EN BANC

G.R. No. 215159 – CHEVRON HOLDINGS, INC. (FORMERLY CALTEX (ASIA) LIMITED) V. COMMISSIONER OF INTERNAL REVENUE

Promulgated:

July 5, 2022

x----------x

DISSENT

LAZARO-JAVIER, *J.*:

The Majority affirmed with modification, the decision of the Court of Tax Appeal (*CTA*) *En Banc* by increasing the amount of unutilized input tax refundable to petitioner Chevron Holdings Inc. (*Chevron*) for taxable year 2006 to ₱1,140,381.22 from ₱47,409.24

Hence, the Majority computed the refundable amount differently from the CTA *En Banc*. In arriving at the increased amount, the Majority held:

(1) The substantiation of a taxpayer's prior quarter's excess input tax is NOT required in claims for refund or credit of unutilized input tax attributable to zero-rated sales because this has no basis in law and jurisprudence.

(2) It was erroneous for the CTA *En Banc* to charge against the taxpayer's output tax for the period covered by the refund the validated unutilized input tax first and use the resultant amount as basis in computing the refundable amount; because to do so would be to disregard the option of the taxpayer, accorded by law, to either claim for a refund or credit the same against the output tax.

I dissent.

Claims for Value-Added Tax (*VAT*) Refund under Section 112, National Internal Revenue Code (*NIRC*),[1] as amended, on "**excess or**

[1] REPUBLIC ACT NO. 8424, AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES, DECEMBER 11, 1997; REPUBLIC ACT NO. 9337, AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117,

1

unutilized input taxes" require: (1) the taxpayer to prove that output taxes (if any) for the period has been charged against input taxes; and (2) the input taxes (including excess from previous quarters) be substantiated.

"Excess or Unutilized input taxes" is the result of charging Input Taxes against Output Taxes

In computing for the taxpayer's VAT liability in a given quarter, Section 110, NIRC,[2] as amended, provides:

> Sec. 110. Tax Credits. -
>
> x x x x
>
> 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.
>
> (B) *Excess Output or Input Tax.* - If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the Vat-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. x x x *Provided, however*, That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.[3]
>
> x x x x

Summarily, Section 110(B) provides:

VAT Formula:	
Output Tax	xxx
Less: Input Tax	xxx
VAT Payable (Excess)	xxx
Output Tax exceeds Input Tax	Excess paid (BIR calls this VAT Payable)

119, 121, 148, 151, 236, 237, AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES, JULY 1, 2005.

2 Id.

3 Id.

Input Tax exceeds Output Tax	Carried Over to Succeeding Quarters (BIR calls this Excess VAT or **Unutilized Input Taxes**) **Why excess or unutilized:** The output tax is not enough. **Option:** If any of these unutilized input tax is attributable to zero-rated sales, VAT-registered taxpayer may claim for refund or credit against other internal revenue taxes.
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. 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.	

"**Excess or Unutilized input tax**," as basis for claim for refund should therefore undergo this formula. **There can be no unutilized or excess input tax if the output tax (if any) has not been "consumed."** More, if in the previous quarter, the taxpayer chooses to instead "carry over" or used the excess input tax as a charge (deduction) in succeeding quarters, it cannot be considered as part of excess input taxes subject of claim for refund.

Verily, the taxpayer's option for a refund or credit of "**excess or unutilized input tax**" is only **available** when the taxpayer has an **excess input tax over the output tax**. This fact should be **established** by the taxpayer in a claim for refund or issuance of a tax credit certificate (*TCC*) under Section 112 of the NIRC. This is supported by Section 112 itself. Section 112(A) states that the excess or unutilized input tax from zero-rated transactions may be refunded or credited to other internal revenue taxes to the extent that it has not been applied against the output tax, *viz.*:

> Sec. 112. *Refunds or Tax Credits of Input Tax.* --
>
> (A) *Zero-rated or Effectively Zero-rated Sales.* - Any VAT-registered person, whose sales are zero-rated or effectively zero- rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, ***to the***

> ***extent that such input tax has not been applied against output tax***: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales. *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.[4] (Emphasis supplied)
>
> x x x x

Accordingly, as provided in Section 110(B) in relation to Section 112, NIRC, as amended, a taxpayer must have "**excess or unutilized input tax**" AFTER output tax for the taxable quarter has been applied for purposes of refund or tax credit. **This situation only arises once there is computation involving input taxes being charged (deducted)[5] from output taxes for the quarter.**

To be allowed a refund of "**excess or unutilized input tax**" from zero-rated sales in a given period, instead of output tax liability (VAT Payable), the taxpayer must show that it has "**excess or unutilized input tax**" for the period or periods covered by the claim. Clearly, charging the validated input tax against the taxpayer's output tax in a given quarter is a necessary step in determining the amount of input tax, if any, which may be refunded to the taxpayer.

In *Coca-Cola Bottlers Philippines, Inc. v. CIR*,[6] the Court interpreted Section 110(B) in relation to Section 112, NIRC, as amended:

> A plain and simple reading of the aforequoted provisions [Section 110(B) and Section 112, NIRC] reveals that ***if and when the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. It is only when the sales of a VAT-registered person are zero-rated or effectively zero-rated that he may have the option of applying for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales.*** Such is the **clear import** of the Court's ruling in *San Roque*, to wit:

---

4 Id.

5 Charge or Credit. The term is used if the items for computation involves taxes. You don't say deducted but it the same as deduction because you reduce. In this case, Output Tax is reduced by Input Tax. Traditionally, deduction or deducted is used as term for computing tax base not taxes.

6 826 Phil. 329–348 (2018).

> Under Section 110(B), a taxpayer can apply his input VAT only against his output VAT. The only exception is when the taxpayer is expressly "zero-rated or effectively zero-rated" under the law, like companies generating power through renewable sources of energy. Thus, a non zero-rated VAT-registered taxpayer who has no output VAT because he has no sales cannot claim a tax refund or credit of his unused input VAT under the VAT System. Even if the taxpayer has sales but his input VAT exceeds his output VAT, he cannot seek a tax refund or credit of his "excess" input VAT under the VAT System. **He can only carry-over and apply his "excess" input VAT against his future output VAT.** If such "excess" input VAT is an "excessively" collected tax, the taxpayer should be able to seek a refund or credit for such "excess" input VAT whether or not he has output VAT. The VAT System does not allow such refund or credit. Such "excess" input VAT is not an "excessively" collected tax under Section 229. The "excess" input VAT is a correctly and properly collected tax. However, ***such "excess" input VAT can be applied against the output VAT because the VAT is a tax imposed only on the value added by the taxpayer.*** If the input VAT is in fact "excessively" collected under Section 229, then it is the person legally liable to pay the input VAT, not the person to whom the tax was passed on as part of the purchase price and claiming credit for the input VAT under the VAT System, who can file the judicial claim under Section 229.[7]

The Majority ordained that for VAT refunds to be granted, the following must be complied with: (1) the input tax is a creditable input tax due or paid; (2) the input tax is attributable to the zero-rated sales; (3) the input tax is not transitional; **(4) the input tax was not applied against the output tax;** and (5) in case the taxpayer is engaged in mixed transactions, *i.e.*, VAT-able, exempt, and zero-rated sales and the input taxes cannot be directly and entirely attributable to any of these transactions, only the input taxes proportionately allocated to zero-rated sales based on sales volume may be refunded or issued a TCC.

But even though the requirements already stated that output tax is relevant, the Majority still did not agree that only after the input tax has been charged to output tax will a refund be allowed.

Section 112, NIRC, as amended, cannot be read in isolation.

It must be read in light of Section 110 on how "**excess or unutilized input tax**" is computed. While Section 112, NIRC, as amended, does not categorically mention that "output tax" is a required factor, it does not necessarily mean that it is not part of the computation.

---

[7] Id. at 343–344.

When a taxpayer alleged "excess or unutilized input tax," it is a condition precedent that the **taxpayer must prove that the input tax (including excess input tax from previous quarters) have been charged (deducted) from any output taxes**. Besides, the phrase "*to the extent that such input tax has not been applied against output tax*," clearly belies the claim that output taxes is not needed in the computation for claims for refund.

Excess input tax from previous quarter is required to be substantiated

Excess input tax carried over from the previous quarter is essential in determining the proper input tax refundable to the taxpayer. It is still input tax, albeit coming from previous quarter. It must still be duly validated or substantiated.

To determine a taxpayer's VAT liability or excess input taxes, input tax is deducted or credited against the output tax. In the quarterly VAT return, the allowable input tax that may be credited against the output tax due for a given period include, among others, the amount pertaining to input tax carried over from previous quarter. Thus, excess input tax carried over from the previous quarter, if any, is crucial to computing a taxpayer's net VAT payable, and ultimately, the amount of input tax refundable to the taxpayer.

As the taxpayer will use it as a charge (deduction) to output taxes in succeeding quarters, it is part of the computation for VAT Payable or Excess VAT. As previously discussed, the taxpayer cannot allege that it has "excess or unutilized input tax" without going thru the computation. Since excess input tax from previous quarter is needed to arrive at "excess or unutilized input tax," it must be duly validated or substantiated.

Section 110(A)(1) of the NIRC,[8] as amended, states that any input tax shall be creditable against the output tax only if the same is evidenced by a VAT invoice or official receipt issued in accordance with Section 113(A) of the NIRC,[9] as amended. Also, jurisprudence has set that if a taxpayer fails to present VAT invoices or official receipts to substantiate his input tax, the amount cannot be credited against his output tax.

---

8 REPUBLIC ACT No. 8424, AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES, DECEMBER 11, 1997; REPUBLIC ACT NO. 9337, 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. JULY 1, 2005.

9 Id.

Thus, mere declaration in the VAT return of the amount of excess input tax carried over from prior quarters, without supporting invoices or official receipts, is insufficient. The taxpayer must present valid invoices or receipts to prove the same.

Here, the taxpayer failed to present VAT invoices or official receipts to establish the existence of its excess input tax carried over from the previous quarter. Verily, the CTA *En Banc* was correct in disallowing the same from being credited against the output tax.

In *Nippon v. CIR*,[10] the Court stated that input taxes requires substantiation, to be entitled to refund or tax credit under Section 112, NIRC:

> As stated in our introduction, the **burden of a claimant** who seeks a **refund of his excess or unutilized creditable input VAT** pursuant to Section 112 of the NIRC is two-fold: (1) **prove payment of input VAT to suppliers;** and (2) prove zero-rated sales to purchasers. Additionally, the taxpayer-claimant has to show that the VAT payment made, called input VAT, is attributable to his zero-rated sales.[11]

Input taxes, whether for the present taxable period, or is an "excess or utilized input tax" from preceding period, is not only a part of the computation of VAT, it needs to be validated and substantiated as well. Here, since the taxpayers where not able to substantiate their respective "excess or utilized input tax from preceding period, it cannot be used as part of the computation and refund as well.

A claim for unutilized input value-added tax is in the nature of a tax exemption. Thus, strict adherence to the conditions prescribed by law is required of the taxpayer. Refunds need to be proven and their application raised in the right manner as required by law.

Section 110(B), in relation to Section 112(A) is clear and unambiguous

The Majority separated the option to refund from the formula mandated under Section 110(B), NIRC,[12] as they are allegedly alternative and cumulative, not sequential, *viz.*:

---

[10] 836 Phil. 379–399 (2018).

[11] Id. at 392.

[12] REPUBLIC ACT NO. 8424, AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES, DECEMBER 11, 1997; REPUBLIC ACT NO. 9337, 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, JULY 1, 2005.

> SEC. 110. Tax Credits. — x x x
>
> (B) *Excess Output or Input Tax.* – If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: x x x *Provided, however*, [t]hat any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.65 (Emphasis supplied.)
>
> 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: x x x.[13]

Again, I beg to disagree.

Indulging in compartmentalization or segmentation will definitely achieve the desired result. But Section 110(B) should not be segmented as the second sentence started with the word "*Provided, however x x x*" which clearly means that the option to refund is controlled by the first sentence – the formula "Excess Output or Input Tax." It sets a condition on what precedes it.

It is the cardinal rule in statutory construction "that the particular words, clauses and phrases should not be studied as detached and isolated expressions, but the whole and every part of the statute must be considered in fixing the meaning of any of its parts and in order to produce a harmonious whole. A statute must so construed as to harmonize and give effect to all its provisions whenever possible."[14] It is very clear that the second sentence is merely an adjunct and controlled by the first sentence. More, the second sentence itself qualifies the option which the Majority interpreted as a singular option outside the provision of Section 110(B), NIRC, *i.e.*, "*subject to the provisions of Section 112.*"

Section 112(A), NIRC **specifically refers several conditions before refund can be made**: (a) the taxpayer must be VAT-registered; (b) the sale must be zero-rated or effectively zero-rated; (c) apply for refund within two (2) years after the close of the taxable quarter when the sales were made; (d) apply for the issuance of a TCC 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**. All of these conditions point to Section 110(B) after the simple formula is applied.

---

[13] Id.

[14] *National Tobacco Administration, et al. v. Commission on Audit*, 370 Phil. 793, 808 (1999).

From a boarder perspective, if this was the real intent of the law as the Majority opined, then why would the Legislature include this option for refund in Section 110(B), NIRC under the title "Excess Output or Input Tax"? It should have been placed under Section 110(A), NIRC under the title "Creditable Input Tax."

The truth is, the VAT law was placed as one formula:

Persons Liable	Section 105. Persons Liable
Output Tax	Section 106. VAT on Sale of Goods or Properties Section 107. VAT on Importation of Goods Section 108. VAT on Sale of Services and Use or Lease of Properties
Exempt from Output Tax	Section 109. Exempt Transactions
Creditable Input Tax	Section 110(A). Creditable Input Tax
Excess	Section 110(B). Excess Output or Input Tax

Most telling is Section 110(C), NIRC[15] which states that "*[t]he sum of the **excess input tax** carried over from the preceding month or quarter and the input tax creditable to a VAT-registered person during the taxable month or quarter **shall be reduced by the amount of claim for refund** or tax credit for value-added tax and other adjustments, such as purchase returns or allowances and input tax attributable to exempt sale.*" This clearly negates the Majority's interpretation that the option of refund is a separate provision since refund is a factor in excess input taxes.

In the Bicameral Conference Committee which led to the passage of Republic Act No. 9337,[16] Sen. Ralph G. Recto explained that zero-rated is "*immediately refundable*." But we all know that this is not the case. **The Tax Code specifically provides requirements for a claim for refund through a myriad of provisions specifically designed to give the taxpayer an alternative.**

In fine, the CTA *En Banc* correctly computed the amount of claim for refund based on Section 112, in relation to Section 110, NIRC, as amended, ordering a refund of ₱15,085.24 representing unutilized excess input VAT for

---

[15] REPUBLIC ACT NO. 8424, AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES, DECEMBER 11, 1997; REPUBLIC ACT NO. 9337, 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, JULY 1, 2005.

[16] REPUBLIC ACT NO. 9337, 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, JULY 1, 2005.

the first quarter of 2006 which is attributable to its zero-rated sales for the same period.

AMY C. LAZARO-JAVIER

CERTIFIED TRUE COPY

MARIA LUISA M. SANTILLA
Deputy Clerk of Court and
Executive Officer
OCC-En Banc, Supreme Court