REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MITSUBA PHILS. TECHNICAL CENTER CORP., *Petitioner,*	**CTA Case No. 9032**
-versus-	Members: **CASTAÑEDA, JR.,** *Chairperson* **CASANOVA,** *and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JAN 2 4 2018 9:30 a.m.

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DECISION

MANAHAN, *J.:*

This is a Petition for Review[1] filed by Mitsuba Phils. Technical Center Corp. praying for the refund or issuance of a tax credit certificate (TCC) in the amount ₱4,201,189.79, allegedly representing its excess and unapplied input valued-added tax (VAT) payments attributable to its zero-rated sales for taxable year 2010.

THE FACTS

Petitioner Mitsuba Phils. Technical Center Corp. is a corporation duly organized and existing under the laws of the Philippines and registered with the Securities and Exchange Commission (SEC), under Registration No. A2000006072, with office address at 3rd Floor, Dusit Hotel cmm

[1] Docket, pp. 13-21.

Nikko, EDSA corner Arnaiz Ave., Ayala Center, Makati City.[2] It is a duly registered VAT taxpayer pursuant to Section 236 of the National Internal Revenue Code (NIRC) of 1997, as amended, with Certificate of Registration No. OCN9RC0000204195 dated May 25, 2000 issued by the Bureau of Internal Revenue (BIR).[3] It is engaged in the business of providing technical data, plans and drawings for automobile parts to its clients located abroad.[4]

Respondent is the duly appointed Commissioner of Internal Revenue (CIR) vested with the authority to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. The CIR holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner filed its Quarterly VAT Returns for taxable year 2010.[5] Subsequently, on March 9, 2012, petitioner filed with the BIR an administrative claim for refund of its alleged accumulated excess input VAT in the amount of ₱4,201,189.79.[6]

On April 27, 2012, petitioner received Letter of Authority No. LOA-047-2012-00000081[7] dated March 30, 2012 and a Checklist of Requirements[8] dated April 26, 2012, authorizing Revenue Officer Hazel Manurac and Group Supervisor Maria Lina Aficial to examine petitioner's books of accounts and other accounting records for VAT for the period covering January 1, 2010 to December 31, 2010 pursuant to a mandatory audit-claim for VAT refund.[9]

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[2] Par. 1, Summary of Admitted Facts, Joint Stipulation of Facts (JSF), docket, p. 247.
[3] Par. 2, Summary of Admitted Facts, JSF, docket, p. 247; Exhibit "P-1".
[4] Par. 5, Petition for Review, docket, p. 14.
[5] Q13 & A, Exhibit "P-36", Judicial Affidavit of Maribeth Sta. Ana, docket, p. 266.
[6] Q16 & A, Exhibit "P-36", Judicial Affidavit of Maribeth Sta. Ana, docket, p. 267; BIR Records, pp. 727-728.
[7] BIR Records, p. 731.
[8] BIR Records, pp. 729-730.
[9] Q17 & A, Exhibit "P-36", Judicial Affidavit of Maribeth Sta. Ana, docket, pp. 267-268.

On March 16, 2015, petitioner received from respondent a Letter[10] dated March 12, 2015, informing petitioner that its claim for refund or issuance of TCC was denied for failure to submit complete documentary evidence in support of its claim.[11] In said letter, respondent emphasized that when the one hundred twenty (120)-day period lapses and there is inaction on the part of the BIR Commissioner, taxpayers must no longer wait for the BIR Commissioner to come up with a decision but must file an appeal within thirty (30) days from the lapse of the 120-day waiting period.

On April 15, 2015, petitioner filed through registered mail, the instant Petition for Review which was received by this Court on April 22, 2015.[12]

Instead of filing his Answer, respondent filed a Motion to Dismiss[13] through registered mail on June 15, 2015, which was received by this Court on June 25, 2015.

In a Resolution[14] dated October 12, 2015, the Court granted respondent's Motion to Dismiss holding that the Court is bereft of jurisdiction to hear petitioner's judicial appeal due to the fact that its Petition for Review was filed beyond the mandatory 30-day period.

On October 18, 2015, petitioner filed a Motion for Reconsideration[15] (re: the Resolution of the Court dated October 12, 2015), which was received by the Court on November 4, 2015. Petitioner prayed for the cancellation, annulment and reversal of said Resolution and prayed for the denial of the Motion to Dismiss filed by respondent for lack of merit.

The Court granted Petitioner's Motion for Reconsideration in a Resolution[16] dated January 18, 2016 and set aside the Resolution issued on October 12, 2015 cm

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[10] BIR Records, p. 807.
[11] Q23 & A, Exhibit "P-36", Judicial Affidavit of Maribeth Sta. Ana, docket, p. 269.
[12] Docket, p. 13.
[13] Docket, pp. 127-131.
[14] Docket, pp. 160-168.
[15] Docket, pp. 169-178.
[16] Docket, pp. 192-195.

and denied respondent's Motion to Dismiss filed on June 15, 2015. In this Resolution, the Court deemed it proper and in the interest of justice to proceed with the full-blown trial to ensure that both parties be given the opportunity to present both testimonial and documentary evidence to support their respective claims.

On February 3, 2016, respondent, filed through registered mail, a Motion for Reconsideration, praying for the reconsideration and setting aside of the Resolution dated January 18, 2016 and reiterated his prayer for the dismissal of the Petition for Review for lack of jurisdiction. The Motion for Reconsideration filed by respondent was denied by the Court in a Resolution[17] dated April 13, 2016.

Respondent subsequently filed his Answer[18] on April 25, 2016.

On April 25, 2016, respondent filed her Pre-Trial Brief[19], while petitioner filed its Pre-Trial Brief[20] on May 10, 2016.

Thereafter, the parties filed their Joint Stipulation of Facts and Issues[21] (JSFI) on June 22, 2016. The JSFI was approved and adopted by the Court in the Pre-Trial Order[22] dated June 24, 2016.

Upon motion[23] of petitioner, the Court commissioned Mr. Neil U. Sison as the Independent Certified Public Accountant (CPA) for the case.[24]

During trial, petitioner presented the following witnesses: Ms. Maribeth Sta. Ana[25], its Accounting cpm

[17] Docket, pp. 215-217.
[18] Docket, pp. 224-228.
[19] Docket, pp. 218-220.
[20] Docket, pp. 238-241.
[21] Docket, pp. 247-250.
[22] Docket, pp. 252-256.
[23] Docket, pp. 243-245.
[24] Oath of Commission, docket, p. 293.
[25] Minutes of the Hearing dated July 11, 2016, docket, p. 280; Exhibit "P-36", Judicial Affidavit of Maribeth Sta. Ana, docket, pp. 264-271.

Manager; and Mr. Neil U. Sison[26], the Court-commissioned Independent CPA.

On September 29, 2016, petitioner filed its Formal Offer of Evidence.[27] In the Resolution[28] dated December 13, 2016, the Court admitted petitioner's Exhibits "P-1", "P-2", "P-3", "P-36 and P-36-A", "P-37", "P-37-M-16 to P-37-N-216", and "P-38 and P-38-A". However, the Court denied the admission of Exhibits "P-4", "P-5", "P-31", "P-32 and P-33", "P-34", and "P-35", for not being found in the records; and Exhibits "P-6 to P-9", "P-10 to P-26", "P-27 and P-28", "P-29", "P-30", and "P-37-A to P-37-M-15", for failure to submit the originals for comparison.

During the hearing held on September 7, 2016, counsel for respondent manifested that he will no longer present any evidence in this case.[29]

On January 9, 2017, respondent filed her Memorandum[30] through registered mail and was received by the Court on January 25, 2017. Meanwhile, petitioner failed to file its Memorandum as per Records Verification Report[31] issued by the Court's Judicial Records Division on February 6, 2017. Thus, in the Resolution[32] dated February 9, 2017, the instant case was declared submitted for decision.

THE ISSUE

> Whether or not petitioner is entitled to a refund/tax credit of excess or unutilized input VAT payments for taxable year 2010 in the amount of ₱4,201,189.79.[33] cm

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[26] Minutes of the Hearing dated September 7, 2016, docket, p. 315; Exhibit "P-38", Judicial Affidavit of Mr. Neil U. Sison, docket, pp. 301-314.
[27] Docket, pp. 319-323.
[28] Docket, pp. 328-329.
[29] Order dated September 7, 2016, docket pp. 317-318.
[30] Docket, pp. 330-336.
[31] Docket, p. 338.
[32] Docket, p. 339.
[33] Issue to be Tried, JSF, docket, p. 248.

Petitioner's arguments:

On the substance of its claim for refund, petitioner remains firm that it is entitled to a refund of its excess and unapplied input VAT payments for taxable year 2000 based on Section 106 (A) (2) of the 1997 NIRC. Petitioner claims that the excess input VAT was paid in connection with its domestic purchases of taxable goods and services as well as its importation of capital goods incidental to the production of the goods, i.e., technical drawings and plans, which were all exported to its clients located abroad. It further claims that such excess input VAT has not been applied to any VAT output tax liability during the same period or any succeeding period.

As to the issue raised in the Motion to Dismiss filed by respondent on the basis of lack of jurisdiction, petitioner argues that the 120 -day period provided under Section 112 (C) of the 1997 NIRC does not apply to the instant case because the actuations of respondent after it submitted the complete documents on July 11, 2014 gave the impression that the refund was "still in process" until it surprisingly received a letter dated March 12, 2015 from the representative of respondent on March 16, 2015, denying the claim due to its alleged failure to submit documentary evidence in support thereof.

Petitioner maintains that the reckoning period of the thirty (30) days to file a judicial claim for refund is on March 16, 2015, the date when it received the letter denying its claim. Petitioner then theorized that the Petition for Review filed on April 15, 2015 was clearly within the prescribed thirty-day period.

Respondent's counter-arguments:

The respondent submits that the judicial claim or the Petition for Review was filed out of time. He cited the ruling of the Supreme Court in the case entitled *Commissioner of Internal Revenue vs San Roque Power Corporation (San Roque)*[34] where it was held that a taxpayer in claims for refund of unutilized input VAT, may file an appeal in two cmv

[34] G.R. No. 187485, February 12, 2013.

ways: 1) file a judicial claim within thirty (30) days after the Commissioner denies the claim within the 120-day period, or (2) file a judicial claim within thirty (30) days from the expiration of the 120-day period if the Commissioner of Internal Revenue does not act within said period. Respondent explains his point further by a narration of three significant dates of filing done by petitioner, thus:

1. On March 9, 2012, petitioner filed its administrative claim for refund of its alleged excess input VAT for taxable year 2010 with the BIR.
2. On July 11, 2014, petitioner submitted to the BIR its last set of documentary requirements to support its claim for refund.
3. On April 15, 2015, petitioner filed a Petition for Review with this Court.

Using the doctrine enunciated by the Supreme Court in the *San Roque* case, respondent maintains that petitioner should have filed its Petition for Review with this Court within thirty (30) days from November 8, 2012 or not later than December 8, 2012. Thus, the filing of the Petition for Review on April 15, 2015 is late by almost three years from its supposed deadline, i.e., December 8, 2012. Respondent emphasizes that if the 120-day period lapses and there is inaction on the part of the CIR, taxpayers must consider this inaction as the decision itself and must file an appeal with this Court within 30 days after said lapse.

The respondent avers in conclusion that petitioner should not have waited for the "denial" of its claim for refund after the lapse of the 120-day period on the ground that the 120 + 30 day period is mandatory and jurisdictional in claims for refund of excess/unutilized input VAT.

The Court notes that respondent erred in presenting the above arguments because of the erroneous dates which were made as her basis. It may be recalled that in the Motion to Dismiss filed on June 15, 2015, respondent asserted as follows: *cpm*

> "Petitioner should not have waited for the respondent's Letter Decision dated March 15, 2015 to file its judicial claim because the mere lapse of the 120-day period is already a denial of its claim for refund. Since there was already a denial of its claim, (lapse of the 120-day period) on November 8, 2012, **counted from petitioner's last submission of documents on July 11, 2014**, petitioner should have filed its judicial claim within thirty (30) days from **November 8, 2012 or not later than December 8, 2012."** (Emphasis supplied.)

Respondent seemed to have gotten her facts and dates wrong as will be shown later.

RULING OF THE COURT

The Motion to Dismiss filed by respondent at the onset of this trial makes it imperative for this Court to determine first and foremost, whether it has jurisdiction to entertain the instant Petition for Review as this is a primary issue upon which depend the validity of its proceedings.

Jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy.[35] It is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties.[36] If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[37]

The Court of Tax Appeals is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[38] The jurisdiction of the CTA regarding internal revenue tax refund is provided under Section 7(a)(1) and (2) of Republic Act (R.A.) No. 1125, as amended by R.A. Nos. 9282 and 9503, which states:

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[35] Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue, G.R. No. 185666, February 4, 2015, citing Commissioner of Internal Revenue vs. Leonardo S. Villa and the Court of Appeals, G.R. No. L-23999, January 2, 1968.

[36] Carmen Danao Malana, et.al. vs. Benigno Tappa, et.al., G.R. No. 181303, September 17, 2009 quoting Laresma vs. Abellana, 484 Phil 766.

[37] *Supra*, Note No. 35.

[38] Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.), G.R. No. 169778, March 12, 2014.

"SEC. 7. *Jurisdiction.* – The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) **Decisions of the Commissioner of Internal Revenue in cases involving** disputed assessments**, refunds of internal revenue taxes**, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;

(2) **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;" (*Emphasis supplied*)

Similarly, Section 3(a)(1) and (2) of Rule 4 of the Revised Rules of the Court of Tax Appeals provides:

"SEC. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

(1) **Decisions of the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal

> Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> (2) **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided*, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further*, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and *Provided, still further*, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code;" (*Emphasis supplied*)

It is clear from the afore-quoted provisions that the CTA shall exercise exclusive appellate jurisdiction to review on appeal the decisions as well as the *inaction* by the BIR Commissioner in cases involving refunds of internal revenue taxes. In cases where the 1997 NIRC provides a specific period for action, the inaction of the Commissioner of Internal Revenue shall be deemed a denial.[39] cmn

[39] Commissioner of Internal Revenue vs. San Roque Power Corporation, G.R. No. 187485, February 12, 2013.

Section 112(A) and (C) of the 1997 NIRC, as amended, governs the filing of administrative and judicial claims for refund or tax credit of excess and unutilized input VAT attributable to zero-rated or effectively zero-rated sales, which we quote:

> "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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> xxx xxx xxx
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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

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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."

Pursuant to the aforequoted Section 112 (A), the administrative claim filed by a VAT-registered person for the issuance of a TCC or refund of unutilized input VAT must be filed within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

In *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*[40], the Supreme Court summarized the rules on prescriptive periods for filing claims for refund or tax credit of input VAT vis-a-vis Section 112 of the 1997 NIRC, as amended, as follows:

"In the subsequent case of *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership*, the Court summarized the rules on prescriptive periods for claiming credit/refund of input VAT, to wit:

SUMMARY OF RULES ON PRESCRIPTIVE PERIODS FOR CLAIMING REFUND OR CREDIT OF INPUT VAT

The lessons of this case may be summed up as follows:

A. Two-Year Prescriptive Period

1. It is only the administrative claim that must be filed within the two-year prescriptive period. (*Aichi*)

2. The proper reckoning date for the two-year prescriptive period is the close of the taxable quarter when the relevant sales were made. (*San Roque*)

3. The only other rule is the *Atlas* ruling, which applied only from **8 June 2007** to **12 September 2008**. *Atlas* states that the two-year prescriptive period for filing a claim for

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[40] G.R. No. 173241, March 25, 2015.

tax refund or credit of unutilized input VAT payments should be counted from the date of filing of the VAT return and payment of the tax. (*San Roque*)

B. 120+30 Day Period

1. The taxpayer can file an appeal in one of two ways: (1) file the judicial claim within thirty days after the Commissioner denies the claim within the 120-day period, or (2) file the judicial claim within thirty days from the expiration of the 120-day period if the Commissioner does not act within the 120-day period.

2. The 30-day period always applies, whether there is a denial or inaction on the part of the CIR.

3. As a general rule, the 30-day period to appeal is both mandatory and jurisdictional. (*Aichi* and *San Roque*)

4. As an exception to the general rule, premature filing is allowed only if filed between 10 December 2003 and 5 October 2010, when BIR Ruling No. DA-489-03 was still in force. (*San Roque*)

5. Late filing is absolutely prohibited, even during the time when BIR Ruling No. DA-489-03 was in force. (*San Roque*)"

The present claim covers the first, second, third, and fourth quarters of calendar year 2010, which closed on March 31, 2010, on June 30, 2010, on September 30, 2010, and on December 31, 2010, respectively. Counting two years from the said dates, petitioner had until March 31, 2012, June 30, 2012, September 30, 2012, and December 31, 2012 within which to file its administrative claim for refund or tax credit of unutilized input VAT for the said quarters, respectively. Thus, petitioner's *administrative claim* filed on March 9, 2012[41] was seasonably filed.

As regards the judicial claim, Section 112(C) of the 1997 NIRC, as amended, provides the prescriptive period for filing a petition for review for the refund or tax credit of input VAT. The Tax Code provision speaks of two periods: (1) the period of 120 days, which serves as a waiting period to give time for the BIR Commissioner to act on the administrative claim for refund or tax credit; and (2) the period of 30 days, which refers to the period for filing a judicial claim with the Court of Tax Appeals.[42]

It must be pointed out that the 120-day period begins to run from the date of submission of complete documents in support of the administrative claim.[43] The other question to contend with is the date when the submission of supporting documents is deemed "completed" for purposes of determining the running of the 120-day period. The Supreme Court's ruling in the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue (Pilipinas Total Gas)*[44] is instructive. The relevant portions of the case are quoted as follows:

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> (D) *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 Subsections (A) and (B) hereof.
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> xxx xxx xxx
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> Aware that not all taxpayers were able to file the complete documents to allow the CIR to properly

[41] Q16 & A, Exhibit "P-36", Judicial Affidavit of Maribeth Sta. Ana, docket, p. 267; BIR Records, pp. 727-728.
[42] Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue, G.R. No. 168950, January 14, 2015.
[43] Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue, G.R. No. 182737, March 2, 2016.
[44] G.R. No. 207112, December 8, 2015.

evaluate an administrative claim for tax credit or refund of creditable input taxes, the CIR issued RMC No. 49-2003, which provided:

> Q-18: *For pending claims with incomplete documents, what is the period within which to submit the supporting documents required by the investigating/processing office? When should the investigating/processing office officially receive claims for tax credit/refund and what is the period required to process such claims?*
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> A-18: **For pending claims** which have not been acted upon by the investigating/processing office due to incomplete documentation, **the taxpayer-claimants are given thirty (30) days within which to submit the documentary requirements unless given further extension by the head of the processing unit, but such extension should not exceed thirty (30) days.**
>
> For claims to be filed by claimants with the respective investigating/processing office of the administrative agency, the same shall be **officially received** only upon submission of complete documents.
>
> For current and future claims for tax credit/refund, the same shall be processed within one hundred twenty (120) days from receipt of the complete documents. If, in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimate amount of claim, the taxpayer-claimants shall submit such documents **within thirty (30) days from request of the investigating/processing office, which shall be construed as within the one hundred twenty (120) day period**.

(Emphases Supplied) *cm*

xxx for purposes of determining ***when*** the supporting documents have been completed – *it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period.* **After all, he may have already completed the necessary documents the moment he filed his administrative claim, in which case, the 120-day period is reckoned from the date of filing.** The taxpayer may have also filed the complete documents on the 30th day from filing of his application, pursuant to RMC No. 49-2003. He may very well have filed his supporting documents on the first day he was notified by the BIR of the lack of the necessary documents. In such cases, **the 120-day period is computed from the date the taxpayer is able to submit the complete documents in support of his application.**

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Lest it be misunderstood, the benefit given to the taxpayer to determine when it should complete its submission of documents is not unbridled. Under RMC No. 49-2003, if in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimacy of the claim, the taxpayer-claimants shall submit such documents within thirty (30) days from request of the investigating/processing office. **Again, notice, by way of a request from the tax collection authority to produce the complete documents in these cases, is essential.**

xxx xxx xxx

To summarize, for the just disposition of the subject controversy, the rule is that from the date an administrative claim for excess unutilized VAT is filed, a taxpayer has thirty (30) days within which to submit the documentary requirements sufficient to support his claim, unless given further extension by the CIR. Then, upon filing by the taxpayer of his complete documents to support his application, or expiration of the period given, the CIR has 120 days within which to decide the claim for tax credit or refund. Should the taxpayer, on the date of his filing, manifest that he no longer wishes to submit any other addition documents to complete his administrative claim, the 120 day period allowed to the CIR begins to run from the date of filing. *cm*

> **In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year period under Section 112(A) of the NIRC. The 30-day period from denial of the claim or from the expiration of the 120-day period within which to appeal the denial or inaction of the CIR to the CTA must also be respected.**" (Emphasis supplied)

In the final analysis, it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period. However, be it noted that the foregoing benefit is not unbridled as enunciated by the Supreme Court in the case of *Pilipinas Total Gas* as the same is subject to the following rules:

1. Upon filing of his application for tax credit or refund for excess creditable input taxes, the taxpayer-claimant is given thirty (30) days within which to complete the required documents, unless given further extension by the head of the processing unit.

2. If in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimacy of the claim, the taxpayer-claimants shall submit such documents within 30 days from request of the investigation/processing unit. Notice of the request for the submission of additional supporting documents is required.

3. It is only upon the submission of the documents by the taxpayer or expiration of the period given, that the 120-day period would begin to run.

4. In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year period under Section 112(A) of the NIRC of 1997, as amended. *cam*

An analysis of the ruling of the Supreme Court in the *Pilipinas Total Gas* case as regards the submission of the supporting documents in support of the claim is in order.

While it is well settled that it is the taxpayer who should determine when the documents (in support of the claim) is already complete, there are instances where the respondent, in the course of studying the sufficiency of the claim, will continue to request for more documents from the taxpayer even after the two-year period mentioned in the *Pilipinas Total Gas* case. In such instances, the taxpayer should not be faulted for complying with these continuous requests from the respondent, whether verbal or written, in the hope of settling the claim in the administrative level, thereby avoiding a long protracted and expensive process if it appeals its claim to the courts. Having said this, we do want to note that the allowable extended period of submission of documents and the consequent extension of the 120-day period applies only if the respondent continues to make requests for documents (whether verbal or written) within the 120- day period which the taxpayer follows and accordingly complies with.

Unfortunately, the evidence in the instant case does not show that this is so.

A review of the records discloses that on March 9, 2012, petitioner filed an administrative claim for refund for its alleged excess input VAT accumulated in taxable year 2010.

On April 27, 2012, petitioner received a Letter of Authority (LOA) No. LOA-047-2012-00000081[45] dated March 30, 2012 together with a Checklist of Requirements[46] dated April 26, 2012.[47] The said checklist enumerated the additional documents requested by the BIR from petitioner for the complete determination of its claim for refund.

Under Revenue Memorandum Circular (RMC) No. 49-2003, the taxpayer has 30 days from notice within which to submit the additional documents requested by the BIR that

[45] BIR Records, p. 731.
[46] BIR Records, pp. 729-730.
[47] Q17 & A, Exhibit "P-36", Judicial Affidavit of Maribeth Sta. Ana, docket, pp. 267-268.

are necessary for the investigation and processing of the claims.

There is no evidence on record which shows that petitioner complied with the above request for supporting documents contained in the Checklist of Requirements which was received by the petitioner on April 27, 2012. It was only on July 11, 2014[48] that petitioner submitted additional documents in response to the request of respondent embodied in a letter dated July 3, 2014.[49]

We believe and so rule that the 120 -day period should be counted *30 days from April 27, 2012* when the petitioner received the LOA with the Checklist of Requirements, or from May 27, 2012, pursuant to the aforequoted ruling laid down in the *Pilipinas Total* case in relation to RMC No. 49-2003. The reason for this is that records do not show that the petitioner submitted any documents within the thirty-day period from April 27, 2012 (the date it received the Checklist of Requirements), hence the 120- day period should be counted from the lapse of the thirty-day period or on May 27, 2012.

Thus, counting 120 days from May 27, 2012, respondent had until September 24, 2012 within which to act on petitioner's administrative claim for refund. Thereafter, petitioner had 30 days from September 24, 2012, or until October 24, 2012, within which to file its judicial claim for refund. This is in contrast with the dates provided by respondent in her arguments mentioned earlier.

Considering that petitioner filed this Petition for Review only on April 15, 2015[50], the judicial claim was filed beyond the prescriptive period provided in Section 112(C) of the NIRC of 1997, as amended.

The argument of petitioner that respondent continued to request for additional documents leading it to believe that the refund was "still in process" does not hold water as the request of respondent for said documents on July 3, 2014 to which

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[48] Exhibit" P-30", Judicial Affidavit of Maribeth Sta. Ana, docket, pp. 267-268.
[49] Exhibit "P-29". Judicial Affidavit of Maribeth Sta. Ana, docket pp. 267-268.
[50] Docket, p. 13.

petitioner complied on July 11, 2014, took place more than two years after the administrative claim was filed on March 9, 2012. It would have been different, if petitioner showed the Court that respondent continued to request for documents within the 120- day period from April 27, 2012 and that petitioner complied with said requests.

Petitioner is not obliged to wait for the "action" of the respondent on its claim for refund endlessly because the law already sets a deadline for the respondent to act, so to speak, on the claim for refund of excess input VAT. The phrase "inaction is deemed a denial" provided in Section 7 (a) (2) of RA 1125 as amended by RA Nos. 9282 and 9503 is not a nonsensical idea but is a clear signal to the taxpayer to elevate an appeal to this Court after the lapse of the 120 + 30 days, otherwise the right given by law to file a judicial claim likewise lapses. The 120-day prescriptive period provided by law for claims of refund is two-pronged in its effects, one, it pushes the respondent to act on pending claims for refund within a certain time and two, it provides an opportunity for the taxpayer to go to court for proper redress thereby avoiding a seemingly endless wait for the claim to prosper in the administrative level.

The imposition of a deadline in the actions on claims for refund of this nature provides a fresh take on the concept of "exhaustion of administrative remedies" because the taxpayer is not obligated to rely on this remedy for a long period of time. In this way, neither party can dictate the time when a claim for refund should already be elevated to the courts. It is unfortunate that petitioner ignored the judicial remedy when the time was ripe and blindly relied on respondent's actions even after the lapse of time prescribed by the law. The letter dated March 12, 2015[51] denying petitioner's claim for VAT refund is no longer significant as this came years after the lapse of the 120-day period prescribed by law, hence cannot be the basis of any reckoning period for the purpose of counting the time within which to appeal before this Court.

The Supreme Court emphasized this period in the *Rohm Apollo* case[52] when it ruled *inter alia*:

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[51] Exhibit "P-31", Judicial Affidavit of Maribeth Sta. Ana, pp. 267-268.
[52] *Supra,* Note 42

> "A final note, the taxpayers are reminded that when the 120-day period lapses and there is inaction on the part of the CIR, they must no longer wait for it to come up with a decision thereafter. The CIR's inaction is the decision itself. It is already a denial of the refund claim. Thus, the taxpayer must file an appeal within 30 days from the lapse of the 120-day waiting period."

To reiterate, the 120 + 30-day period within which to file an appeal of the denial of the claim or inaction on the part of the BIR Commissioner is both mandatory and jurisdictional, and non-compliance therewith precludes the CTA from acquiring jurisdiction over the case.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED** for lack of jurisdiction.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A.CASANOVA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice