THIRD DIVISION

[G.R. Nos. 255324 & 255353. April 12, 2023]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. TOLEDO POWER COMPANY, RESPONDENT.

D E C I S I O N

DIMAAMPAO, J.:

Via this Petition for Review on *Certiorari*,[1] the Commissioner of Internal Revenue (petitioner) assails the Decision[2] and the Resolution[3] of the Court of Tax Appeals (CTA) *En Banc*, affirming the adjudication of its Special First Division[4] and denying the motion for reconsideration thereof, respectively, in the consolidated cases docketed as CTA EB Nos. 1990 and 2000. The CTA Special First Division ordered the refund or the issuance of a tax credit certificate in the amount of P399,550.84 in favor of Toledo Power Company (respondent), representing its unutilized input value-added tax (VAT) for the first quarter of taxable year (TY) 2003.

Stripped of unnecessary verbiage, the facts of the case follow:

Petitioner is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) empowered to perform the duties of its office, including the power to decide refunds of internal revenue taxes.[5]

Respondent, on the other hand, a general partnership duly registered and existing under Philippine laws, is engaged in the business of power generation and the subsequent sale of generated power to the National Power Corporation, the Cebu Electric Cooperative III, and the Visayan Electric Company, Inc. As a VAT taxpayer, respondent is registered with the BIR, which released to it Tax Identification Number 003-883-626 and Certificate of Registration Revenue District Office (RDO) Control No. 94-083-000300.[6]

Ruling of the CTA First Division

On April 22, 2005, respondent filed with the CTA Special First Division a judicial claim for

the refund or issuance of tax credit certificate in the amount of P3,907,783.80. This represented the unutilized input VAT from its domestic purchases of goods and services and importation of goods attributable to zero-rated sales for the *first* quarter of TY 2003. The petition was docketed as CTA Case No. 7233.[7] As it happened, the CTA Special First Division initially granted respondent's claim for refund or issuance of a tax credit certificate.[8] However, upon motion for reconsideration of both parties, respondent's petition was dismissed pursuant to the Court's pronouncements in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.* (*Aichi*).[9]

Ruling of the CTA En Banc

Before the CTA *En Banc*, respondent sought recourse on the dismissal of its petition.[10] However, the CTA *En Banc* affirmed the ruling of its Special First Division applying the case in *Aichi* that the petition was prematurely filed.[11]

Respondent's bid for a reconsideration of the foregoing having been denied, it filed a petition for review before the Court praying for the reversal of the CTA *En Banc*'s disposition.[12]

In disposing the case, the Court partially granted respondent's petition and remanded the case to the CTA Special First Division for computation of refundable input VAT, *viz*.—

> **WHEREFORE**, premises considered, the Petition in G.R. No. 195175 is **DENIED**, while the Petition in G.R. No. 199645 is **PARTLY GRANTED**. Accordingly, the case in G.R. No. 199645 is hereby **REMANDED** to the Court of Tax Appeals insofar as the Petition in [CTA] Case No. 7233, for the purpose of the computation of the refundable input VAT attributable to the zero-rated or effectively zero-rated sales of [respondent] for the first quarter of 2003.
>
> **SO ORDERED.**[13]

Remand to the CTA Special First Division and
Appeal to the CTA *En Banc*

Accordingly, the CTA *En Banc* remanded CTA Case No. 7233 to its Special First Division for

the computation of respondent's input VAT attributable to zero-rated or effectively zero-rated sales for the first quarter of 2003.[14]

On July 13, 2018, the Special First Division rendered an Amended Decision[15] partially granting respondent's claim for refund in the amount of P399,550.84, and disposed in this wise:

> **WHEREFORE**, in light of the foregoing considerations, the Petition for Review filed by *[respondent] vs. [petitioner]* in CTA Case No. 7233 is hereby **PARTIALLY GRANTED**. Accordingly, the [petitioner] is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of [respondent] in the amount of **THREE HUNDRED NINETY-NINE THOUSAND FIVE HUNDRED FIFTY PERSOS AND EIGHTY-FOUR CENTAVOS ([PHP] 399,550.84)**, representing its unutilized input VAT first quarter of taxable year 2003.
>
> **SO ORDERED.**[16]

Displeased, both parties moved for partial reconsideration,[17] which the CTA Third Division denied for lack of merit, *viz*.:

> "**WHEREFORE**, premises considered, [petitioner]'s **Motion for Partial Reconsideration (Re: Decision promulgated 13 July 2018)** and [respondent]'s **Motion for Partial Reconsideration (Re: Amended Decision dated July 13, 2018)** are **DENIED** for lack of merit.
>
> **SO ORDERED.**"[18]

Unruffled, both parties elevated the case to the CTA *En Banc*, docketed as CTA EB Nos. 1990 and 2000. Eventually, the cases were consolidated.[19]

In the impugned Decision, the CTA *En Banc* decreed, *inter alia*, that there was no cogent reason to disturb the findings of the CTA Division. Thus, the consolidated petitions were denied—

> **WHEREFORE**, the Petitions for Review are **DENIED** for lack of merit. The

> Amended Decision dated July 13, 2018 and Resolution dated December 19, 2018 are **AFFIRMED**.
>
> **SO ORDERED.**[20]

Petitioner moved anew for the reconsideration of the foregoing Decision, which the CTA *En Banc* ultimately denied in the challenged Resolution.[21]

ISSUES AND ARGUMENTS

Through the instant Petition, petitioner raises issues, which can be summed in two:

> *One*, did the CTA *En Banc* correctly interpret and apply the law and jurisprudence to the case at bench?
>
> *Two*, did respondent present sufficient evidence for the grant of tax refund or issuance of a tax credit certificate?[22]

Petitioner contends that the CTA *En Banc* erred in holding that respondent established its entitlement to P399,550.84 worth of unutilized input tax for the first quarter of 2003. Section 112 of the Tax Reform Act of 1997[23] (Tax Code) does not dispense with the requirement that unutilized input taxes be directly attributable to a taxpayer's zero-rated sales. Here, respondent had the burden of establishing the attributability of its unutilized input tax to its zero-rated sales transactions in order to qualify for a tax refund or credit under Section 112 of the Tax Code. Moreover, existing laws at the time respondent applied for refund of its alleged unutilized input tax required direct and entire attribution to its zero-rated sales.[24] To bolster its claim, petitioner invokes the Court's rulings in *Atlas Consolidated Mining and Development Corporation v. CIR*[25] (*Atlas Case*) and *CIR v. Team Sual Corporation*[26] (*Team Sual Case*).[27]

For its part, respondent posits that the CTA *En Banc* correctly upheld that law does not require a claimant for refund or tax credit to prove that the input tax is directly attributable to its zero-rated transactions and which are directly attributable to its taxable transactions. In any case, the determination of its entitlement to refund of input tax is a question of fact that is beyond the scope of a Petition for Review on *Certiorari* under Rule 45 of the Rules of

Court.[28]

THE COURT'S RULING

The Petition is bereft of merit.

Preliminarily, the Court emphasizes that it is not a trier of facts. Only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court.[29] Questions of fact are generally proscribed.[30]

A petition raising questions of law is one which raises doubts as to what the law is on a certain state of facts as opposed to a petition raising a question of fact which occurs when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them.[31]

In claims for tax refunds, this Court distinguished a question of law from a question of fact as follows:

> [xxx] the proper interpretation of the provision on tax refund that *does not* call for an examination of the probative value of the evidence presented by the parties-litigants is a *question of law*. Conversely, it may be said that if the appeal essentially calls for the re-examination of the probative value of the evidence presented by the appellant, the same raises a *question of fact*. Often repeated is the distinction that there is a question of law in a given case when doubt or difference arises as to what the law is on a certain state of facts; there is a question of fact when doubt or difference arises as to the truth or falsehood of alleged facts.
>
> Verily, the sufficiency of a claimant's evidence and the determination of the amount of refund, as called for in this case, are *questions of fact*, which are for the judicious determination by the CTA of the evidence on record.[32]

Mixed questions of fact and law are raised in the case at bench. For one, whether respondent presented sufficient evidence for the grant of tax refund or issuance of a tax credit certificate is a question of fact. For another, the issue on the correct interpretation

and application of law and jurisprudence is a question of law.

As to the question of law

The Court emphasizes that the applicable law to the instant Petition is the Tax Code in view of the principle of prospective application of tax laws.[33] Here, respondent's claim for tax refund and issuance of tax credit certificate of its unutilized input taxes for the first quarter of TY 2003 was filed with the CTA on April 22, 2005. Meanwhile, the amendments brought forth by Republic Act (RA) No. 9337[34] took effect on July 1, 2005 or more than two months after respondent filed the judicial claim subject of this case. Thusly, the instant Petition shall be examined based on the parameters of the Tax Code, prior to any amendments brought by RA No. 9337, and its effective implementing rules and regulations.

Section 112(A) of the Tax Code provides for the requirements for refund and tax credits of input taxes, *viz*.—

> 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 close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the an1ount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

Elsewise stated, a VAT-registered person engaged in zero-rated or effectively zero-rated sales may apply for a claim of refund or issuance of tax credit certificate for its creditable input tax due or paid attributable to such sales. However, the input taxes must have not been applied to any output taxes. Moreover, the application or claim must be made within two years after the close of the quarter when the sales were made. Mere semblance of

attribution to the zero-rated or effectively zero-rated sales would suffice.

Contrary to petitioner's allegation, the Tax Code does not require direct and entire attribution of input taxes to the zero-rated or effectively zero-rated sales before it may be made subject of a tax refund or claim for tax credit certificate. In fact, the law only mentions the phrase "directly and entirely" in reference to mixed transactions or in cases where the taxpayer is engaged in both zero-rated or effectively zero-rated sales *and* VAT-taxable or VAT-exempt sales—such that input taxes which cannot be directly and entirely attributed to specific transactions shall be allocated based on the sales volume of each transaction.

The word *attribute* means to explain something by indicating a cause.[35] Thus, when the law states that the input VAT must be *attributable* to the zero-rated or effectively zero-rated sales, it simply means that the input VAT must be incurred on a purchase or importation which causes or relates to the zero-rated or effectively zero-rated sales but not necessarily a part of the finished goods subject of such sales.

Based on this parameter, the input taxes of taxpayers engaged purely in either zero-rated or effectively zero-rated transactions are presumably attributable to the zero-rated or effectively zero-rated activity as they are not engaged in any other category for VAT purposes. All its purchases of goods and services are made in relation to or caused by its zero-rated or effectively zero-rated activities. Otherwise, how else would the taxpayer utilize its purchase but for its main activity which, incidentally in this case, is a zero-rated or effectively zero-rated transaction? The remaining requirement for it to claim refund or tax credit certificate for unutilized input tax are the documentary requirements and the period within which the same must be filed.

Meanwhile, taxpayers engaged in mixed transactions must first categorize its input taxes. Those which can be *directly and entirely* attributed to VAT-taxable transactions, VAT-exempt transaction, zero-rated transactions, and effectively zero-rated transactions shall first be applied to the respective output tax resulting from such transaction. Thereafter, residual input taxes, or input tax which "cannot be directly and entirely attributed to any one of the transactions, [xxx] shall be allocated to any one of the transactions [xxx] proportionately on the basis of the volume of sales." Simply stated, even if the input VAT cannot be *directly* and *entirely* allocated in any of these transactions, the taxpayer may still apply the input VAT proportionately based on the volume of the transactions. This is so because requirement of direct and entire attributability only applies in mixed transactions and only to the extent that input taxes can be attributed as a particular transaction.

This interpretation is further bolstered when juxtaposed with the definition of creditable input taxes under Section 110 of the Tax Code and the effective revenue regulations at the time.

Section 110 of the Tax Code provides:

> **Section 110.** ***Tax Credits.*** **—**
>
> b. ***Creditable Input Tax.*** **—**
>
> (b) 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:
>
> (b) Purchase or importation of goods:
>
> (b) 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.
>
> (2) The input tax on domestic purchase of goods or properties shall be creditable:
>
> (b) To the purchaser upon consummation of sale and on importation of goods or properties; and
>
> (b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.
>
> Provided, that the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code shall be spread evenly over the a month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (P1,000,000): Provided, however, That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: Provided, further, That the amortization of the input VAT shall only be allowed until December 31, 2021 after which taxpayers with unutilized input VAT on capital goods purchased or imported shall be allowed to apply the same as scheduled until fully utilized: Provided, finally, That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or free.

> (3) A VAT-registered person who is also engaged in transactions not subject to the value-added tax shall be allowed tax credit as follows:
>
> (b) Total input tax which can be directly attributed to transactions subject to value-added tax; and
>
> (b) A ratable portion of any input tax which cannot be directly attributed to either activity.
>
> The term "input tax" means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. It shall also include the transitional input tax determined in accordance with Section 111 of this Code.
>
> The term "output tax" means the value-added tax due on the sale or lease of taxable goods or properties or services by any person registered or required to register under Section 236 of this Code.

Contrary to petitioner's submission, creditable input taxes go beyond taxes on purchases of goods that form part of the finished product of the taxpayer or those which are directly used in the chain of production. The Tax Code did not limit creditable input taxes to those incurred on purchases which ultimately find its way to taxpayer's finished products for sale. Input taxes incurred on other purchases may still be credited against output tax liability. Despite not forming part of the finished goods, Section 110 treats as creditable those input tax due from or paid in the course of their trade or business on the importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. Surely, even if the purchased goods do not find their way into the taxpayer's finished product, the input tax incurred therefrom can still be credited against the output tax if it is (1) incurred or paid in the course of the VAT-registered taxpayer's trade or business, and (2) supported by a VAT invoice issued in accordance with the invoicing requirements of the law.

Along this grain, the Court takes this opportunity to clarify its earlier rulings in *Atlas*[36] and *Team Sual*[37] which petitioner cites in support of its position.

In *Atlas*, petitioner Atlas Consolidated Mining and Development Corporation (Atlas) applied for a tax refund or a tax credit certificate with herein petitioner in the amount of P842,336,291.60 representing its excess VAT credit of the fourth quarter of 1994. On the same date, it also filed a claim for refund with the CTA.

As it happened, the CTA denied Atlas' claim for failure to comply with the documentary requirements under Section 16 of Revenue Regulations No. 5-87[38], as amended by Revenue Regulations No. 3-88.[39] Upon reconsideration, the CTA allowed Atlas to present additional documents together with its proof of non-availment for prior and succeeding quarters of the input VAT subject of its claim for refund. Still and all, the CTA denied the claim and ruled that Atlas failed to substantiate its claim that it has not applied its alleged excess input taxes to any of its subsequent quarter's output tax liability.

Atlas elevated its case to the Court *via* a petition for review on *certiorari* insisting that it submitted pieces of evidence other than those required by law which would establish the existence of the input VAT and that the same had not been applied to its output tax liability. In denying the petition, the Court, not being a trier of facts, deferred to the factual findings of the CTA and the Court of Appeals, *viz*. —

> In the present case, petitioner is basically asking this Court to review the factual findings of the CTA and the CA. Petitioner insists that it had presented the necessary documents or copies thereof with the CTA that would prove that it is entitled to a tax refund. [xxx] Again, citing the earlier case of *Atlas Consolidated Mining and Development Corporation v. CIR*, this Court has expounded the nature and bases of claiming tax refund[.]
>
> x x x x
>
> As to the evidence that must be presented, the provisions of the pertinent laws provide:
>
> > Section 106, Tax Code
> >
> > *Refunds or tax credits of input tax*. — (a) Any VAT-registered person, whose sales are 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 creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in case of zero-rated sales under Section 100 (a) (2) (A) (I), (ii) and (b) and Section 102 (b) (1) and (2), the acceptable foreign

currency exchange proceeds thereof have been duly accounted for in accordance with the regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

Section 16 of Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88, dated April 7, 1988

A photocopy of the purchase invoice or receipt evidencing the value added tax paid shall be submitted together with the application. The original copy of the said invoice/receipt, however, shall be presented for cancellation prior to the issuance of the Tax Credit Certificate or refund. In addition, the following documents shall be attached whenever applicable:

1. Export Sales

i) Photocopy of export document showing the amount of export, the date and destination of the goods exported. With respect to foreign currency denominated sale, the photocopy of the invoice or receipt evidencing the sale of the goods, as well as the name of the person to whom the goods were delivered.

ii) Statement from the Central Bank or any of its accredited agent banks that the proceeds of the sale in acceptable foreign currency has been inwardly remitted and accounted for in accordance with applicable banking regulations.

x x x x

In all cases, the amount of refund or tax credit that may be granted shall be limited to the amount of value-added tax (VAT) paid directly

and entirely attributable to the zero-rated transaction during the period covered by the application for credit or refund.

The CTA, applying the abovementioned rules, in its Decision dated August 24, 1998, came out with the following factual findings:

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.

Lastly, We cannot grant petitioner's claim for credit or refund of input taxes due to its failure to show convincingly that the same has not been applied to any of its output tax liability as provided under Section 106 (a) of the Tax Code. There is no evidence to show that the amount herein claimed for refund when applied for on January 25, 1996 has not been priorly or thereafter applied to its output tax liability.

The above factual findings of the CTA were even bolstered when it granted petitioner's motion for reconsideration allowing petitioner to submit the necessary documents and other pieces of evidence, so as to comply with the requirements provided for by law. However, despite such allowance, petitioner still failed to comply. Thus, in its Resolution dated June 21, 2000, the CTA finally disposed the case by ruling that:

The Court finds and so holds that Petitioner failed again to present proof that it has not applied the alleged excess input taxes to any of its subsequent quarter's output tax liability. In this Court's decision dated August 24, 1998, We already mentioned that petitioner failed to convince us that its input taxes have not been applied to any of its

> output tax liability as provided under Section 106 (a). Now on its second opportunity to substantiate its claim, Petitioner again failed to prove this particular allegation. Petitioner merely presented in evidence the following documents to show that it has not applied the amount of P4,534,933.74, subject of the claim, to its 1994 first quarter output tax liability[.]
>
> x x x x
>
> The above factual findings were affirmed and accorded respect by the CA. Nevertheless, petitioner insists that it has submitted documents and other pieces of evidence, except those required by law, that would establish the existence of the input VAT for the fourth quarter of 1993 and that the excess input VAT claimed for refund or tax credit has not been applied to its output tax liability for prior and succeeding quarters.
>
> The above argument, however, is flawed. It must be remembered that when claiming tax refund/credit, the VAT-registered taxpayer must be able to establish that it does have refundable or creditable input VAT, and the same has not been applied against its output VAT liabilities — information which are supposed to be reflected in the taxpayer's VAT returns. Thus, an application for tax refund/credit must be accompanied by copies of the taxpayer's VAT return/s for the taxable quarter/s concerned. The CTA and the CA, based on their appreciation of the evidence presented, committed no error when they declared that petitioner failed to prove that it is entitled to a tax refund and this Court, not being a trier of facts, must defer to their findings. x x x[40]

To be sure, the courts *a quo* made no categorical pronouncement on the requirement of direct and entire attributability of input VAT to the zero rated sales or the effectively zero-rated transactions. Upon reconsideration, the CTA was satisfied that Atlas had input VAT for the fourth quarter of 1993. However, despite the additional pieces of evidence submitted by it, Atlas still failed to prove that it had not applied the excess input VAT claimed for refund or tax credit to its output tax liability for prior and succeeding quarters. The CTA's Resolution made no mention on the requirement of attributability in denying Atlas' claim.

Instead, the courts *a quo* made an exhaustive discussion on petitioner's failure to "present proof that it has not applied the alleged excess input taxes to any of its subsequent quarter's output tax liability."

Thus, when the case reached this Court, the Court stressed that "an application for tax refund/credit must be accompanied by copies of the taxpayer's VAT return/s for the taxable quarters concerned"—documents proving that the input tax has not been applied to any of its output tax liability. In promulgating the *Atlas* decision, the Court did not categorically require direct and entire attributability of input taxes to zero-rated or effectively zero-rated transactions. Surely, it did not even touch upon or rule on the matter. The requirement of proving that input taxes subject of a claim for refund or the issuance of tax credit certificate had not been applied to the taxpayer's output tax liability was merely emphasized.

Meanwhile, in *Team Sual*, herein petitioner alleged that the taxpayer failed to submit all the documents enumerated in Revenue Memorandum Order No. 53-98[41] and, as a consequence, the 120-day period given for it to decide, under Section 112(c) of the Tax Code, did not commence. Simply stated, the issue for the Court's resolution was whether failure to submit the documents under Revenue Memorandum Order No. 53-98 interrupts the running of the 120-day period. In denying the petition, the Court disposed in this wise:

> We adopt the above-mentioned findings of fact of the CTA Special First Division, as affirmed by the CTA EB. Whether TSC complied with the substantiation requirements of Section 112 of the NIRC and RR 3-88 is a question of fact, which could only be answered after reviewing, examining, evaluating, or weighing all over again the probative value of the evidence before the CTA, which this Court does not have reason to do in the present petition for review on *certiorari*. The findings of fact of the CTA are not to be disturbed unless clearly shown to be unsupported by substantial evidence. Since by the very nature of its functions, the CTA has developed an expertise on this subject, the Court will not set aside lightly the conclusions reached by them, unless there has been an abuse or improvident exercise of authority.
>
> The CIR, however, insists that TSC failed to submit the complete documents enumerated in RMO 53-98. Thus, the 120-day period given for it to decide allegedly did not commence.
>
> The CIR's reliance on RMO 53-98 is misplaced. There is nothing in Section 112 of

the NIRC, RR 3-88 or RMO 53-98 itself that requires submission of the complete documents enumerated in RMO 53-98 for a grant of a refund or credit of input VAT. The subject of RMO 53-98 states that it is a "Checklist of Documents to be Submitted by a Taxpayer upon **Audit** of his Tax Liabilities…." In this case, TSC was applying for a grant of refund or credit of its input tax. There was no allegation of an audit being conducted by the CIR. Even assuming that RMO 53-98 applies, it specifically states that some documents are required to be submitted by the taxpayer "if applicable".

Moreover, if TSC indeed failed to submit the complete documents in support of its application, the CIR could have informed TSC of its failure, consistent with Revenue Memorandum Circular No. (RMC) 42-03. However, the CIR did not inform TSC of the document it failed to submit, even up to the present petition. The CIR likewise raised the issue of TSC's alleged failure to submit the complete documents only in its motion for reconsideration of the CTA Special First Division's 4 March 2010 Decision. Accordingly, we affirm the CTA EB's finding that TSC filed its administrative claim on 21 December 2005, and submitted the complete documents in support of its application for refund or credit of its input tax **at the same time**.

Under Section 112 (C) of the NIRC, in case of failure on the part of the CIR to act on the application, the taxpayer affected may, within 30 days after the expiration of the 120-day period, appeal the unacted claim with the CTA. The charter of the CTA also expressly provides that if the Commissioner fails to decide within "a specific period" required by law, such "inaction shall be deemed a denial" of the application for tax refund or credit. In *Commissioner of Internal Revenue vs. San Roque Power Corporation*, we emphasized that compliance with the 120-day waiting period is mandatory and **jurisdictional**. In this case, when TSC filed its administrative claim on 21 December 2005, the CIR had a period of 120 days, or until 20 April 2006, to act on the claim. However, the CIR failed to act on TSC's claim within this 120-day period. Thus, TSC filed its petition for review with the CTA on 24 April 2006 or within 30 days after the expiration of the 120-day period. Accordingly, we do not find merit in the CIR's argument that the judicial claim was prematurely filed.[42]

The Court ruled that petitioner was applying for a claim for refund, and that Revenue

Memorandum Order No. 53-98 did not apply. As a result, the taxpayer filed its administrative claim and submitted the supporting documents on the same date. The Court held that the taxpayer correctly filed its petition with the CTA within 30-days-after the expiration of the 120-period from the filing of the administrative claim which the CIR failed to act on.

The *Team Sual*, as with the *Atlas*, made no pronouncement on the requirement of direct and entire attributability of input taxes in claims for refund and issuance of tax credit certificate. In both cases, the Court's discussions never touched upon the issue of direct and entire attribution of input taxes as it was never raised as an issue. While the Court cited the provision of Revenue Regulations Nos. 3-88 and 5-87, no categorical pronouncements as to this requirement was made. Any issue, whether raised or not by the parties, but not passed upon by the Court, does not have any value as precedent.[43] Petitioner cannot, therefore, invoke these cases as legal bases to impress upon this Court the direct and entire attributability requirement of input taxes in claims for refund and issuance of tax credit certificate.

This Court shall proceed to examine the provisions of Revenue Regulation No. 5-87, as amended by Revenue Regulations No. 3-88, which petitioner invokes.

Pursuant to Section 245,[44] in relation to Section 4,[45] of the 1997 Tax Code, the Secretary of Finance promulgated on September 1, 1987 Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88. The revenue regulations implemented the provisions of the law imposing VAT on importation of goods and sale of goods and services. Section 16(a) of Revenue Regulations No. 5-87 reads:

> Sec. 16. *Refunds or tax credits of input tax*. —
>
> (a) *Zero-rated sales of goods and services*. — Only a VAT-registered person may be granted a tax credit or refund of value-added taxes paid corresponding to the zero-rated sales of goods or services, to the extent that such taxes have not been applied against output taxes, upon showing of proof of compliance with the conditions stated in Section 8 of these Regulations. cd
>
> x x x x
>
> **In all cases, the amount of refund or tax credit that may be granted shall**

> **be limited to the amount of the value-added tax (VAT) paid directly and entirely attributable to the zero-rated transaction during the period covered by the application for credit or refund.**
>
> Where the applicant is engaged in zero-rated and other taxable and exempt sales of goods or services, and the VAT paid (inputs) on purchases of goods and services cannot be directly attributed to any of the aforementioned transactions, the following formula shall be used to determine the creditable or refundable input tax for zero-rated sale:
>
> Amount of Zero-rated Sale Total Sale
> Total Sales
> X
> Total Amount of Input Taxes
> =Amount Creditable/Refundable

On its face, it appears that the revenue regulations limited that amount of refund of input taxes to those paid directly and entirely attributable to the zero-rated transaction. However, this Court takes note of the guidelines in the determination of refundable or creditable input taxes as contained in **Revenue Regulations No. 9-89**.[46] Interestingly, petitioner failed to mention Revenue Regulations No. 9-89 which is similarly applicable to the instant Petition. The guidelines read:

> SECTION 3. Section 16 of RR No. 5-87, as amended by RR 3-88, is further amended by adding a new paragraph to be known as Section 16(c)(6); to read as follows:
>
> Section 16(C)(6). *Determination of attributable input tax*. – In general, the amount of refund or tax credit shall be limited to the amount of the value added tax (VAT) paid attributable to zero-rated transactions during the period covered by the application for credit or refund.
>
> Purely zero-rated transactions. **Where the applicant is exclusively engaged in zero-rated or effectively zero-rated transactions, he shall be entitled to the entire amount of the value-added tax paid on purchases of goods and services, as well as on importations, notwithstanding the existence of an**

> **inventory of goods at the end of the quarter in which the zero-rated transactions were made**, subject to the submission of a sworn statement attesting to the subsequent actual exportation or consumption of goods in the inventory and supported by appropriate export documents.
>
> For purposes of this paragraph, a VAT-registered person shall be considered as exclusively engaged in zero-rated or effectively zero-rated transactions if there are no taxable or exempt sales not only during the quarter covered by the claim but also that of the immediately preceding last three quarters prior to the claim. Incidental sales of obsolete or non-moving supplies, equipment, "scraps", and by-products of processed, manufactured or milled goods, etc., which are shown to have been subjected to value-added tax, shall not be considered for purposes of determining if the VAT registered person shall be considered as exclusively engaged in zero-rated of effectively zero-rated transactions.[47]

Recognizing the confusion that might have stemmed from its previous pronouncements in Revenue Regulations No. 3-88, as amended, the Secretary of Finance promulgated guidelines in the determination of refundable/creditable input taxes attributable to zero-rated transactions. In effect, Revenue Regulations No. 9-89 explicitly stated that taxpayers engaged in purely zero-rated or effectively zero-rated transactions may apply for the refund or credit of the *entire amount* of input tax paid on the purchases of goods and services in the quarter in which the transactions were made.

Thus, contrary to petitioner's notion, the applicable regulations at the time respondent filed its claim for refund or issuance of tax credit certificate do not require direct and entire attributability of input taxes.

Tellingly, the CTA *En Banc* erred when it held that the provisions of Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88 *and* Revenue Regulations No. 9-89, were inapplicable to the case at bench. However, despite the misapplication of law and regulations, this Court nevertheless agrees with the conclusion reached by the CTA *En Banc*.

Still, the basic tenet remains: *direct and entire attributability of the input taxes is not required in claims for tax refund and issuance of tax credit certificate*. Thusly, the only requisites for a claim of refund or issuance of tax credit certificate of unutilized input taxes, as laid down in the Court's earlier ruling involving respondent in *Commissioner of Internal*

Revenue v. Toledo Power Co. (Toeldo Power)[48] are as follows:

1) The taxpayer-claimant is VAT-registered;
2) The claimant is engaged in zero-rated or effectively zero-rated sales;
3) There are creditable input taxes due or paid attributable to the zero-rated or effectively zero-rated sales;
4) The input taxes have not been applied against the output tax; and
5) The application and the claim for a refund or issuance of a tax credit certificate have been filed within the prescribed period.[49]

As to question of fact

Petitioner raises the question – *Did respondent present sufficient evidence for the grant of tax refund or issuance of a tax credit certificate?*

In the determination of whether respondent is entitled to tax refund or tax credit certificate, the CTA examined the documents it had submitted on the parameters laid down in *Toledo Power*. As a specialized court dedicated to the consideration of tax problems, the CTA has necessarily developed an expertise on the subject. Consequently, its factual findings when supported by substantial evidence, will not be disturbed on appeal. Unless there has been an abuse of discretion on its part, the Court accords the highest respect to the factual findings of the CTA.[50] Its conclusions will not be overturned unless there has been an abuse or improvident exercise of authority.[51]

However, the rule admits of the following recognized exceptions applicable to tax cases: 1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; 2) when the inference made is manifestly mistaken, absurd or impossible; 3) where there is a grave abuse of discretion; 4) when the judgment is based on a misapprehension of facts; 5) when the findings of fact are conflicting; 6) when the CTA, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both petitioner and respondent; 7) the findings of the CTA *En Banc* are contrary to those of the CTA Division; 8) when the findings of fact are conclusions without citation of specific evidence on which they are based; 9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and 10) the finding of fact of the CTA is premised on the supposed absence of evidence and 1s contradicted by the evidence on record.[52]

To be clear, the burden of showing convincing evidence that the appeal falls under one of the exceptions remains on the party filing the petition. A mere assertion is not sufficient.[53]

In the case at bench, both the CTA Special First Division and CTA *En Banc* ruled that respondent is entitled to claim a refund or credit of its unutilized input value-added attributable to its zero-rated sales of electricity to National Power Corporation but only to the extent of P399,550.84.[54]

The CTA Special First Division referred to the documents respondent submitted in determining the input VAT attributable to zero-rated sales. These documents were likewise examined by the court-commissioned independent certified public accountant. The court based its findings upon after a careful examination of all pieces of evidence presented by respondent, including supplier's invoices, official receipts, Bureau of Customs' Import Entries and Internal Revenue Declaration, and bank official receipts. It found that respondent was able to establish entitled to tax refund or credit in the amount of P399,550.84.[55] These findings were affirmed by the CTA *En Banc*.[56]

In questioning the findings of the CTA, petitioner raises **questions of fact**. To determine whether respondent is entitled to its claim of refund or issuance of tax credit certificate for unutilized input VAT requires an evaluation of the documents and other evidence submitted during trial. Consequently, it becomes incumbent upon petitioner to prove that the listed exceptions are present in this case. Yet it failed to do so.

Although the CTA *En Banc* failed to apply the provisions of Revenue Regulations No. 5-87, as amended, it nevertheless applied the correct principle of the law and regulations. In its appreciation of the evidence submitted before it, the CTA. Special First Division examined these documents *vis-à-vis* the requirements under the foregoing disquisition and was convinced of sufficient proof for respondent's claim. Moreover, the CTA *En Banc* did not impose additional requirements not sanctioned by Section 112 of the Tax Code and Revenue Regulations No. 5-87, as amended.

In précis, this Court finds no reason to disturb the factual findings and conclusions reached by the CTA.

IN LIGHT OF THE FOREGOING, the Petition for Review on *Certiorari* is hereby **DENIED**. The Decision dated July 23, 2020 and the Resolution dated January 12, 2021 of the Court of Tax Appeals *En Banc* in the consolidated cases docketed as CTA EB Nos. 1990 and 2000 are **AFFIRMED**.

SO ORDERED.

Caguioa (Chairperson), Inting, Gaerlan, and *Singh, JJ.*, concur.

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[1] *Rollo*, pp. 34-41 and 47-72.

[2] *Id.* at 11-26 and 74-89. The July 23, 2020 Decision of the CTA *En Banc* was penned by Associate Justice Catherine T. Manahan, with the concurrence of Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Esperanza R. Fabon-Victorino, Ma. Belen M. Ringpis-Liban, Jean Marie A. Bacorro-Villena, and Maria Rowena Modesto San-Pedro.

[3] *Id.* at 28-31 and 91-94. The January 12, 2021 Resolution of the CTA *En Banc* was penned by Associate Justice Catherine T. Manahan, with the concurrence of Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Ma. Belen M. Ringpis-Liban, Jean Marie A. Bacorro-Villena, and Maria Rowena Modesto San-Pedro.

[4] *Id.* at 97-110. The July 13, 2018 Amended Decision of the CTA Special First Division in CTA Case Nos. 7233 and 7294 was penned by Associate Justice Caesar A. Casanova and concurred in by Associate Justice Lovell R. Bautista.

[5] *Id.* at 12 and 75.

[6] *Id.*

[7] *Id.* at 13 and 76.

[8] *Id.*

[9] 646 Phil. 710 (2010).

[10] *Rollo*, pp. 111-124. Petitioner for Review dated January 23, 2019.

[11] *Id.* at 14 & 77.

[12] *Id.*

[13] *Id.* at 15 and 78.

[14] *Id.* at 16 and 79.

[15] *Id.* at 97-110. CTA Special First Division Amended Division in CTA Case Nos. 7233 and 7294.

[16] *Id.* at 109.

[17] *Id.* at 17 and 80. CTA *En Banc* Decision dated July 23, 2020.

[18] *Id.*

[19] *Id.* at 18 and 81.

[20] *Id.* at 25 and 88. CTA *En Banc* Decision dated July 23, 2020.

[21] *Id.* at 28-31 and 91-94. CTA *En Banc* Resolution dated January 12, 2021.

[22] *Id.* at 54.

[23] Republic Act No. 8424: AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES, effect on January 1, 1998.

[24] *Id.* at 54-62.

[25] 655 Phil. 499 (2011).

[26] 739 Phil. 215 (2014).

[27] *Rollo*, pp. 54-62.

[28] *Id.* at 161-166. Comment (Re: CIR's Petition for Review Dated March 19, 2021) dated November 17, 2021.

[29] Section 1. *Filing of petition with Supreme Court.* – A party desiring to appeal by certiorari from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

[30] See **Commissioner of Internal Revenue v. Filminera Resources Corporation, G.R. No. 236325**, September 16, 2020, 954 SCRA 505, 519.

[31] See **Lorzano v. Tabayag, Jr.**, 681 Phil. 39, 48 (2012).

[32] See **Fortune Tobacco Corp. v. Commissioner of Internal Revenue**, 762 Phil. 450, 460 (2015).

[33] See **Gulf Air Co., Phil. Branch v. Commissioner of Internal Revenue**, 695 Phil. 493, 501-502 (2012).

[34] Entitled, AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES, approved on May 24, 2005.

[35] https://www.merriam-webster.com/dictionary/attributable last accessed on November 16, 2022.

[36] *Supra* note 26.

[37] *Supra* note 27.

[38] Subject: Value-Added Tax took effect on September 1, 1987.

[39] Subject: Revenue Regulations amending Section 16 and of Revenue Regulations No. 5-87 took effect on April 7, 1988.

[40] *Supra* note 26, at 509-510.

[41] Subject: Prescribes the documents required by a taxpayer upon audit of his tax liabilities, issued on June 25, 1998.

[42] *Supra* note 27 at 227-230.

[43] See **Commissioner of Internal Revenue v. San Roque Power Corp.**, 703 Phil. 310, 381 (2013).

[44] SECTION 245. Specific Provisions to be Contained in Rules and Regulations. – The rules and regulations of the Bureau of Internal Revenue shall, among other things, contain

provisions specifying, prescribing or defining:

x x x x

(g) The manner in which revenue shall be collected and paid, the instrument, document or object to which revenue stamps shall be affixed, the mode of cancellation of the same, the manner in which the proper books, records, invoices and other papers shall be kept and entries therein made by the person subject to the tax, as well as the manner in which licenses and stamps shall be gathered up and returned after serving their purposes;

x x x x

(j) The manner in which internal revenue taxes, such as income tax, including withholding tax, estate and donor's taxes, value-added tax, other percentage taxes, excise taxes and documentary stamp taxes shall be paid through the collection officers of the Bureau of Internal Revenue or through duly authorized agent banks which are hereby deputized to receive payments of such taxes and the returns, papers and statements that may be filed by the taxpayers in connection with the payment of the tax: Provided, however, That notwithstanding the other provisions of this Code prescribing the place of filing of returns and payment of taxes, the Commissioner may, by rules and regulations, require that the tax returns, papers and statements and taxes of large taxpayers be filed and paid, respectively, through collection officers or through duly authorized agent banks: Provided, further, That the Commissioner can exercise this power within six (6) years from the approval of Republic Act No. 7646 or the completion of its comprehensive computerization program, whichever comes earlier: Provided, finally, That separate venues for the Luzon, Visayas and Mindanao areas may be designated for the filing of tax returns and payment of taxes by said large taxpayers. xxx

[45] SECTION 4. The Secretary of Finance shall, upon the recommendation of the Commissioner of Internal Revenue and publish the necessary rules and regulations for the effective implementation of this Act.

[46] Subject: Guidelines in determining refundable/creditable input taxes attributable to zero-rated transactions, took effect on 4 December 4, 1989.

[47] Emphasis supplied.

[48] 766 Phil. 20 (2015).

[49] *Id.* at 27.

[50] See **Team Sual Corporation v. Commissioner of Internal Revenue**, 830 Phil. 141, 160 (2018).

[51] See **Sea-Land Service, Inc v. Court of Appeals**, 409 Phil. 508, 514 (2011).

[52] See **Phil. Airlines, Inc. (PAL) v. Commissioner of Internal Revenue**, 823 Phil. 1043, 1064 (2018).

[53] See **Sps. Miano v. Manila Electric Company**, 800 Phil. 118, 124 (2016).

[54] *Rollo*, p. 106.

[55] *Id.* at 107-109.

[56] *Id.* at 86.

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