declared Input VAT of ₱29,981,910.77 less Substantiated or Valid Input VAT of ₱21,433,670.06) divided by ₱29,981,910.77.

unwittingly sanctions a judicial assessment for deficiency VAT—an outcome the Supreme Court sought to correct through its pronouncement in *Chevron*—the Court *En Banc* hereby changes the formula for computing the “Output VAT Still Due.”

This new formula or method of computing “Output VAT Still Due” ensures that the risk of judicially sanctioning an indirect deficiency VAT assessment is completely avoided, aligning the Court’s practice with the *ratio decidendi* of the Supreme Court’s ruling in *Chevron*.

- ii. *The apportionment of input VAT for purposes of computing the “Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales” should also be based on the “Declared Input VAT.”*

Regarding the computation of the “Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales”, the next logical step would be to determine how much of the ratable portion of input VAT allocable to zero-rated sales will be offset against the “Output VAT Still Due.”

This aspect of the computation raises a similar question about the proper basis for allocating input VAT. Should it be the “Declared Input VAT” (or the “Total Available Input VAT” for the period of claim), consistent with the computation of the “Output VAT Still Due,” or the “Substantiated or Valid Input VAT” (after deducting disallowances)?

The Court’s primary consideration for its longstanding practice of using the “Substantiated or Valid Input VAT” is that the evaluation of the merits of a refund claim should be limited to the substantiated portion of input VAT attributable to zero-rated sales. Since the “Substantiated or Valid Input VAT,” like the “Declared Input VAT,” is an undivided amount, the apportionment of input VAT based on sales volume should begin with this amount.



The Court must therefore examine the rationale of both approaches to determine whether the allocation of input VAT should be based on the declared amount or the substantiated amount after adjustments.

There are two (2) contrasting interpretations of the ‘no judicial assessment rule’ enunciated in *Chevron* insofar as the ratable portion of input VAT allocable to zero-rated sales is concerned.

The *first interpretation* treats the ‘no judicial assessment rule’ as **applicable to both options** of the taxpayer-claimant. Regardless of whether the input VAT attributable to zero-rated sales is charged against the “Output VAT Still Due,” the Court should not reduce this ratable portion for any disallowances, as this would also be tantamount to an indirect judicial assessment for deficiency VAT.

In other words, when determining the ratable portion of input VAT allocable to zero-rated sales that will be offset against the “Output VAT Still Due,” as sanctioned under Section 112(A)⁷⁴ of the NIRC of 1997, as amended, the Court should not examine the substantiation of the “Declared Input VAT” (or the “Total Available Input VAT” for the period of claim). Instead, the apportionment of input VAT based on sales volume between that allocable to VAT-able sales and zero-rated sales (and/or any other type of sales, as applicable) should consistently be based on the “Declared Input VAT.”

The resulting amount of “Excess and Unutilized Input VAT attributable to Declared Zero-Rated Sales”, in turn, may be reduced to equal the “Substantiated or Valid Input VAT” (after deducting disallowances), as only such portion corresponding to transactions “incurred or paid” may be refunded to the taxpayer-claimant pursuant to Section 112(A)⁷⁵ of the NIRC of 1997, as amended. 

⁷⁴ 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 [.]. (Emphasis and underscoring supplied)

⁷⁵ SEC. 112. *Refunds or Tax Credits of Input Tax.* —

Correspondingly, the basis for computing the refundable amount in relation to what the taxpayer-claimant is able to establish as valid zero-rated sales would be the lower amount between the resulting “Excess and Unutilized Input VAT attributable to Declared Zero-Rated Sales” and the “Substantiated or Valid Input VAT.” Notably, in the event that the lower amount is the “Substantiated or Valid Input VAT”, the whole amount is deemed attributable to zero-rated sales, *i.e.*, it will no longer be re-apportioned based on sales volume.

The final step would be to compute for the “Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales”, which is the amount corresponding only to valid zero-rated sales. The amount corresponding to the invalid zero-rated sales, although duly substantiated, is no longer refundable since under Section 112(A)⁷⁶ of the NIRC of 1997, as amended, the right to apply for refund or issuance of a TCC only covers valid zero-rated sales.

Following the *first interpretation*, the recomputed “Output VAT Still Due” of ₱808,480.80 shall be offset against the ratable portion of input VAT allocable to zero-rated sales using the “Declared Input VAT” amounting to ₱29,862,370.89, resulting in the “Excess and Unutilized Input VAT attributable to Declared Zero-Rated Sales” of ₱29,053,890.09. Since the “Substantiated or Valid Input VAT” (after deducting disallowances) is only ₱21,433,670.06, the whole amount is deemed attributable to zero-rated sales. Lastly, given that respondent was only able to establish valid zero-rated sales of ₱1,377,347,640.67 (or 71.29%) of the declared zero-rated sales of ₱1,931,914,361.46, the “Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales” would be ₱15,281,016.32. 

(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[.] (Emphasis and underscoring supplied)

⁷⁶ 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[.] (Emphasis and underscoring supplied)

Below is table summary of the computation of “Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales” under the *first interpretation*:

Table 3. Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales	
Declared Input VAT allocated to Declared Zero-Rated Sales	₱29,862,370.89
Less: Output VAT Still Due	808,480.80
Excess and Unutilized Input VAT attributable to Declared Zero-Rated Sales (a)	₱29,053,890.09
Substantiated or Valid Input VAT deemed attributable to Zero-Rated Sales (after deducting disallowances)⁷⁷ (b)	₱21,433,670.06
Substantiated or Valid Input VAT deemed attributable to Zero-Rated Sales [whichever is lower between (a) and (b)]	₱21,433,670.06
Divided by Declared Zero-Rated Sales per 3 rd Quarterly VAT Return for CY 2019	1,931,914,361.46
Multiplied by Valid Zero-Rated Sales per 3 rd Quarterly VAT Return for CY 2019	1,377,347,640.67
Refundable Excess and Unutilized Input VAT Attributable to Valid Zero-Rated Sales	₱15,281,016.32

On the other hand, the *second interpretation* considers the ‘no judicial assessment rule’ as **applicable only to the second option**, where the taxpayer claims the input VAT attributable to zero-rated sales for a refund or issuance of a TCC in its entirety. The rationale for this interpretation is that the factual milieu in *Chevron*, where therein 

⁷⁷ Out of the “Declared Input VAT” of ₱29,981,910.77 for the 3rd Quarter of CY 2013, only the amount of ₱21,433,670.06 pertains to validly substantiated input VAT, computed as follows:

Description	Amount
Purchase of Capital Goods not exceeding ₱1 million	₱205,098.03
Domestic Purchases of Goods Other than Capital Goods	144,210.40
Domestic Purchases of Services	28,759,080.71
Services Rendered by Non-Residents	509,431.35
Amortized Input Tax from Purchase of Capital Goods exceeding ₱1 million	364,090.28
Total Declared Input VAT	₱29,981,910.77
Less: Disallowances	
Found by the ICPA	7,556,589.69
Found by the Court	662,930.12
On amortized input VAT	328,720.90
Valid Input VAT	₱21,433,670.06

The “Substantiated or Valid Input VAT” pertains to the amount worth of invoices or receipts submitted by the taxpayer to the Court for examination and confirmed to be compliant with the substantiation requirement under Sections 113 and 237 of the NIRC of 1997, as amended.

taxpayer-claimant chose the second option, is not on all fours with refund cases where the taxpayer-claimant chose the first option.

Additionally, it can be argued that the CTA may examine the substantiation of the “Declared Input VAT” (or the “Total Available Input VAT” for the period of claim) in determining the ratable portion of input VAT allocable to zero-rated sales, as an exception to the ‘no judicial assessment rule,’ since this function is inherent in the Court’s authority to determine the merits of a refund claim anchored in Section 112(A) of the NIRC of 1997, as amended.

Since it is well settled that “a claim for tax refund or credit is similar to a tax exemption and should be strictly construed against the taxpayer. The burden of proof to show that he [or she] is ultimately entitled to the grant of such tax refund or credit rests on the taxpayer.”⁷⁸ It thus stands to reason that the taxpayer-claimant must overcome the burden of substantiating the “Declared Input VAT” for the period of claim as a whole, rather than only the amount claimed for refund or the net input VAT (after deducting the output VAT from the “Declared Input VAT” for the period of claim).

Failure of substantiation merits the outright denial of the unsubstantiated portion of the “Declared Input VAT” for the period of claim such that only the substantiated portion thereof or the “Substantiated or Valid Input VAT” is apportioned based on sales volume in determining the ratable portion of input VAT allocable to the taxpayer-claimant’s zero-rated sales.

Following the *second interpretation*, the recomputed “Output VAT Still Due” of ₱808,480.80 shall be offset against the ratable portion of input VAT allocable to *valid* zero-rated sales (using the “Substantiated or Valid Input VAT” of ₱21,433,670.06). Since zero-rated sales account for 99.60% of respondent’s total sales, the said ratable portion amounts to ₱21,348,212.59. Then, as respondent was only able to establish valid zero-rated sales of ₱1,377,347,640.67 (or 71.29%) of the declared zero-rated sales of ₱1,931,914,361.46, the resulting “Excess 

⁷⁸ *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue*, G.R. No. 190506, 13 June 2016, citing *BPI Leasing Corporation v. The Honorable Court of Appeals, et al.*, G.R. No. 127624, 18 November 2003.

and Unutilized Input VAT attributable to Valid Zero-Rated Sales” is ₱15,220,089.89. Ultimately, after offsetting thereto the “Output VAT Still Due” of ₱808,480.80, the “Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales” would be **₱14,411,609.09**.⁷⁹

Below is table summary of the computation of “Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales” under the *second interpretation*:

Table 3. Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales

Substantiated or Valid Input VAT allocated to Declared Zero-Rated Sales	₱21,348,212.59
Divided by Declared Zero-Rated Sales <i>per</i> 3 rd Quarterly VAT Return for CY 2013	1,931,914,361.46
Multiplied by Valid Zero-Rated Sales <i>per</i> 3 rd Quarterly VAT Return for CY 2013	1,377,347,640.67
Substantiated or Valid Input VAT allocated to Valid Zero-Rated Sales	₱15,220,089.89
Less: Output VAT Still Due	808,480.80
Refundable Excess and Unutilized Input VAT Attributable to Valid Zero-Rated Sales	₱14,411,609.09

In contrast to the Special Third Division’s approach, where the “Output VAT Still Due”⁸⁰ was first offset against the ratable portion of input VAT allocable to *declared* zero-rated sales before computing the refundable amount based on what respondent able to establish as valid zero-rated sales, resulting in “Refundable Excess and Unutilized Input VAT Attributable to Valid Zero-Rated Sales” amounting to ₱14,619,389.11⁸¹, the foregoing computation under the *second interpretation* is more consistent with the Supreme Court’s method of computing “Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales” in *Chevron*, citing Section 4.110-4⁸² of RR No. 16-2005⁸³, as amended by RR No. 4-2007⁸⁴:

⁷⁹ This amount is lower by ₱869,407.23 compared to the ₱15,281,016.32 refundable amount computed under the *first interpretation*.
⁸⁰ Computed at ₱842,563.21 since the apportionment of input VAT for purposes of computing the “Output VAT Still Due” was based on the “Substantiated or Valid Input VAT.”
⁸¹ This amount is higher by ₱207,780.02 compared to the ₱14,411,609.09 refundable amount computed under the *second interpretation*.
⁸² 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

...
***Computation of refundable
input tax attributable to zero-
rated sales when the taxpayer-
claimant is engaged in mixed
transactions.***

The manner of apportionment of the input tax is provided in
Section 4.110-4 of RR No. 16-2005, as amended by RR No. 4-2007[.]

...
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:

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. <i>The input tax attributable to zero-rated sales for the month shall be computed as follows:</i>	
Input tax directly attributable to zero-rated sale	— ₱ 3,000.00
Ratable portion of the input tax not directly attributable to any activity:	
$\frac{\text{Taxable sales (0\%)}}{\text{Total Sales}} \times \text{Amount of input tax not directly attributable to any activity}$	
$\frac{₱100,000.00}{400,000.00} \times ₱20,000.00$	— ₱ 5,000.00
Total input tax attributable to zero-rated sales for the month	₱ 8,000.00

83 Consolidated Value-Added Tax Regulations of 2005.
84 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
Valid zero-rated sales	5,762,011.70	4,669,743.23	66,091,331.71	79,131,661.58
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

Claims for the tax refund, like tax exemptions, are construed *strictissimi juris* against the taxpayer. However, when the claim for refund has a clear legal basis and is sufficiently supported by evidence, as in the present case, then the Court shall not hesitate to grant the refund.⁸⁵

...

As expressly stated in *Chevron*, “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.” This means that only the valid portion of the “Substantiated or Valid Input VAT allocated to Declared Zero-Rated Sales” may be applied for refund or issuance of a TCC and creditable against the “Output VAT Still Due.”

It must be stressed that the taxpayer-claimant should no longer benefit from the invalid portion in terms of applying or crediting it against “Output VAT Still Due,” as it should only be claimed as expense or recorded as part of an asset account subject to depreciation, whichever is applicable, as provided under Q-13 and A-13 of Revenue Memorandum Circular (RMC) No. 42-03⁸⁶, to wit:

⁸⁵ Supra at note 68; Citations omitted, italics in the original text, and emphasis in the original text and supplied.

⁸⁶ Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters.

...
Q-13: Should penalty be imposed on TCC application for failure of claimant to comply with certain invoicing requirements, (e.g., sales invoices must bear the TIN of the seller)?

A-13: Failure by the supplier to comply with the invoicing requirements on the documents supporting the sale of goods and services will result to the **disallowance of the claim for input tax** by the purchaser-claimant.

If the claim for refund/TCC is based on the existence of zero-rated sales by the taxpayer but it fails to comply with the invoicing requirements in the issuance of sales invoices (e.g. failure to indicate the TIN), its claim for tax credit/refund of VAT on its purchases shall be denied considering that the invoice it is issuing to its customers does not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales. Nonetheless, this treatment is without prejudice to the right of the taxpayer to charge the input taxes to the appropriate expense account or asset account subject to depreciation, whichever is applicable. Moreover, the case shall be referred by the processing office to the concerned BIR office for verification of other tax liabilities of the taxpayer.⁸⁷

...
It goes without saying that deducting the “Output VAT Still Due” from the “Substantiated or Valid Input VAT allocated to **Declared Zero-Rated Sales**,” rather than only from the “Substantiated or Valid Input VAT allocated to **Valid Zero-Rated Sales**” would result in a double tax benefit to the taxpayer-claimant insofar as “Substantiated or Valid Input VAT allocated to **Invalid Zero-Rated Sales**” is concerned, as a portion thereof may be charged against the “Output VAT Still Due” and only the remainder is claimed as expense (when the whole amount corresponding to invalid zero-rated sales should just be claimed as expense), as illustrated below:

Allocated to	Substantiated Input VAT Allocated to Zero-Rated Sales	Amount Offset Against Output VAT Still Due	Refundable Amount/ Amount Claimed as Expense	Tax Benefit (b) & (c)
	(a)	(b)	(c) = (a) - (b)	
Valid Zero-Rated Sales	₱15,220,089.89	₱576,401.91	₱14,643,687.98	1. Credited against the “Output VAT

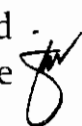
⁸⁷ Emphasis and underscoring supplied.

Allocated to	Substantiated Input VAT Allocated to Zero-Rated Sales	Amount Offset Against Output VAT Still Due	Refundable Amount/ Amount Claimed as Expense	Tax Benefit (b) & (c)
	(a)	(b)	(c) = (a) - (b)	
				Still Due"; and, 2. Applied for refund or tax credit
Invalid Zero-Rated Sales	6,128,122.70	232,078.89	₱5,896,043.81	1. Credited against the "Output VAT Still Due"; and, 2. Claimed as Expense
Declared Zero-Rated Sales	₱21,348,212.59	₱808,480.80	₱20,539,731.59	

Whereas, under the *second interpretation*, there is no such double tax benefit with respect to the "Substantiated or Valid Input VAT allocated to *Invalid Zero-Rated Sales*" since no amount thereof is offset against "Output VAT Still Due" or only the "Substantiated or Valid Input VAT allocated to *Valid Zero-Rated Sales*" is charged against the "Output VAT Still Due," as follows:

Allocated to	Substantiated Input VAT Allocated to Zero-Rated Sales	Amount Offset Against Output VAT Still Due	Refundable Amount/ Amount Claimed as Expense	Tax Benefit
	(a)	(b)	(c) = (a) - (b)	
Valid Zero-Rated Sales	₱15,220,089.89	₱808,480.80	₱14,411,609.09	1. Credited against the "Output VAT Still Due"; and, 2. Applied for refund or tax credit
Invalid Zero-Rated Sales	6,128,122.70	-	6,128,122.70	1. Claimed as Expense
Declared Zero-Rated Sales	₱21,348,212.59	₱808,480.80	₱20,539,731.59	

Notably, the computation of "Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales" under the *second interpretation* aims to rectify the above-illustrated double tax benefit by *only* granting a refund *if and only if* there is an excess of "Substantiated or Valid Input VAT allocated to *Valid Zero-Rated Sales*" after applying the "Output VAT Still Due."

Having discussed the merits and logic behind the *first* and *second interpretations* of the 'no judicial assessment rule' enunciated in *Chevron*, as it pertains to the ratable portion of input VAT allocable 

to zero-rated sales, We shall now determine which interpretation shall be applied.

This Court finds it more prudent to apply the *first interpretation*: the 'no judicial assessment rule' is **applicable to both options** of the taxpayer-claimant regarding input VAT attributable to zero-rated sales.

It bears noting that in declaring that it is not for the CTA to rule on the sufficiency or substantiation of input taxes in a refund claim under Section 112(A) of the NIRC of 1997, as amended, the Supreme Court did not expressly state that this rule applies only to the second option. In other words, the Supreme Court plainly ruled that the Court is precluded from inquiring into the nature and substance of a taxpayer's input VAT from various sources for the purpose of determining the ratable portion allocable to zero-rated sales and chargeable against the "Output VAT Still Due." This ruling was made without specifying any distinctions or exceptions (such as not applying the rule with respect to the first option as suggested by the *second interpretation*).

The principle of *stare decisis et non quieta movere* (to adhere to precedents and not to unsettle things which are established), as ordained in Article 8⁸⁸ of the Civil Code, enjoins adherence by this Court to doctrinal rules established by the Supreme Court in its final decisions⁸⁹, such as the recent pronouncement in *Chevron* regarding the proper formula for computing the "Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales." 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.⁹⁰ The High Court's interpretation of a statute becomes part of the law as of the date it was originally passed because such

⁸⁸ ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines.

⁸⁹ See *Benjamin G. Ting v. Carmen M. Velez-Ting*, G.R. No. 166562, 31 March 2009.

⁹⁰ *Id.*

interpretation simply establishes the contemporaneous legislative intent that the interpreted law carries into effect.⁹¹

Settled is the rule that where the law does not distinguish, courts should not distinguish.⁹² *Ubi lex non distinguit, nec nos distinguere debemos.*

Accordingly, since the Supreme Court's 'no judicial assessment rule' enunciated in *Chevron* already forms part of the law on the matter (i.e., Section 112[A] of the NIRC of 1997, as amended, which governs claims for refund or tax credit of excess and unutilized input VAT attributable to zero-rated or effectively zero-rated sales) as of its effective date, and, as aforesaid, this pronouncement does not distinguish between a taxpayer-claimant's two (2) options with respect to input VAT attributable to zero-rated sales, this Court should not make such a distinction and is thus constrained to apply the *first interpretation*.

Having thus established that there is a refundable excess input VAT attributable to valid zero-rated sales in the increased amount of **₱15,281,016.32**⁹³, following the pronouncements in *Chevron* (i.e., the 'no judicial assessment rule' regarding both the computation of "Output VAT Still Due" and the "Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales" under the *first interpretation*), and since this amount is well within the input VAT claim of **₱28,938,050.29** that remained unutilized until the same was deducted as part of the "VAT Refund/TCC Claimed" in respondent's Amended Quarterly VAT Return for the 2nd Quarter of CY 2015⁹⁴, respondent has sufficiently proven its entitlement to a refund or issuance of a TCC in the said increased amount.

It is a well-settled doctrine that a tax refund, which is in the nature of a tax exemption, should be construed *strictissimi juris* against the taxpayer. However, when the claim for refund has a clear

⁹¹ *Philippine Long Distance Telephone Company v. Abigail R. Razon Alvarez, et al.*, G.R. No. 179408, 05 March 2014.

⁹² *Pension and Gratuity Management Center (PGMC), v. AAA*, G.R. No. 201292, 01 August 2018.

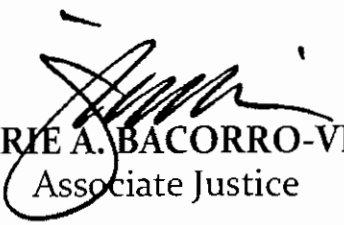
⁹³ Supra at pp. 29-30.

⁹⁴ Exhibit "P-3.14" (Line 23D), Division Docket, Volume V, pp. 2390-2391.

legal basis and is sufficiently supported by evidence, as in the present case, then the Court shall not hesitate to grant the refund.⁹⁵

WHEREFORE, premises considered, the present Petition for Review filed by petitioner Commissioner of Internal Revenue on 15 June 2023 is hereby **DENIED** for lack of merit. The Special Third Division's Amended Decision dated 24 March 2023 and Resolution dated 23 May 2023, respectively, in CTA Case No. 9154 entitled *Deutsche Knowledge Services, Pte. Ltd. v. Commissioner of Internal Revenue*, are hereby **AFFIRMED with MODIFICATION**. Accordingly, petitioner Commissioner of Internal Revenue is **DIRECTED** to refund respondent Deutsche Knowledge Services, Pte. Ltd. the amount of **₱15,281,016.32**, representing the latter's excess and unutilized input VAT attributable to its zero-rated sales for the 3rd Quarter of the calendar year ended 31 December 2013 or the period 01 July 2013 to 30 September 2013.

SO ORDERED.


JEAN MARIE A. BACORRO-VILLENA
Associate Justice

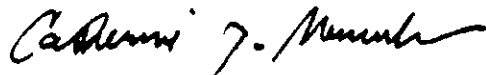
WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice

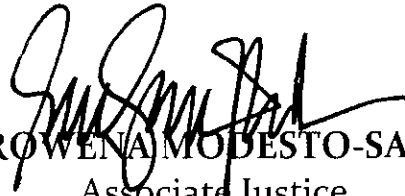

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

⁹⁵

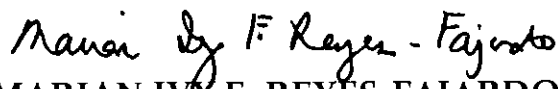
San Roque Power Corporation v. Commissioner of Internal Revenue, G.R. No. 180345, 25 November 2009; *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*, G.R. No. 180043, 14 July 2009.



(With Concurring Opinion)
CATHERINE T. MANAHAN
Associate Justice



MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice



MARIAN IVY F. REYES-FAJARDO
Associate Justice



LANEE S. CUI-DAVID
Associate Justice

ON LEAVE

CORAZON G. FERRER-FLORES
Associate Justice



HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.



ROMAN G. DEL ROSARIO
Presiding Justice

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

EN BANC

**COMMISSIONER OF
INTERNAL REVENUE,**

Petitioner,

CTA *EB* No. 2764

(CTA Case No. 9154)

Present:

-versus-

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

**DEUTSCHE KNOWLEDGE
SERVICES PTE. LTD.,**

Respondent.

Promulgated:

OCT 04 2024

X- - - - -X

CONCURRING OPINION

MANAHAN, J.:

The *ponencia* denied the *Petition for Review*, affirming with modification the assailed *Amended Decision* dated March 24, 2023 and *Resolution* dated May 23, 2023 on the following grounds:

First, the argument of petitioner Commissioner of Internal Revenue (“**CIR**”) that respondent Deutsche Knowledge Services Pte. Ltd. (“**Deutsche**”) failed to establish that the input value-added tax (“**VAT**”) is directly attributable to its zero-rated sales has already been settled in the case of *Cargill*.¹ *Cargill* held that the law does not require direct attributability of the input VAT from the purchase of goods to the finished product whose sale is zero-rated in order for such input VAT to be refundable.

¹ *Commissioner of Internal Revenue v. Cargill Philippines, Inc.*, G.R. Nos. 255470-71, January 30, 2023 [Per J. Dimaampao, Third Division]. 

Second, in light of the recent case of *Chevron*² which was promulgated prior to the assailed *Amended Decision*, the amount of input VAT refund must be re-computed. *Chevron* subscribed to the “**no judicial assessment rule**” and held that the substantiation of input VAT creditable against the output VAT is not for the Court to determine in a judicial claim for refund, but is for the CIR to determine in the proper administrative proceeding for deficiency tax assessment.

In making the re-computation, the *ponencia* presented two interpretations of the “no judicial assessment rule” insofar as the *ratable* portion of input VAT allocable to zero-rated sales is concerned.

The first interpretation prohibits the Court from reducing the ratable portion for any disallowances, as this would amount to an indirect judicial assessment for deficiency VAT. *Deutsche’s* entitlement to refund is hence computed as follows:

	Amount (PhP)	% Volume of sales
Declared VAT-able sales	7,733,505.67	0.3987%
Declared Zero-rated sales	1,931,914,361.46	99.6013%
Total sales	1,939,647,867.13	100%
Declared Input VAT	29,981,910.77	
Allocable to VAT-able sales	119,539.88	$29,981,910.77 \times 0.3987\%$
Allocable to Zero-rated sales	29,862,370.89	$29,981,910.77 \times 99.6013\%$
Output VAT	928,020.68	
Less: Declared Input VAT allocable to VAT-able sales	119,539.88	
Output VAT Still Due	808,480.80	
Declared Input VAT allocable to Zero-rated sales	29,862,370.89	
Less: Output VAT Still Due	808,480.80	
Unutilized Input VAT attributable to Declared Zero-rated sales	29,053,890.09	

² *Chevron Holdings, Inc. v. Commissioner of Internal Revenue*, G.R. No. 215159, July 05, 2022 [Per J. Lopez, En Banc]. 

Valid Input VAT ³ deemed attributable to Zero-rated sales	21,433,670.06	
Multiplied by: % Valid Zero-rated sales to Declared Zero-rated sales	71.29445% ⁴	
REFUNDABLE INPUT VAT	15,281,016.32	

The second interpretation permits the Court to examine the substantiation of input VAT in determining the ratable portion allocable to zero-rated sales, if the taxpayer does not claim for refund the input VAT attributable to zero-rated sales in its entirety. Thus, the “Output VAT Still Due” (P 808,480.80) is deducted from the ratable portion of input VAT allocable to *valid* zero-rated sales:

	Amount (PhP)
Valid Input VAT ⁵	21,433,670.06
Multiplied by: % of Zero-rated sales to total sales	99.6013%
Valid Input VAT allocable to Declared Zero-rated sales	21,348,212.59
Valid Input VAT allocable to Declared Zero-rated sales	21,348,212.59
Multiplied by: % of Valid Zero-rated sales to declared zero-rated sales	71.29445%
Valid Input VAT allocable to <u>Valid</u> Zero-rated sales	15,220,089.89
Less: Output VAT Still Due	808,480.80
REFUNDABLE INPUT VAT	14,411,609.09

The *ponencia* cogently explained how the second interpretation prevents the taxpayer-claimant from benefitting from the input VAT attributable to *invalid* zero-rated sales by charging such portion against the “Output VAT Still Due.” Although this involves a determination of tax liability, it can be argued that the “no judicial assessment rule” does not apply in this case since the taxpayer has the burden of substantiating its declared input VAT for the period of claim as a whole.

I concur.

The “no judicial assessment rule” in tax refund cases

³ Footnote 77, *Decision*, p. 30.
⁴ 1,377,347,640.67 / 1,931,914,361.46. See Table 4, *Decision*, p. 15. 

CONCURRING OPINION

CTA EB No. 2764 (CTA Case No. 9154)

Page 4 of 7

The “no judicial assessment rule” is succinctly defined in *SMI-ED Philippines Technology, Inc. v. Commissioner of Internal Revenue* (“SMI-ED”):⁵

The Court of Tax Appeals has no power to make an assessment at the first instance. On matters such as tax collection, tax refund, and others related to the national internal revenue taxes, the [CTA]’s jurisdiction is appellate in nature.

The “no judicial assessment rule” is firmly grounded on the basic principle of separation of powers. Under this principle, the enforcement of tax laws and all matters of tax administration, including assessment, collection, and refund, properly pertain to the executive branch. Hence, the power to assess national internal revenue taxes is statutorily lodged with the Bureau of Internal Revenue (“**BIR**”).⁶

The BIR’s power to assess is not mutually exclusive with the Court’s power to determine a taxpayer’s liability *after* the BIR makes its assessment and such assessment is brought before the Court. This much was elaborated in *SMI-ED*:

When the BIR’s unfavorable decision is brought on appeal to the Court of Tax Appeals, the Court of Tax Appeals reviews the correctness of the BIR’s assessment and decision. *In reviewing the BIR’s assessment and decision, the Court of Tax Appeals had to make its own determination of the taxpayer’s tax liabilities.*⁷

The Court’s power to make its own determination of the taxpayer’s liabilities is *not a function of tax administration*, but is *incidental to the exercise of judicial power*, i.e. the power “to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.”⁸ Such judicial power

⁵ G.R. No. 175410, November 12, 2014 [Per J. Leonen, Second Division].

⁶ TAX CODE, Sec. 2 and Sec. 6.

⁷ *Emphasis supplied.*

⁸ CONST., Article VIII, Sec. 1. 

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enables the Court to review, by appeal, decisions or inactions of the CIR in cases involving disputed assessments and tax refunds.⁹

In the case of tax *refunds*, the “no judicial assessment rule” prevents the Court from *finding liability for deficiency tax*. This is because such finding of liability is not precipitated by a BIR assessment, thereby constituting an “assessment at the first instance” by the Court. Thus, in *SMI-ED*, a refund case, the Supreme Court held that it was erroneous for the Court of Tax Appeals (“**CTA**”) to impose capital gains tax after finding that the taxpayer sold capital assets:

The BIR, however, did not initiate any assessment for deficiency capital gains tax. Since more than a decade have lapsed from the filing of petitioner's return, the BIR can no longer assess petitioner for deficiency capital gains taxes, if petitioner is later found to have capital gains tax liabilities in excess of the amount claimed for refund.

The Court of Tax Appeals should not be expected to perform the BIR's duties of assessing and collecting taxes whenever the BIR, through neglect or oversight, fails to do so within the prescriptive period allowed by law.

In *Commissioner of Internal Revenue v. Toledo Power Company*,¹⁰ the high court also held that while the taxpayer is not entitled to the refund because its sales of electricity do not qualify for VAT zero-rating, the Court cannot hold the taxpayer liable for the deficiency VAT by imposing such VAT on said sales of electricity.

It bears to note that the imposition of deficiency capital gains tax, deficiency VAT, or other deficiency taxes in excess of the amount claimed for refund is not intrinsic to the claim for refund. Distinction should therefore be made between “judicial assessment” and mere judicial determination of the amounts due for refund. While both ultimately delve into the correctness of the amount of taxes, the latter is limited to what the taxpayer has already voluntarily paid. *SMI-ED* is once again instructive:

⁹ Republic Act No. 9282, Sec. 7.

¹⁰ G.R. No. 196415, December 2, 2015 [Per J. Del Castillo, Second Division]. 

Taxes are generally self-assessed. They are initially computed and voluntarily paid by the taxpayer. The government does not have to demand it. If the tax payments are correct, the BIR need not make an assessment.

An assessment involves a demand to pay the correct amount of taxes due; a judicial determination of a refund claim does not. Courts cannot make such demand on a taxpayer, the enforcement of tax laws being within the exclusive province of the executive branch. Thus, in a refund case, since the tax has already been paid, the CTA's appellate jurisdiction is limited to reviewing the merits of the taxpayer's claim through the proper interpretation and application of tax laws. This necessarily entails inquiring into whether the taxpayer has complied with the legal requisites for entitlement to refund. For instance, in input VAT refunds, the Tax Code requires that the input VAT claimed must be evidenced by a VAT invoice,¹¹ be attributable to zero-rated sales by a VAT-registered person and in excess of the output VAT at the end of the taxable quarter,¹² and not applied against output tax.¹³

When the Court makes a disallowance in a refund case, it is not therefore making a deficiency tax assessment. The tax has already been paid. Such disallowance is simply an inescapable consequence of the Court's finding that under pertinent law, regulations, and jurisprudence, the taxpayer fell short of substantiating its claim. After all, the long-standing doctrine is that the burden of proof rests on the taxpayer to establish its right to deductions, refunds, or exemptions¹⁴ In actions for tax refund, not only is the law construed strictly against the taxpayer; the pieces of evidence entitling it thereto are also strictly scrutinized and must be duly proven.¹⁵

***Duty to adhere to precedent
under the principle of stare
decisis***

¹¹ Sec. 110(A)(1).

¹² Sec. 110(B).

¹³ Sec. 112(A).

¹⁴ *Thunderbird Pilipinas Hotels and Resorts, Inc. v. Commissioner of Internal Revenue*, G.R. No. 211327, November 11, 2020 [Per J. Leonen, Third Division].

¹⁵ *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008 [Per J. Velasco, Jr., Second Division]. 

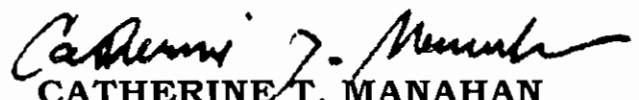
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In applying nonetheless the first interpretation, the *ponencia* considered that *Chevron* applied the “no judicial assessment rule” without distinction in refund cases, whether the taxpayer claims its input VAT attributable to zero-rated sales for refund in its entirety or charges the same against its output VAT from VAT-able sales. The application of the first interpretation is more faithful to the established principles of *stare decisis et non quieta movere* (to adhere to precedents and not unsettle things established) and *ubi lex non distinguit, nec nos distinguere debemus* (where the law does not distinguish, courts should not distinguish).

I concur.

Courts must follow earlier decisions of the Supreme Court when another case involving exactly the same point at issue arises again. Adherence to precedent ensures the consistent and predictable development of judicial decisions. It is crucial in fostering reliance in the judicial system. More importantly, it is “a gross injustice to decide alternate cases on opposite principles.”¹⁶ Adherence to precedent is necessary to promote the even-handed administration of justice.


CATHERINE T. MANAHAN

Associate Justice

¹⁶ *Quinto v. Commission on Elections*, G.R. No. 189698, February 22, 2010 [Per C.J. Puno, *En Banc*]. 