FIRST DIVISION

[G.R. No. 233301, February 17, 2020]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. CHEVRON HOLDINGS, INC., [FORMERLY CALTEX (ASIA) LIMITED], RESPONDENT.

D E C I S I O N

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 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 P51,198,943.08.

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 P4,623,001.60 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 P409,127,980.26 can be considered as Chevron's valid zero rated sales. Moreover, it held that out of the total input VAT claim of P55,273,888.13, only the amount of P44,296,472.84 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.
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> **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 P186,438,134.34. Accordingly, the CTA Division adjusted Chevron's valid VAT zero-rated sales from P409,127,980.26 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 P6,785,362.73, 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*. —
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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 dose 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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> (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.
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> 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;