Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

CHEVRON HOLDINGS, INC., [Formerly CALTEX (ASIA) LIMITED],
Respondent.

G.R. No. 233301

Present:

PERALTA, *C.J., Chairperson,*
CAGUIOA, *Working Chairperson,*
REYES, J. JR.,
LAZARO-JAVIER, and
LOPEZ, *JJ.*

Promulgated:
FEB 17 2020

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DECISION

REYES, J. JR., *J.*:

This treats of the Petition for Review on *Certiorari* filed by the Commissioner of Internal Revenue (CIR) assailing the Decision[1] dated March 15, 2017 and the Resolution[2] dated July 25, 2017 of the Court of Tax Appeals *En Banc* (CTA EB) in CTA EB No. 1143 and CTA EB No. 1349. The CTA EB affirmed the August 14, 2013 Decision,[3] February 27, 2014 Resolution,[4] and the August 11, 2015 Amended Decision of the CTA First

1 Penned by Associate Justice Lovell R. Bautista with Presiding Justice Roman G. Del Rosario (*see* Concurring Opinion, id. at 55-61) and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Ma. Belen M. Ringpis-Liban, and Catherine T. Manahan, concurring; *rollo*, pp. 31-53.
2 Id. at 62-68.
3 Penned by Presiding Justice Roman G. Del Rosario with Associate Justices Erlinda P. Uy and Cielito N. Mindaro-Grulla, concurring; id. at 69-102.
4 Id. at 103-114.

Division (CTA Division) in CTA Case No. 8241 that partially granted the claim of Chevron Holdings, Inc. (Chevron), formerly Caltex (Asia) Limited, for tax refund/credit of unutilized input VAT attributable to zero-rated sales.

Chevron is a corporation duly organized and existing under the laws of the State of Delaware, United States of America. It is licensed by the Securities and Exchange Commission (SEC) to transact business in the Philippines as regional operating headquarters (ROHQ) and duly registered with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) taxpayer. As ROHQ, it established a shared services center in the Philippines that provides finance, information technology, human resource, procurement and customer interaction services to its affiliates, subsidiaries or branches in the Asia Pacific and North America Regions.

On November 2, 2010, Chevron filed with the BIR an Application for Tax Credits/Refunds (BIR Form No. 1914) of its excess and unutilized input VAT credits for the four taxable quarters of 2009 in the total sum of ₱51,198,943.08.

The CIR, however, failed to act on the refund claim prompting Chevron to file a Petition for Review before the CTA (originally raffled to the Second Division) on March 23, 2011.

The CIR filed an Answer and the case was set for pre-trial conference on August 4, 2011. During the pre-trial, only counsel for the CIR, Atty. Janet L. Martinez, appeared. She then moved for the dismissal of the case for failure of Chevron's counsel to appear despite notice and to file the pre-trial brief. The case was dismissed on August 4, 2011.

Chevron filed a Motion for Reconsideration with Motion to Admit Attached Pre-Trial Brief which was subsequently granted by the CTA (Second Division) in a Resolution dated October 5, 2011. After the CTA (Second Division) approved the Joint Stipulation of Facts and Issues submitted by the parties, trial on the merits ensued.

On April 2, 2013, the case was transferred to the First Division pursuant to the reorganization of the three (3) divisions of the CTA under the CTA Administrative Circular No. 01-2013.

In its Decision dated August 14, 2013, the CTA Division partially granted Chevron's petition and ordered the CIR "to refund or to issue a tax credit certificate in the reduced amount of ₱4,623,001.60 to Chevron, representing its excess and unutilized input VAT for the four taxable quarters of 2009 attributable to its zero-rated sales for the same period," as computed below:

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Total
Valid Input VAT	P10,486,621.80	P14,702,595.13	P10,446,482.85	P8,660,773.06	P44,296,472.84
Less: Output VAT	4,902,092.41	4,677,577.02	5,293,050.03	5,003,210.44	19,875,929.90
Excess Input VAT	P5,584,529.39	P10,025,018.11	P5,153,432.82	P3,657,562.62	P24,420,542.94
Valid Zero-Rated Sales	P172,457,718.97	P81,431,862.18	P81,116,633.45	P74,121,765.66	P409,127,980.26
Divide by Total Declared Zero-Rated Sales	620,201,395.33	508,595,820.63	469,176,463.98	472,288,095.56	2,070,261,775.50
Multiplied by Excess Input VAT	5,584,529.39	10,025,018.11	5,153,432.82	3,657,562.62	24,420,542.94
Excess Input VAT Attributable to Valid Zero-Rated Sales	**P1,552,874.93**	**P1,605,117.19**	**P890,984.85**	**P574,024.63**	**P4,623,001.60**

CTA Division did not treat all of Chevron's alleged zero rated sales as transactions subject to 0% VAT for failure to prove that the entities to whom it rendered services are all non-resident foreign corporations doing business outside the Philippines. It declared that only the amount of ₱409,127,980.26 can be considered as Chevron's valid zero rated sales. Moreover, it held that out of the total input VAT claim of ₱55,273,888.13, only the amount of ₱44,296,472.84 was duly substantiated and therefore allowed.

Both the CIR and Chevron filed their respective motions for partial reconsideration of the August 14, 2013 Decision. Further, Chevron filed a Motion for New Trial on the ground that its pieces of evidence could not be produced during trial despite reasonable diligence and serious attempt.

In a Resolution dated February 27, 2014, the CIR's motion for reconsideration was denied while that of Chevron was held in abeyance. Meanwhile, the CTA Division granted Chevron's Motion for New Trial.

On August 11, 2015, the CTA Division partially granted Chevron's Motion for Partial Reconsideration thereby amending its August 14, 2013 Decision. The dispositive portion of the Amended Decision reads:

> **WHEREFORE,** premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, [the CIR] is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in favor of [Chevron] in the reduced amount of **SIX MILLION SEVEN HUNDRED EIGHTY FIVE THOUSAND THREE HUNDRED SIXTY TWO PESOS and 73/100 (P[hp]6,785,362.73),** representing [CHI]'s unutilized and excess input VAT attributable to its zero-rated sales of services to its affiliate companies for the four quarters of 2009.

SO ORDERED.

In said Amended Decision, the CTA Division noted that Chevron recalled to the witness stand its current Optimization Manager Hyacinth Pacifico-Carreon (Carreon) who presented and identified several documents to prove that Chevron's customers are located outside the Philippines. These documents include: (1) printed screenshots from Chevron intranet/subgovern site; (2) printed screenshots of the official online websites of the foreign government company registries; and (3) negative certifications issued by the SEC. To support Chevron's claim for VAT refund, Carreon also presented Chevron's VAT official receipts and sales invoices issued to its local affiliates customers in 2009, authority to print receipt issued by the BIR, quarterly VAT return for 2007, and certifications from the BIR and the CTA that no refund claims were filed by Chevron for the period covering 2007. The CTA Division accepted the printed screenshots of the official websites of other foreign government's registry of companies as sufficient proof, in lieu of the Certificates/Articles of Foreign Incorporation/Association and found Chevron to have an additional valid zero-rated sales amounting to ₱186,438,134.34. Accordingly, the CTA Division adjusted Chevron's valid VAT zero-rated sales from ₱409,127,980.26 to P595,566,114.60 with an input VAT attributable thereto amounting to P6,785,362.73.

The CIR and Chevron filed their respective petitions for review before the CTA EB. These cases were consolidated and on March 15, 2017; the CTA EB rendered the now assailed Decision affirming the August 14, 2013 Decision, February 27, 2014 Resolution, and the August 11, 2015 Amended Decision of the CTA Division.

The CIR moved for reconsideration but the same was denied in a Resolution dated July 25, 2017.

Hence, this petition raising the sole issue:

> **WHETHER OR NOT THE CTA *EN BANC* DECIDED A QUESTION OF SUBSTANCE NOT IN ACCORD WITH LAW AND EVIDENCE WHEN IT PARTIALLY GRANTED [CHEVRON'S] REQUESTED REFUND IN THE REDUCED AMOUNT OF ₱6,785,362.73, ALLEGEDLY REPRESENTING ITS EXCESS AND UNUTILIZED INPUT VAT ATTRIBUTABLE TO ITS ZERO-RATED SALES FOR THE FOUR QUARTERS OF TY 2009.**

The CIR maintains that Chevron's petition with the CTA Division was prematurely filed since the 120-day period (for the CIR to decide the administrative claim for refund) did not even commence to run for failure of Chevron to submit complete documents to support its claim. The CIR also avers that Chevron failed to comply with the invoicing and accounting requirements for VAT-registered persons. The CIR posits that in partially granting Chevron's claim for refund, the CTA did not comply with the

procedural and substantive requirements set forth in the 1997 National Internal Revenue Code (NIRC), as amended, and in existing revenue regulations.

Chevron, on the other hand, argues that the CIR did not notify it of the need to submit additional supporting documents to substantiate its claim and stresses that absent such notification, the documents it submitted are deemed complete and sufficient. It also asseverates that it has satisfied the invoicing and accounting requirements under the law as enunciated by the CTA Division in its original decision.

The petition is devoid of merit.

Section 112 of the NIRC provides:

> 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.
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> x x x x
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> (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 Subsection (A) hereof.
>
> x x x x

In case of full or partial denial of the claim for tax refund or tax credit, or

> the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, **within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period**, appeal the decision or the unacted claim with the Court of Tax Appeals.

The above legal provision supplies the periods relative to the filing of a claim for VAT refunds. Preliminarily, the law allows the taxpayer to file an administrative claim for refund with the BIR within two years after the close of the taxable quarter when the purchase was made (for the input tax paid on capital goods) or after the close of the taxable quarter when the zero-rated or effectively zero-rated sale was made (for input tax attributable to zero-rated sale). The CIR must then act on the claim within 120 days from the submission of complete documents in support of the application. In the event of an adverse decision, the taxpayer may elevate the matter to the CTA by way of a petition for review within 30 days from the receipt of the CIR's decision. If, on the other hand, the 120-day period lapses without any action from the CIR, the taxpayer may validly treat the inaction as denial and file a petition for review before the CTA within 30 days from the expiration of the 120-day period. An appeal taken prior to the expiration of the 120-day period without a decision or action of the CIR is premature, without a cause of action, and, therefore, dismissible on the ground of lack of jurisdiction.[5]

It is undisputed that Chevron filed an administrative claim for refund with the BIR on November 2, 2010, which was well within the two-year prescriptive period provided by law. As illustrated by the CTA Division in its original decision:

Period/Quarter Covered	Close of Taxable Quarter	Last Day for Filing of Administrative Claim for Refund	Date of Filing of Administrative Claim for Refund
1st Quarter of 2009	March 31, 2009	March 31, 2011	November 2, 2010
2nd Quarter of 2009	June 31, 2009	June 31, 2011	
3rd Quarter of 2009	September 31, 2009	September 31, 2011	
4th Quarter of 2009	December 31, 2009	December 31, 2011	

In support of its application for refund, Chevron submitted the following documents on November 2, 2010:

1. Application of Tax Credit/Refund (BIR Form No. 1914);
2. SEC Certificate of Registration;
3. BIR Certificate of Registration (BIR Form No. 2303);
4. Articles of Incorporation;
5. Annual Income Tax Return for taxable year 2009 (BIR Form No. 1702);
6. Quarterly VAT Returns for taxable year 2009 (BIR Form No. 2550Q;
7. Monthly VAT Returns for taxable year 2009 (BIR Form No. 2550M);
8. Audited Financial Statements for year ended December 31, 2009;
9. Service Agreements with Chevron's foreign affiliates;
10. Certificates of Inward Remittance from JP Morgan Chase Bank N.A.;

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5 *Aichi Forging Co. of Asia, Inc. v. Court of Tax Appeals* (En Banc), 817 Phil. 403, 409 (2017).

11. Summary List of Sales and Purchases (in DVD-R); and
12. Certification showing amount of zero-rated sales, taxable sales and exempt sales.[6]

Chevron also manifested that all voluminous documents shall be made available to revenue officers for their examination at its office's premises.[7] Upon Chevron's submission of its supporting documents, the CIR had 120 days or until March 2, 2011 to decide whether to grant or deny the application. But the 120-day period expired without the CIR having acted on the claim. At this juncture, Chevron had 30 days from the lapse of the 120-day period or until April 1, 2011 to file its judicial claim. Thus, when Chevron filed its petition for review with the CTA on March 23, 2011, it was properly made within the period prescribed by law.

Settled is the rule that it is only upon the submission of complete documents in support of the application for tax credit/refund that the 120-day period would begin to run.[8] The CIR is of the belief that Chevron's judicial claim was prematurely filed because the 120-day period has not yet commenced on account of the taxpayer's submission of incomplete supporting documents. It contends that the issuance of Revenue Memorandum Order (RMO) No. 53-98 is "anchored on the premise that all documents enumerated therein must be submitted to support an application for tax refund/credit."[9]

We do not agree.

The issue of whether the failure of the taxpayer to submit all the documents enumerated in RMO No. 53-98 is fatal to its judicial claim for VAT refund had been squarely raised and amply settled in the case of *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*.[10] The Court clarified:

> Anent RMO No. 53-98, the CTA Division found that the said order provided a checklist of documents for the BIR to consider in granting claims for refund, and served as a guide for the courts in determining whether the taxpayer had submitted complete supporting documents.
>
> This should also be corrected.
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> To quote RMO No. 53-98:
>
> REVENUE MEMORANDUM ORDER NO. 53-98
>
> SUBJECT: Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities as well as of the Mandatory

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6 *Rollo*, pp. 83-84.
7 Id. at 18.
8 *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*, 774 Phil. 473, 492 (2015).
9 *Rollo*, p. 17.
10 Supra note 8.

Reporting Requirements to be Prepared by a Revenue Officer, all of which Comprise a Complete Tax Docket.

TO: All Internal Revenue Officers, Employees and Others Concerned

I. *BACKGROUND*

It has been observed that for the same kind of tax audit case, Revenue Officers differ in their request for requirements from taxpayers as well as in the attachments to the dockets resulting to tremendous complaints from taxpayers and confusion among tax auditors and reviewers.

For equity and uniformity, this Bureau comes up with a prescribed list of requirements from taxpayers, per kind of tax, as well as of the internally prepared reporting requirements, all of which comprise a complete tax docket.

II. *OBJECTIVE*

This order is issued to:

a. Identify the documents to be required from a taxpayer during audit, according to particular kind of tax; and

b. Identify the different audit reporting requirements to be prepared, submitted and attached to a tax audit docket.

III. *LIST OF REQUIREMENTS PER TAX TYPE*

Income Tax/Withholding Tax

— Annex A (3 pages)

Value Added Tax

— Annex B (2 pages)

— Annex B-1 (5 pages)

x x x x

As can be gleaned from the above, RMO No. 53-98 is addressed to internal revenue officers and employees, for purposes of equity and uniformity, to guide them as to what documents they may require taxpayers to present **upon audit of their tax liabilities**. Nothing stated in the issuance would show that it was intended to be a benchmark in determining whether the documents submitted by a taxpayer are *actually* complete to support a claim for tax credit or refund of excess unutilized excess VAT. As expounded in *Commissioner of Internal Revenue v. Team Sual Corporation (formerly Mirant Sual Corporation)*:

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.
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> (Emphasis included; underscoring supplied)
>
> As explained earlier and underlined in *Team Sual* above, taxpayers cannot simply be faulted for failing to submit the complete documents enumerated in RMO No. 53-98, absent notice from a revenue officer or employee that other documents are required. Granting that the BIR found that the documents submitted by Total Gas were inadequate, it should have notified the latter of the inadequacy by sending it a request to produce the necessary documents in order to make a just and expeditious resolution of the claim.
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> Indeed, a taxpayer's failure with the requirements listed under RMO No. 53-98 is not fatal to its claim for tax credit or refund of excess unutilized excess VAT. This holds especially true when the application for tax credit or refund of excess unutilized excess VAT has arrived at the judicial level. After all, in the judicial level or when the case is elevated to the Court, the Rules of Court governs. Simply put, the question of whether the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court.

RMO No. 53-98 assumes relevance only on matters pertinent to an audit of tax liabilities. Thus, it finds no application in the present case since Chevron's claim is one for refund of its input tax.

Here, Chevron submitted all documents it deemed necessary for the grant of its refund claim. It even authorized the examination of the voluminous supporting documents kept in its office and grant revenue officers access thereto. This is to ensure that it has adequate documentary evidence to substantiate its request. Interestingly, as in *Pilipinas Total* case, the CIR did not notify the Chevron of the document it failed to submit, if any. In fact, there is not a single letter or notice sent to Chevron informing it of its failure to submit complete documents and/or ordering the production of the lacking documents necessary for the allowance of the claim. The CIR should have taken a positive step in apprising Chevron of the completeness and adequacy of its supporting documents considering their particular relevance in reckoning the 120-day period under Section 112(C) of the NIRC.

Finally, the Court rejects the CIR's bare claim that Chevron failed to comply with the invoicing and accounting requirements for VAT-registered persons. The CIR asserts that Chevron did not imprint the word "zero-rated"

on its invoices and receipts in violation of Section 113(B) of the NIRC, as amended, in relation to Revenue Regulations (RR) No. 16-05, which reads:

> Section 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* —
>
> (B) Information Contained in the VAT Invoice or VAT Official Receipt. – The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN);
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax; Provided, That:
>
> x x x x
>
> (c) If the sale is subject to zero percent (0%) value-added tax, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt;
>
> x x x x

In its original Decision, the CTA Division explicitly stated that Chevron presented various invoices, official receipts and other documents to substantiate its reported input VAT, all of which were examined by Atty. Fredieric B. Landicho (Atty. Landicho), Court-commissioned Independent Certified Public Accountant (CPA).[11] It sustained the findings of Atty. Landicho and disallowed the ₱10,977,415.30 of Chevron's claimed input VAT for failure to comply with the substantiation and invoicing requirement as prescribed under Section 110(A) and Section 113(A) and (B) of the NIRC. It is thus clear that the invoices and receipts which were not compliant with the invoicing and accounting requirements were already excluded by the CTA Division when it rendered its Decision partially granting Chevron' refund claim. Suffice it to say that Chevron has duly established its claim for refund or tax credit in the amount of ₱4,623,001.60 in accordance with the statutory requirement for the grant of a tax credit certificate/refund.

Time and again, great weight and highest respect are accorded to the factual findings of the CTA. The Court will not review nor disturb the CTA's factual determination when it is supported by substantial evidence and there is no showing of gross error or abuse on the part of the CTA, as in this case.[12]

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[11] *Rollo*, p. 98.

[12] *Commissioner of Internal Revenue. v. Toledo Power, Inc.*, 725 Phil. 66, 82 (2014).

WHEREFORE, the petition is **DENIED.** The March 15, 2017 Decision and the July 25, 2017 Resolution of Court of Tax Appeals *En Banc* in CTA EB No. 1143 and CTA EB No. 1349 are **AFFIRMED**.

SO ORDERED.

JOSE C. REYES, JR.
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice
Chairperson

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

MARIO V. LOPEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

DIOSDADO M. PERALTA
Chief Justice