EN BANC

G.R. No. 215159 — CHEVRON HOLDINGS, INC. (FORMERLY CALTEX [ASIA] LIMITED), *petitioner*, ***versus*** **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

Promulgated:

July 5, 2022

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DISSENTING OPINION

CAGUIOA, *J.*:

The *ponencia* modifies the Decision of the Court of Tax Appeals (CTA) *En Banc* (CTA EB) by increasing the amount of unutilized input tax refundable to petitioner Chevron Holdings, Inc. (Formerly Caltex [Asia] Limited), for taxable year 2006 from Php47,409.24, as determined by the CTA EB, to Php1,140,381.22.[1]

In arriving at the increased amount, the *ponencia* found erroneous the formula used by the CTA EB in computing the refundable amount. In particular, the *ponencia* holds that the substantiation of a taxpayer's creditable input tax, including 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 supposedly has no basis in law and jurisprudence.[2] The *ponencia* also rules that it was erroneous for the CTA EB to first charge the validated unutilized input tax attributable to zero-rated sales against the taxpayer's output tax for the period covered by the refund, and thereafter use the resultant amount as basis in computing the refundable input tax. The *ponencia* holds that to do so would render nugatory the options accorded by law to the taxpayer, to either claim for a refund of its unutilized input tax attributable to zero-rated sales or to credit the same against its output tax.[3]

I strongly dissent. The *ponencia*'s formula in computing for the refundable amount of input tax attributable to zero-rated sales **contravenes the plain language of the law and undermines the basic principles of a sound tax system**.

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[1] *Ponencia*, pp. 6, 24-28.
[2] Id. at 22-24.
[3] Id. at 16-22.

I.

Sections 110 and 112 of the National Internal Revenue Code of 1997,[4] as amended (1997 NIRC), requires that only the "excess" input tax attributable to zero-rated sales is refundable to the taxpayer

It is a basic rule in statutory construction that —

> The law must not be read in truncated parts; its provisions must be read in relation to the whole law. It is [a] cardinal rule in statutory construction that a **statute's clauses and phrases must not be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole.** Every part of the statute must be interpreted with reference to the context, *i.e.*, **that every part of the statute must be considered together with other parts of the statute and kept subservient to the general intent of the whole enactment.**[5]

In line with this principle, I take strong exception on how the majority of the Court blindly read Section 112 of the 1997 NIRC, in isolation or apart from the other provisions thereof, particularly Section 110(B). To be sure, Section 110(B), which provides for the determination of a taxpayer's excess output tax or excess input tax in a given quarter, makes initial reference to the grant of refund or credit of input tax to a taxpayer, *viz.*:

> SECTION. 110. *Tax Credits.* –
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> x x x x
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> (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.** (Emphasis supplied)

Breaking down the foregoing provision, a taxpayer incurs Value-Added Tax (VAT) liability if, at the end of a given quarter, it[6] has excess output tax, *i.e.*, its output tax is more than its input tax. Conversely, no VAT liability is due from a taxpayer if it has excess input tax in a given quarter, *i.e.*, its input tax is more than its output tax. In such a case, the excess input tax shall be used as credit against its output tax in the succeeding quarters. However, if

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[4] Otherwise known as the "TAX REFORM ACT OF 1997," approved on December 11, 1997.

[5] *Mactan-Cebu International Airport Authority v. Urgello*, 549 Phil. 302, 322 (2007); emphasis supplied, citation omitted.

[6] "It" is used given that the taxpayer in this case is a corporation.

the excess input tax in a given quarter is attributable to its zero-rated sales, then the taxpayer, aside from crediting it against the output tax for the succeeding quarters, has the additional options of either: (1) claiming for a refund; or (2) crediting it against other internal revenue taxes. These additional options may be exercised subject to the requirements of Section 112.

In simple terms, Section 112 is foremost circumscribed by how a taxpayer's VAT liability is determined or computed under Section 110(B). Stated differently, the requisites for claiming for refund of input tax attributable to zero-rated sales are not confined to the provisions of Section 112 alone. Before Section 112 may even operate to grant a taxpayer a refund or credit, the requirement of Section 110(B) must first be satisfied — that is, the taxpayer must first have excess input tax. In other words, the taxpayer's option for refund or credit under Section 112 arises only when the excess input tax is attributable to zero-rated sales.

Clearly, in contrast to the *ponencia*'s ruling, a taxpayer's right to a refund or credit of input tax attributable to zero-rated sales is neither absolute nor automatic. Refund or credit can only be granted when the taxpayer complies with the requirements of Section 112 **and,** pursuant to Section 110(B), it has excess input tax over output tax in the period or periods covered by the claim. Thus, apart from complying with the requirements of Section 112, the taxpayer must also establish that it has excess input tax in the given quarter to be entitled to refund of the claimed input tax attributable to zero-rated sales; otherwise, following Section 110(B), the taxpayer is instead liable to pay its VAT liability.

Therefore, in charging the substantiated and validated input taxes against the output taxes, the CTA did nothing more than determine whether petitioner is entitled to its claimed refund. In doing so, the CTA had to determine whether petitioner had outstanding output tax liability — an issue that is inextricably linked to the resolution of the claimed refund. Again, Section 110(B) of the 1997 NIRC is clear when it states that "[i]f at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person."

Relevantly, this reading of Section 110(B) in relation to Section 112, has already been established by the Court as far back as 2005 in the case of *Commissioner of Internal Revenue v. Seagate Technology (Phils.)*[7] (*Seagate*). Contrary to the characterization made by the *ponencia*, the Court's pronouncement in *Seagate* that only the "excess" input tax over output tax shall be refunded to the taxpayer is not *obiter dictum*.[8] To be sure, *Seagate* involves a claim for refund or credit of input tax attributable to zero-rated sales. And in determining Seagate's entitlement thereto, the Court discussed the VAT system and applied Section 110(B) and the requirements for input tax refund, *viz.*:

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[7] 491 Phil. 317 (2005).
[8] *See ponencia*, p. 23

> ***Nature of the VAT and the Tax Credit Method***
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> Viewed broadly, the VAT is a uniform tax ranging, at present, from 0 percent to 10 percent 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 and subsequently adopted in New Zealand and Canada. 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.
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> 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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> ***Tax Refund or Credit in Order***
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> Having determined that respondent's purchase transactions are subject to a zero VAT rate, the tax refund or credit is in order.
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> x x x x
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> ***Compliance with All Requisites for VAT Refund or Credit***
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> As further enunciated by the Tax Court, respondent complied with all the requisites for claiming a VAT refund or credit.[9]

That only the excess input tax may be refunded under Section 112 was reiterated in the Court *En Banc* case of *Abakada Guro Party List v. Ermita*[10]

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[9] *Commissioner of Internal Revenue v. Seagate Technology (Phils.)*, supra note 7, at 331-349; emphasis, italics and underscoring supplied, citations omitted.

[10] G.R. Nos. 168056, 168207, 168461, 168463 & 168730, September 1, 2005, 469 SCRA 14.

(*Abakada Guro*), where the constitutionality of Republic Act No. 9337[11] was upheld. The Court, explaining the VAT crediting system, said:

> As earlier stated, the input tax is the tax paid by a person, passed on to him by the seller, when he buys goods. Output tax meanwhile is the tax due to the person when he sells goods. In computing the VAT payable, three possible scenarios may arise:
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> *First*, if at the end of a taxable quarter the output taxes charged by the seller are equal to the input taxes that he paid and passed on by the suppliers, then no payment is required;
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> *Second*, when the output taxes exceed the input taxes, the person shall be liable for the excess, which has to be paid to the Bureau of Internal Revenue (BIR); and
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> ***Third*, if 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, any *excess over the output taxes* shall instead be refunded to the taxpayer or credited against other internal revenue taxes, at the taxpayer's option.**[12]

Indeed, the issue discussed in the *ponencia* has long been settled by jurisprudence; and to revisit and reverse the same is completely unwarranted as it is contrary to the plain letter of the law.

To reiterate, Section 112 should be read in conjunction with Section 110(B). Based on these provisions, before a taxpayer can be granted a refund of input tax from zero-rated sales, it must first be established that it has no output tax liability but, in fact, has excess input tax for the period or periods covered by the claim. As such, charging/offsetting the validated input tax against the taxpayer's output tax liability in the quarter subject of the claim is necessary and required by law to determine the amount of excess input tax, if any, which may be refunded to the taxpayer.

The *ponencia* also points out that the term "excess" does not apply to zero-rated transactions because it is technically a misnomer; and that Section 110(B) uses the word "any" in referring to the input tax attributable to zero-rated sales that a taxpayer may opt to refund or credit against other internal revenue taxes.[13]

However, contrary to the foregoing postulation, the term "excess" also applies to zero-rated sales because it is a VAT-taxable transaction; only that, for a taxpayer engaged in purely zero-rated transactions, its "excess" input tax pertains entirely to the amount of its input tax attributable to zero-rated sales.

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[11] 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, May 24, 2005.

[12] *Abakada Guro Party List v. Ermita*, supra note 10, at 132-133; emphasis, italics and underscoring supplied, citations omitted.

[13] *See ponencia*, pp. 18, 22-23.

Moreover, the *proviso* in Section 110(B) cannot be read in isolation or apart from the general concept discussed therein, which is the determination of a taxpayer's VAT liability. Again, it bears emphasis that the meaning of the law is not to be extracted from any single part, portion or section or from isolated words and phrases, clauses or sentences but from a general consideration or view of the act as a whole.[14] Thus, a taxpayer's entitlement for refund or tax credit under Section 112 is always subject to whether the taxpayer has excess input tax or is liable for VAT in a given quarter. Had the Legislature intended that a taxpayer can simply refund any of its input tax attributable to zero-rated sales, even if the taxpayer is, in fact, liable for output tax for the given quarter, then it should not have included such *proviso* under Section 110(B). Section 112 would have been a sufficient basis for a taxpayer's entitlement for input tax refund or credit. However, the Legislature did not. Instead, the Legislature was explicit that the refund or credit of input tax attributable to zero-rated sales must satisfy both Section 110(B) and Section 112.

Worthy of note as well is the fact that despite the Court's categorical pronouncements in *Seagate* and *Abakada Guro*, the relevant portions of Section 110(B) and Section 112 were neither amended nor repealed by Congress in the recent laws[15] it enacted that amended the 1997 NIRC.

Further, the *ponencia* refers to Section 110(C),[16] which requires the taxpayer to deduct the amount of claim for refund or tax credit from its creditable input tax in a taxable month or quarter. According to the *ponencia*, this supports the construction that the taxpayer has the option to automatically claim for a refund of input tax attributable to zero-rated sales.

Section 110(C) reads:

> SECTION 110. *Tax Credits.* –
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> x x x x
>
> (C) *Determination of Creditable Input Tax.* – **The 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.**
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> The claim for tax credit referred to in the foregoing paragraph shall include not only those filed with the Bureau of Internal Revenue but also

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[14] *Aisporna v. CA, et al.*, 198 Phil. 838, 847 (1982).

[15] *See* Republic Act No. (RA) 10963 or the "TAX REFORM FOR ACCELERATION AND INCLUSION (TRAIN)" Law and RA 11534 or the "CORPORATE RECOVERY AND TAX INCENTIVES FOR ENTERPRISES ACT (CREATE)."

[16] *See ponencia*, pp. 17-18.

> those filed with other government agencies, such as the Board of Investments and the Bureau of Customs. (Emphasis supplied)

Again, this is egregiously wrong. Section 110(C) does not negate or contradict the requirement under Section 110(B) that only the excess input tax attributable to zero-rated transactions shall be refunded or credited against other internal revenue taxes. These two provisions are distinct and independent of each other. What Section 110(C) simply ensures is that there will be no double recovery of input tax. Mandating that the amount of the claim for input tax refund be deducted from creditable input tax for the month or quarter prevents the taxpayer from also crediting the same against its output tax in that given quarter or from the output tax of the succeeding quarters. On the other hand, what Section 110(B) requires is that the taxpayer proves that it has no output tax liability in the given quarter before it can be granted a refund or credit of the excess input tax.

Substantiation of accumulated input tax carry-over is mandatory in input tax refund

I also cannot agree with the *ponencia*'s ruling that, in cases of refund of input tax attributable to zero-rated sales, the taxpayer is not required to substantiate its creditable input tax, including those carried over from the previous quarter.[17]

As earlier emphasized, the entitlement of a taxpayer to a refund or credit of input tax attributable to zero-rated sales depends on whether it has excess input or excess output tax. To determine this, input tax is deducted or credited against the output tax. In the quarterly VAT return,[18] the allowable input tax that may be credited against the output tax due for a given period includes, 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 in computing a taxpayer's net VAT payable,[19] and ultimately, the amount of input tax refundable to a taxpayer.

However, before any input tax may be credited against the output tax, the law requires that the same be duly validated or substantiated. Section 110(A)(1)[20] of the 1997 NIRC 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. In turn, Section

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17 *Ponencia*, pp. 24-26.

18 *See* BIR Form No. 2550Q, February 2007 (ENCS).

19 Id.; Net VAT payable is computed by deducting allowable input taxes from output tax due for the quarter.

20 The relevant provision reads:

> SECTION 110. *Tax Credits.* –
>
> (A) *Creditable Input Tax.* –
>
> (1) Any input tax **evidenced by a VAT invoice or official receipt issued in accordance with Section 113** hereof on the following transactions shall be creditable against the output tax[.] (Emphasis supplied).

113(A)[21] describes a valid VAT invoice and VAT official receipt. Consequently, only those input taxes duly supported by valid VAT invoice or VAT official receipt can be credited against the output taxes. In fact, it has long been settled in jurisprudence that if a taxpayer fails to present VAT invoices or official receipts to substantiate its input tax, the amount cannot be credited against the output tax.[22] Therefore, a mere declaration in the VAT return of the amount of excess input tax carried over from prior quarters, without supporting VAT invoices or VAT official receipts, is insufficient. The taxpayer must present valid VAT invoices or VAT official receipts to prove the same.

Relative thereto, the majority's Decision to not require the substantiation of accumulated input tax carry-over indicates a total failure to appreciate the nature of the proceedings in the CTA.

First, a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an *appeal* by way of petition for review of a previous, unsuccessful administrative claim. Therefore, as in every appeal or petition for review, a taxpayer has to convince the appellate court that the quasi-judicial agency *a quo* did not have any reason to deny its claims. In the present case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit,[23] **which should include presenting VAT invoices or receipts to substantiate its accumulated input tax carry-over**.

Second, cases filed in the CTA are litigated *de novo*. Thus, a taxpayer should prove every minute aspect of its case by presenting, formally offering, and submitting its evidence to the CTA. Since it is crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim.[24]

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[21] The relevant provision reads:

SECTION 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* --

(A) *Invoicing Requirements.* -- A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:

(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and

(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.

[22] *See Sitel Phils. Corp. v. Commissioner of Internal Revenue*, 805 Phil. 464, 486 (2017), citing *Western Mindanao Power Corp. v. Commissioner of Internal Revenue*, 687 Phil. 328 (2012).

[23] *Atlas Consolidated Mining and Dev't. Corp. v. Commissioner of Internal Revenue*, 547 Phil. 332, 339 (2007).

[24] Id. at 339.

In stark contrast to the *ponencia*'s ruling that the substantiation of excess input tax carried over from the previous quarter is not a requirement for entitlement to a refund of unutilized input VAT from zero-rated sales, I submit that the submission of VAT invoices or receipts to prove a taxpayer's accumulated input tax carry-over is exactly what the law requires under Section 110(A)(1) in relation to Section 113 of the 1997 NIRC.

In this case, considering that petitioner failed to present VAT invoices or official receipts to establish the existence of its excess input tax carried over from the previous quarter, the CTA EB is therefore correct in disallowing the same from being credited against the output tax.[25] At bottom, the CTA EB correctly applied what is written in the 1997 NIRC.

In fine, it bears to emphasize the well-established rule in taxation that tax refunds, as that provided under Section 110(B) in relation to Section 112, is in the nature of tax exemption. As such, the law must be construed in *strictissimi juris* against the taxpayer and liberally in favor of the government.[26] Aside from this, the pieces of evidence presented entitling a taxpayer to a refund or exemption are also *strictissimi* scrutinized and must be duly proven.[27] Accordingly, an applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim, but also compliance with all the documentary and evidentiary requirements required by law.[28]

II.

The ponencia's formula undermines the basic principles of a sound tax system

The canons of a sound tax system are the following:

(a) Fiscal adequacy – the sources of revenues must be adequate to meet government expenditures and their variations;[29]

(b) Ability-to-pay – the tax burden must be in proportion to the taxpayer's ability to pay;[30] and

(c) Administrative feasibility – the tax system should be capable of being effectively administered and enforced with the least inconvenience to the taxpayer.[31]

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[25] *See ponencia*, p. 12, citing the assailed CTA EB Decision.

[26] *Eastern Telecommunications Phils., Inc. v. Commissioner of Internal Revenue*, 757 Phil. 136, 146 (2015).

[27] *KEPCO Phils. Corp. v Commissioner of Internal Revenue*, 656 Phil. 68, 86 (2011), citing *Atlas Consolidated Mining and Dev't. Corp. v. Commissioner of Internal Revenue*, 569 Phil. 483 (2008).

[28] *Eastern Telecommunications Phils., Inc. v. Commissioner of Internal Revenue*, supra note 26, at 144; *Atlas Consolidated Mining and Dev't. Corp. v. Commissioner of Internal Revenue*, id.

[29] *Chavez v. Ongpin*, 264 Phil. 695, 704 (1990).

[30] *Abakada Guro Party List v. Ermita*, supra note 10.

[31] *Municipality of Cainta v. City of Pasig, et al.*, 811 Phil. 666, 679 (2017).

Although these principles are not mandatory, they have been used by the Court as a guide in construing and determining the validity of tax provisions and related rules and regulations. For example, in ruling that Executive Order No. 73[32] is constitutional, the Court in *Chavez v. Ongpin*[33] stated that "to continue collecting real property taxes based on valuations arrived at several years ago, in disregard of the increases in the value of real properties that have occurred since then, is not in consonance with a sound tax system[,]"[34] specifically, the principle of fiscal adequacy.[35] Also, in *Municipality of Cainta v. City of Pasig, et al.*,[36] the Court ruled that for tax compliance purposes, taxpayers should be allowed to rely on the location reflected in their certificate of title. "To hold otherwise would subject taxpayers to the vagaries of boundary disputes, to their prejudice and inconvenience and to the detriment of proper tax administration. Such scenario is contrary to the canons of a sound tax system."[37]

The formula for computing the refundable amount of input VAT attributable to zero-rated sales, as deduced by the *ponencia* from its interpretation of Sections 110 and 112, contravenes the principles of administrative feasibility and fiscal adequacy.

To be sure, "[a]dministrative convenience cannot thwart legislative mandate."[38] However, where said mandate cannot be readily determined from a plain reading of specific tax provisions, the Court has ruled that Congress is deemed to have enacted a valid, sensible, and just law, one that intends to promote, rather than defeat, administrative feasibility.[39] Thus, in *University Physicians Services Inc.-Mgmt., Inc. v. Commissioner of Internal Revenue*,[40] the Court ruled, as follows:

> *Second*, on the premise that the carry-over is to be disallowed due to the pending application for refund, it would be more complicated and circuitous if the government were to grant first the refund claim and then later assess the taxpayer for the claim of automatic tax credit that was previously disallowed. ***Such procedure is highly inefficient and expensive on the part of the government due to the costs entailed by an assessment. It unduly hampers, instead of eases, tax administration and unnecessarily exhausts the government's time and resources. It defeats, rather than promotes, administrative feasibility. Such could not have been intended***

[32] PROVIDING FOR THE COLLECTION OF REAL PROPERTY TAXES BASED ON THE 1984 REAL PROPERTY VALUES, AS PROVIDED FOR UNDER SECTION 21 OF THE REAL PROPERTY TAX CODE, AS AMENDED, November 25, 1986.

[33] Supra note 29.

[34] Id. at 704.

[35] Id.

[36] Supra note 31.

[37] Id. at 679.

[38] *Commissioner of Internal Revenue v. Seagate Technology (Phils.)*, supra note 7, at 348.

[39] *See University Physicians Services Inc.-Mgmt., Inc. v. Commissioner of Internal Revenue*, 827 Phil. 376, 391 (2018), citing *Lawyers Against Monopoly and Poverty (LAMP), et al. v. The Secretary of Budget and Management, et al.*, 686 Phil. 357, 372-373 (2012), further citing *Fariñas v. The Executive Secretary*, 463 Phil. 179, 197 (2003).

[40] Id.

> ***by our lawmakers. Congress is deemed to have enacted a valid, sensible, and just law.***
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> Thus, in order to place a sensible meaning to paragraph (c) of Section 228, it should be interpreted as contemplating only that situation when an application for refund or tax credit certificate had already been previously granted. Issuing an assessment against the taxpayer who benefited twice because of the application of automatic tax credit is a wholly acceptable remedy for the government.
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> Going back to the case wherein the application for refund or tax credit is still pending before the BIR, but the taxpayer had in the meantime automatically carried over its excess creditable tax in the taxable quarters of the succeeding taxable year(s), the only judicious course of action that the BIR may take is to deny the pending claim for refund. ***To insist on giving due course to the refund claim only because it was the first option taken, and consequently disallowing the automatic tax credit, is to encourage inefficiency or to suppress administrative feasibility, as previously explained.*** Otherwise put, imbuing upon the choice of refund or tax credit certificate the character of irrevocability would bring about an irrational situation that Congress did not intend to remedy by means of an assessment through the issuance of a FAN without a prior PAN, as provided in paragraph (c) of Section 228. It should be remembered that Congress' declared national policy in passing the NIRC of 1997 is to rationalize the internal revenue tax system of the Philippines, including tax administration.[41]

The formula espoused by the *ponencia* from its interpretation of Sections 110 and 112 is no different. **The dangerous consequences of the majority's Decision in the present case cannot and should not be ignored. By removing the output tax from the formula for granting a refund of input tax attributable to zero-rated sales, the majority's Decision encourages inefficiency and suppresses administrative feasibility.** In fine, the *ponencia* submits that a taxpayer can refund its unutilized input tax as long as it is attributable to its zero-rated transactions, regardless if the taxpayer still has excess output tax. As discussed above, excess output tax results in a VAT liability which must be paid by the taxpayer to the government.

Verily, instead of interpreting Sections 110 and 112 in such a way that the taxpayer is required to first charge the amount it wants to refund from the government against the amount it has to pay to the government, thereby promoting administrative feasibility, the *ponencia* suggests a multistep approach that unnecessarily exhausts the government's time and resources and causes inconvenience to the taxpayer. It would be more complicated and circuitous if the government were to grant first the refund claim and then later collect from the taxpayer the outstanding output tax liability. Such procedure defeats, rather than promotes, administrative feasibility, as previously explained.

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[41] Id. at 391-392; emphasis, italics and underscoring supplied, citations omitted.

Too, the *ponencia*'s formula also undermines the principle of fiscal adequacy. Instead of ensuring collection of the taxpayer's VAT liability by already debiting the same from the amount of refundable input tax allowed to be claimed from the government, the *ponencia* suggests an interpretation that mainly guarantees tax refund which, as mentioned, is in the nature of a tax exemption. This clearly is not the intent of Congress as it is not in consonance with the objective of the government to collect taxes and revenues sufficient enough to meet the government's disbursements and expenses.

Just a final observation at this juncture. It seems to me that the majority of the Court fails to recognize that by granting the input tax refund without charging against the taxpayer's output tax liability, the government would always be on the losing end — refunding input tax attributable to zero-rated sales even if the taxpayer-claimant owes the government output tax. **<u>Leaving out the output tax from the equation would drain government funds while also delaying the collection of much-needed revenue for government operations</u>.**

In view of these glaring violations of the canons of a sound tax system, I am compelled to maintain my dissent.

To summarize:

The *ponencia* finds erroneous the following procedures used by the CTA EB in computing for the refundable amount, if any, as these, according to the *ponencia*, find no basis in law and jurisprudence: (1) the substantiation of the prior quarter's excess input tax; and (2) the charging against the output tax the validated unutilized input tax to arrive at the refundable amount.

However, as discussed, the provisions of the 1997 NIRC and relevant jurisprudence in fact support the formula adopted by the CTA EB. Section 110 in relation to Section 112 provides that only the excess input tax attributable to zero-rated transactions may be refunded to the taxpayer. In arriving at the refundable amount, it is necessary therefore that: (1) the taxpayer substantiate its input tax, including the input tax carried over from the previous quarter, before the same may be credited/offset against the output tax; and (2) the validated input tax must be charged against the output tax first to determine if there is *excess* input tax that may still be refunded to the taxpayer.

The formula adopted by the CTA EB and its interpretation of Sections 110 and 112 are also reinforced by the principles of administrative feasibility and fiscal adequacy of a sound tax system.

Accordingly, I vote to **DENY** the Petition.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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