Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

MAIBARARA GEOTHERMAL, INC.,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

G.R. No. 250479

Present:

LEONEN, *J.*, *Chairperson*,
LAZARO-JAVIER,
LOPEZ, M.,
LOPEZ, J., and
KHO, JR., *JJ.*

Promulgated:

JUL 18 2022

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DECISION

LOPEZ, J., *J.*:

This Court resolves a Petition for Review on *Certiorari*[1] filed by Maibarara Geothermal, Inc. (*MGI*) assailing the Decision[2] dated March 14, 2019 and Resolution[3] dated November 15, 2019 of the Court of Tax Appeals (*CTA*) *En Banc* in CTA *EB* No. 1765. The CTA *En Banc* earlier affirmed the Decision[4] of the CTA First Division dated August 18, 2017 in CTA Case Nos. 8699, 8732, 8771, and 8811, which denied petitioner's claim for tax refund/credit of unutilized input value-added taxes (*VAT*) for the first, second, third, and fourth quarters of taxable year 2011.

The Facts

MGI is a corporation duly registered under the laws of the Philippines, with the primary purpose of the corporation to:

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1 *Rollo*, pp. 12-50.

2 Penned by Associate Justice Esperanza R. Fabon-Victorino, with Presiding Justice Roman G. del Rosario, and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Cielito N. Mindaro-Grulla, Ma. Belen Ringpis-Liban and Catherine T. Manahan, concurring; *id.* at 63-75.

3 Penned by Associate Justice Esperanza R. Fabon-Victorino, with Presiding Justice Roman G. del Rosario (on leave), and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Cielito N. Mindaro-Grulla, Ma. Belen Ringpis-Liban, Catherine T. Manahan and Jean Marie A. Bacorro-Villena, concurring; *id.* at 58-61.

4 *Id.* at 80-94.

> [E]xplore, extract, exploit, or otherwise obtain from the earth, store, hold, use, treat, reinject, prepare for market, buy, sell, distribute, exchange and transport geothermal steam and brine, and all their products, compounds and derivatives; to convert geothermal energy into electric power and to build, construct, erect, own, equip, install, operate, maintain, sell, lease power generation plants, facilities, machineries, equipment that utilize geothermal energy; to sell, trade, transmit or distribute any electricity generated by such power plants; to utilize geothermal steam and brine for industrial, agricultural, health, tourism, mineral recovery and processing of other similar direct and indirect uses of geothermal steam and brine.[5]

MGI is also a registered VAT taxpayer with the Bureau of Internal Revenue (BIR) under Certificate of Registration No. OCN3RC0000483772 and Taxpayer's Identification Number (TIN) 007-843-328-000.[6]

In addition, MGI is registered as a Renewable Energy Developer of a 20 MW Maibarara Geothermal Power Generation Project in Batangas and Laguna under Certificate of Registration No. GRESC 2011-01-025 issued by the Department of Energy and Certificate of Registration No. 2011-06 issued by the Board of Investments.[7]

MGI filed its quarterly VAT returns for the first, second, third, and fourth quarters for taxable year 2011 on April 25, 2011, on July 25, 2011, on October 19, 2011, and on January 20, 2012, respectively.[8]

On March 22, 2013, MGI filed with the BIR Revenue District Office (*RDO*) No. 43A in Pasig City an administrative claim for refund of its unutilized input VAT for the first quarter of taxable year 2011 in the total amount of ₱10,095,979.46.[9]

On June 24, 2013, MGI filed with the BIR another administrative claim for refund of its unutilized input VAT for the second quarter of taxable year 2011 in the total amount of ₱3,134,942.99.[10]

On September 26, 2013, MGI filed its third administrative claim for refund of its unutilized input VAT for the third quarter of taxable year 2011 in the total amount of ₱1,534,692.20.[11]

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5 *Id.* at 81.
6 *Id.*
7 *Id.*
8 *Id.* at 82.
9 *Id.*
10 *Id.*
11 *Id.*

On December 13, 2013, petitioner filed its fourth administrative claim for refund of its unutilized input VAT for the fourth quarter of taxable year 2011 in the total amount of ₱1,023,598.99.[12]

The Commissioner of Internal Revenue failed to act on MGI's administrative claims for refund of its unutilized input VAT for the first, second, third, and fourth quarters of taxable year 2011. This prompted MGI to file various petitions for review[13] before the CTA, docketed as CTA Case Nos. 8699, 8732, 8771, and 8811 on August 16, 2013, November 15, 2013, February 21, 2014, and April 30, 2014, respectively.[14]

In its Decision[15] dated August 18, 2017, the CTA First Division denied the consolidated petitions for review for lack of merit. Aggrieved, MGI moved for reconsideration, which was denied by the CTA First Division in its Resolution[16] dated January 3, 2018.

After the denial of its motion for reconsideration, petitioner elevated the case before the CTA *En Banc*. On March 14, 2019, the CTA *En Banc* rendered the assailed Decision[17] denying the petition for review and affirming the rulings of the CTA First Division.

MGI moved for the reconsideration of the CTA *En Banc* decision. However, the same was denied in a Resolution[18] dated November 15, 2019.

Hence, the instant petition.

Issue

Whether petitioner is entitled to the refund of its unutilized input VAT for the first, second, third, and fourth quarters of taxable year 2011.

Our Ruling

Under the Philippine tax system, VAT is considered as an indirect tax. Indirect tax is a tax demanded, in the first instance, from, or is paid by, one person or entity in the expectation and intention of shifting the burden to

12 *Id.*
13 *Id.* at 80.
14 *Id.* at 82.
15 *Id.* at 80-94.
16 *Id.* at 102-107.
17 *Id.* at 63-75.
18 *Id.* at 58-61.

someone else.[19] As enunciated in *Commissioner of Internal Revenue v. Philippine Long Distance Telephone* Company:[20]

> [I]ndirect taxes are taxes wherein the liability for the payment of the tax falls on one person but the burden thereof can be shifted or passed on to another person, such as when the tax is imposed upon goods before reaching the consumer who ultimately pays for it. When the seller passes on the tax to the [buyer], [the seller], in effect, shifts the tax burden, not the liability to pay it, to the purchaser as part of the price of goods sold or services rendered.[21]

Under Section 105 of the NIRC, the persons liable to pay VAT are as follows:

> Section 105. *Persons Liable.* — Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.
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> The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of Republic Act No. 7716.

Since VAT is an indirect tax, the seller of goods and services which also serves as an intermediary in a chain of manufacturers, suppliers, distributors, and consumers (i) shoulders the economic burden of VAT imposed on its purchases, and (ii) pays the VAT imposed on its sales. The first is called input tax and the second, output tax. Section 110(A)(3) of the NIRC provides:

> 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.
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> 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.

In a chain of production, the manufacturers, suppliers, and distributors – *i.e.*, those persons or entities which are engaged in economic activities, such as the production of goods, the provision of services, and the sale of goods and services – ultimately pass on the VAT to the final consumers. To implement this, the first party in that chain of production (*e.g.*, a manufacturer) passes on an output VAT to the next party in that chain (*e.g.*, a wholesale distributor), and such output VAT of the manufacturer is considered an input

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19 *Commissioner of Internal Revenue v. John Gotamco & Sons, Inc.* 232 Phil. 38, 42 (1987).
20 514 Phil. 255 (2005).
21 *Id.* at 266.

VAT of the wholesale distributor. In turn, the second party in that chain further passes on an output VAT to another party (*e.g.*, a retail distributor), and such output VAT of the wholesale distributor is considered an input VAT of the retail distributor. Finally, the last seller in that chain of production passes on the output VAT to the final consumer. For each party in this chain of production, the excess of output taxes over input taxes is paid for by the relevant party *and* passed on by that party to their immediate buyer. Section 110(B) of the NIRC provides:

> (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: *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.

This seller-intermediary may, in the course of their trade or business, engage in two kinds of sale: domestic sales (or those where the buyer is domiciled in the Philippines) and export sales (or those where the buyer is domiciled in another country). If the sale is a domestic sale, the sale generates an output tax. If the sale is an export sale, the sale generally does not generate an output tax. The reason for the latter is that export sales are zero-rated transactions. As a general rule, the VAT system uses the destination principle as a basis for the jurisdictional reach of the tax. Goods and services are taxed only in the country where they are consumed. To implement this principle, exports are zero-rated under the NIRC, while imports are taxed.[22] Section 106 of the NIRC provides, in part:

> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
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> (a) *Export Sales.* — The term "export sales" means:
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> (1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
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> x x x

This seller-intermediary, which may engage in export sales, or both domestic and export sales, incurs purchases imposed with VAT—*i.e.*, it incurs input taxes. The said purchases, which are inputs to its production or economic/business activity, may be utilized for the purpose of fulfilling its

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22 *Commissioner of Internal Revenue v. American Express International, Inc., (Philippine Branch)*, 500 Phil. 586, 605 (2005).

obligations in all its sales transactions. If the sales are domestic sales, the domestic sales generate an output tax, and the output tax can be credited against the input tax. However, if the sales are export sales, the export sales do not generate an output tax, being zero-rated transactions, so there is no output tax that can be credited against the input tax. The latter is the reason why the seller-intermediary is then allowed to obtain a refund or tax credit on input taxes "attributable" to zero-rated transactions. Section 112(A) of the NIRC of 1997, as amended, provides:

> SEC. 112. *Refunds or Tax Credits of Input Tax.*—
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> (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 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.

As laid down by this Court in *San Roque Power Corporation v. Commissioner of Internal Revenue*,[23] to claim a refund or tax credit under Section 112(A), petitioner must comply with the following criteria:

> (1) the taxpayer is VAT-registered;
> (2) the taxpayer is engaged in zero-rated or effectively zero-rated sales;
> (3) the input taxes are due or paid;
> (4) the input taxes are not transitional input taxes;
> (5) the input taxes have not been applied against output taxes during and in the succeeding quarters;
> (6) the input taxes claimed are attributable to zero-rated or effectively zero-rated sales;
> (7) for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;
> (8) where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and
> (9) the claim is filed within two years after the close of the taxable quarter when such sales were made.[24]

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23 620 Phil. 554 (2009).

24 *Id.* at 575.

Petitioner contends that the two-year prescriptive period provided under Section 112(A) of the NIRC, as amended, should be reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT.[25] Relying on the case of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation* (*Mirant*),[26] petitioner argues that "relevant sales" pertain to the sale of the supplier, and "input VAT" refers to the purchase of the buyer.[27] Applying the doctrine laid down in *Mirant*, petitioner asserts that the reckoning date in counting the prescriptive period in filing a claim for refund or tax credit should be from the time the sales relating to the input VAT has occurred.[28]

Petitioner also contends that there is no requirement that the zero-rated or effectively zero-rated sales should be made during the same period as when the input taxes sought to be refunded were incurred or paid.[29] According to petitioner, the only requirement is that the input VAT sought to be refunded must be attributable to zero-rated or effectively zero-rated sales.[30] Thus, petitioner asserts that the taxpayer-claimant must only establish the existence or presence of input taxes which are attributable to a zero-rated or effectively zero-rated sales.[31] Petitioner further asserts that it is not, however, necessary that the zero-rated or effectively zero-rated sales and the input taxes subject of the refund fall during the same period.[32]

Thus, the main issue in this case is whether or not petitioner complied with the requirements to claim for a refund or tax credit under Section 112(A), in particular, the existence of zero-rated or effectively zero-rated sales, to which the input taxes it incurred may be attributed.

This Court has already ruled that any claim for refund or tax credit of unutilized input VAT must be attributable to zero-rated or effectively zero-rated sales.

In the case of *Luzon Hydro Corporation v. Commissioner of Internal Revenue* (*Luzon Hydro Corporation*),[33] this Court pronounced that any claim for refund or tax credit of unutilized input VAT must be clearly established by evidence showing the existence of zero-rated or effectively zero-rated sales to which the input VAT being refunded must be attributable, thus:

> The petitioner did not competently establish its claim for refund or tax credit. **We agree with the CTA *En Banc* that the petitioner did not produce evidence showing that it had zero-rated sales for the four**

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25 *Rollo*, p. 25.
26 586 Phil. 712 (2008).
27 *Rollo*, p. 26.
28 *Id.*
29 *Id.* at 28.
30 *Id.*
31 *Id.*
32 *Id.*
33 721 Phil. 202 (2013).

> **quarters of taxable year 2001. As the CTA *En Banc* precisely found, the petitioner did not reflect any zero-rated sales from its power generation in its four quarterly VAT returns, which indicated that it had not made any sale of electricity.** Had there been zero-rated sales, it would have reported them in the returns. Indeed, it carried the burden not only that it was entitled under the substantive law to the allowance of its claim for refund or tax credit but also that it met all the requirements for evidentiary substantiation of its claim before the administrative official concerned, or in the *de novo* litigation before the CTA in Division.
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> Although the petitioner has correctly contended here that the sale of electricity by a power generation company like it should be subject to zero-rated VAT under Republic Act No. 9136, its assertion that it need not prove its having actually made zero-rated sales of electricity by presenting the VAT official receipts and VAT returns cannot be upheld. It ought to be reminded that it could not be permitted to substitute such vital and material documents with secondary evidence like financial statements.
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> We further find to be lacking in substance and bereft of merit the petitioner's insistence that the CTA *En Banc* should not have disregarded the letter opinion by BIR Regional Director Rene Q. Aguas to the effect that its financial statements and its return were sufficient to establish that it had generated zero-rated sale of electricity. To recall, the CTA *En Banc* rejected the insistence because, firstly, the letter opinion referred to taxable year 2000 but this case related to taxable year 2001, and, secondly, even assuming for the sake of argument that the financial statements, the return and the letter opinion had related to taxable year 2001, they still could not be taken at face value for the purpose of approving the claim for refund or tax credit due to the need to produce the supporting documents proving the existence of the zero-rated sales, which did not happen here. In that respect, the CTA *En Banc* properly disregarded the letter opinion as irrelevant to the present claim of the petitioner.[34]

In *Mirant*,[35] this Court also clarified that the two-year prescriptive period for filing an administrative claim for refund begins to run from the close of the taxable quarter when the relevant sales were made, and not from the time the input VAT was incurred, thus:

> The above proviso clearly provides in no uncertain terms **that unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not.** As the CA aptly puts it, albeit it erroneously applied the aforequoted Sec. 112(A), "[P]rescriptive period commences from the close of the taxable quarter when the sales were made and not from the time the input VAT was paid nor from the time the official receipt was issued." Thus, when a zero-rated VAT taxpayer pays its input VAT a year after the pertinent transaction, said taxpayer only has a year to file a claim for refund or tax credit of the unutilized creditable input VAT. The reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid.[36]

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34 *Id.* at 213-215. (Emphasis supplied, citations omitted).

35 *Supra* note 26.

36 *Id.* at 730. (Emphasis supplied, citation omitted).

In this case, petitioner, through its Accounting Manager, Helenio B. Seraspi, admitted that it had no sales during the taxable year 2011 and only started selling during the first quarter of 2014. Petitioner has no zero-rated or effectively zero-rated sales during the first to fourth quarters of taxable year 2011. Thus, there is no output VAT against which the input VAT may be deducted. Hence, the input VAT incurred from the first to fourth quarters of taxable year 2011 attributable thereto cannot be refunded. It is clear under Section 112(A) that the refund or tax credit of unutilized input VAT is premised on the existence of zero-rated or effectively zero-rated sales.

Accordingly, this Court finds that petitioner failed to establish its claim for refund or tax credit of its unutilized input VAT for the first, second, third, and fourth quarters of taxable year 2011.

Citing *Mirant*, petitioner contends that the phrase "relevant sales" pertains to its purchase of goods and services from which it incurred input VAT, and not from the time of its zero-rated or effectively zero-rated sales. In other words, petitioner argues that it had "relevant sales" in 2011 pertaining to its purchases in 2011 from which it incurred input VAT. Thus, petitioner asserts that the two-year prescriptive period should be reckoned with from the time of the said purchase of goods and services from which it incurred input VAT.

This Court is not convinced.

In *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*,[37] this Court explained the nature of the VAT and the entitlement to tax refund or credit of a zero-rated taxpayer, thus:

> Viewed broadly, the VAT is a uniform tax x x x levied on every importation of goods, whether or not in the course of trade or business, or imposed on each sale, barter, exchange or lease of goods or properties or on each rendition of services in the course of trade or business as they pass along the production and distribution chain, the tax being limited only to the value added to such goods, properties or services by the seller, transferor or lessor. It is an indirect tax that may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. As such, it should be understood not in the context of the person or entity that is primarily, directly and legally liable for its payment, but in terms of its nature as a tax on consumption. In either case, though, the same conclusion is arrived at.
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> The law that originally imposed the VAT in the country, as well as the subsequent amendments of that law, has been drawn from the *tax credit method*. Such method adopted the mechanics and self-enforcement features of the VAT as first implemented and practiced in Europe[.] Under the present method that relies on invoices, an entity can credit against or subtract from the VAT charged on its sales or outputs the VAT paid on its purchases, inputs and imports.

37 491 Phil. 317 (2005).

> If at the end of a taxable quarter the output taxes charged by a seller are equal to the input taxes passed on by the suppliers, no payment is required. It is when the output taxes exceed the input taxes that the excess has to be paid. If, however, the input taxes exceed the output taxes, the excess shall be carried over to the succeeding quarter or quarters. Should the input taxes result from zero-rated or effectively zero-rated transactions or from the acquisition of capital goods, any excess over the output taxes shall instead be refunded to the taxpayer or credited against other internal revenue taxes.
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> x x x x
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> Zero-rated transactions generally refer to the export sale of goods and supply of services. The tax rate is set at zero. When applied to the tax base, such rate obviously results in no tax chargeable against the purchaser. The seller of such transactions charges no output tax, but can claim a refund of or a tax credit certificate for the VAT previously charged by suppliers.[38]

Thus, our tax credit system allows a VAT-registered entity to credit against or subtract from the VAT charged on its sales or outputs the VAT paid on its purchases, inputs and imports. However, there are enterprises that engage in exportation of local goods and services that are subject to zero-rated VAT instead of the regular VAT rate of 12%. The tax refund under Section 112(A) gives option to these enterprises, since exports of this nature do not incur output VAT, to claim as refund or applied as a tax credit the input VAT that is passed on to them. Therefore, it can be said that these enterprises are being incentivized by providing them an option whereby their unutilized input VAT may be claimed as refund or tax credit. Viewed in this context, Section 112(A) is clearly intended for the tax refund or credit of input VAT directly attributable to zero-rated or effectively zero-rated sales as a form of incentive given to enterprises engaged in exports of local goods and services. Thus, whether applied as a refund or tax credit, the requisite of attribution to the zero-rated or effectively zero-rated sales must clearly be shown; otherwise, it is not covered by the provisions of Section 112(A) and the claim for refund or tax credit will not prosper.

This Court agrees with the CTA *En Banc* that the phrase "when the relevant sales were made" refers to zero-rated or effectively zero-rated sales, and not to the purchase of goods and services from which it incurred input VAT.

Through a plain reading of Section 112(A), it can be inferred that the phrase "when the sales were made" refers to zero-rated or effectively zero-rated sales. Based on the heading of Section 112(A), it is clear that the intent of the said provision is to cover only the refund or tax credits of unutilized input VAT attributable to zero-rated or effectively zero-rated sales. This is further supported in the last sentence of Section 112(A) stating that "where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in

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38 *Id.* at 331-334. (Citations omitted).

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." This proportional allocation of the input taxes if the taxpayer-claimant is engaged in both zero-rated or effectively zero-rated sales and taxable or exempt sales clearly shows the intent of Section 112(A) to restrict the refund or tax credit of unutilized input VAT only to those which are directly attributable to the zero-rated or effectively zero-rated sales.

Moreover, contrary to the assertion of petitioner, the phrase "when the relevant sales were made pertaining to the input VAT" as stated by this Court in *Mirant*, simply means that the input VAT that were incurred must be regarded as being related to such "relevant sales," which should be zero-rated or effectively zero-rated. In other words, there must be a direct relation or attributability of the purchases that incurred input VAT to the "relevant sales" that were made.

If We are to accept petitioner's interpretation of the ruling of this Court in *Mirant,* it will result in an absurd situation wherein the input VAT will be attributed from the "purchase" made by petitioner or the sales made by its supplier, and not from the sales made by petitioner, which is the taxpayer-claimant. As clearly provided in Section 112(A), the creditable input VAT must be attributable to the sales made by the taxpayer-claimant, in this case, the petitioner.

Petitioner's contention that it is not necessary that the zero-rated or effectively zero-rated sales and input taxes subject of the refund fall during the same period also fails to persuade.

As mentioned in *Luzon Hydro Corporation*, there must be evidence showing the existence of zero-rated or effectively zero-rated sales to which the input VAT being refunded must be attributable.[39] As admitted by petitioner, it had no zero-rated or effectively zero-rated sales from the first to fourth quarters of taxable year 2011. Thus, the CTA *En Banc* correctly ruled as follows:

> It is clear from the foregoing requisites that it is essential for the taxpayer-claimant to prove that it had zero-rated or effectively zero-rated sales during the pertinent taxable quarter unto which the input VAT, which is sought to be refunded, can be attributed to. **Thus, petitioner must first establish that zero-rated or effectively zero-rated sales unto which the input VAT can attributed to exist. It cannot be the other way around lest it is going to be putting the cart before the horse.**
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39 *Supra* note 33, at 213.

> Significantly, petitioner admitted the fact that it had no zero-rated or effectively zero-rated sale during the 1st to the 4th quarters of CY 2011 unto which the input taxes could be attributed to. Thus, the Court *En Banc* is one with the Court in Division in holding that:
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> > x x x without any zero-rated or effectively zero-rated sales being shown by petitioner, the attribution requirement or that the input tax due or paid must be attributable "to such sales" cannot be fulfilled or complied with. To be clear, what is refundable under Section 112(A) is the input VAT attributable to the taxpayer-claimant's zero-rated or effectively zero-rated sales. Thus, petitioner's contention that the existence of zero-rated or effectively zero-rated sales during the subject period is immaterial, has no basis in law.[40]

It is well-settled that the taxpayer-claimant has the burden of proving the legal and factual bases of its claim for tax credit or refund.[41] Petitioner failed to do so. We have held that:

> [T]ax refunds partake the nature of exemption from taxation, and as such, must be looked upon with disfavor. It is regarded as in derogation of the sovereign authority, and should be construed in *strictissimi juris* against the person or entity claiming the exemption. The taxpayer who claims for exemption must justify its claim by the clearest grant of organic or statute law and should not be permitted to stand on vague implications. The burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund.[42]

In fine, petitioner is not entitled to a refund or tax credit in the amount of ₱10,095,979.46, ₱3,134,942.99, ₱1,534,692.20, and ₱1,023,598.99, representing its unutilized input VAT for the first, second, third and fourth quarters, respectively, of taxable year 2011.

FOR THESE REASONS, the Petition for Review on *Certiorari* is **DENIED**. The assailed Decision of the Court of Tax Appeals *En Banc* dated March 14, 2019 and Resolution dated November 15, 2019 are **AFFIRMED.** Consequently, the CTA First Division's Decision dated August 18, 2017 and Resolution dated January 3, 2018 are **AFFIRMED**.

SO ORDERED."

JHOSEP Y. LOPEZ
Associate Justice

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40 *Rollo*, pp. 72-73. (Emphasis supplied).

41 *Commissioner Internal Revenue v. Filminera Resources Corporation*, G.R. No. 236325, September 16, 2020, citing *Atlas Consolidated Mining and Dev't Corp. v. Commission on Internal Revenue*, 551 Phil. 519, 546 (2007).

42 *Commissioner Internal Revenue v. Filminera Resources Corporation, supra.*

WE CONCUR:

MARVIC M.V.F. LEONEN
Senior Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

MARIO V. LOPEZ
Associate Justice

ANTONIO T. KHO, JR.
Associate Justice

ATTESTATION

I attest 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.

MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Second Division Chairperson's Attestation, 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.

ALEXANDER G. GESMUNDO
Chief Justice