REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

KODEC PRECISION, INC.,
Petitioner,

CTA EB No. 1762
(CTA Case No. 9677)

-versus-

Present:

DEL ROSARIO, *PJ*;
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, *JJ*.

COMMISSIONER OF INTERNAL REVENUE, represented by REVENUE DISTRICT OFFICER ERLINDA V. VICTORINO OF THE BUREAU OF INTERNAL REVENUE, REVENUE DISTRICT NO. 21-B, SOUTH PAMPANGA, CITY OF SAN FERNANDO, PAMPANGA,
Respondent.

Promulgated:

APR 08 2019

3:39 p.m.

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DECISION

Fabon-Victorino, J.:

This is a Petition for Review[1] filed by petitioner Kodec Precision, Inc., seeking to reverse and set aside the twin Resolutions dated September 19, 2017[2] and November 28, 2017[3] respectively, both issued by the Court in Division in CTA Case No. 9677. The twin Resolutions dismissed petitioner's appeal on jurisdictional ground, ratiocinating that

[1] *Rollo,* pp. 1-9.
[2] Ibid. at pp. 16-18.
[3] Id. at pp. 20-22.

it failed to strictly abide with the 120+30 day mandatory and jurisdictional periods mandated in Section 112 of the National Internal Revenue Code (NIRC), as amended.

The facts, as synthesized from the record, are as follows:

Petitioner Kodec Precision, Inc. is a domestic corporation engaged in the manufacture and sale, through direct and indirect exports of computer and automotive parts, among others. Its principal office is located at Angeles Industrial Park, Special Economic Zone, Calibutbot, Bacolor, Pampanga.[4]

Respondent, on the other hand, is the Commissioner of Internal Revenue (CIR), as represented by Erlinda V. Victorino, the Revenue District Officer of the Bureau of Internal Revenue, Revenue District No. 21-B, South Pampanga City, is the government official legally empowered to grant refund of internal revenue taxes, fees, charges, or other penalties in relation thereto.[5]

On November 22, 2016, petitioner simultaneously filed its Quarterly VAT Returns covering the first,[6] second,[7] third,[8] and fourth[9] quarters of taxable year (TY) 2015.

On November 29, 2016, petitioner filed with the BIR its administrative claim for refund of alleged excess and unutilized input taxes attributable to its zero-rated sales for the four (4) quarters of *TY 2015* in the aggregate amount of ₱2,054,084.06.[10]

On August 2, 2017[11], petitioner received a Letter dated July 25, 2017,[12] denying the said administrative claim for refund on the ground that as a Philippine Economic Zone

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[4] Id. at pp. 23-24.
[5] Id. at p. 24. See Section 4 of the NIRC, as amended.
[6] Id. at pp. 37-39.
[7] Id. at pp. 59-62.
[8] Id. at pp. 82-84.
[9] Id. at pp. 103-105.
[10] Id. at pp. 136-138.
[11] Id. at p. 24.
[12] Id. at p. 36.

Authority (PEZA) registered-entity, its sales to another PEZA-Registered entity, such as NIDEC Philippines, were VAT-exempt and not zero-rated sales. Besides, its allegedly failed to adhere with all the requirements of a claim for refund of input tax under Section 112 of the National Internal Revenue Code (NIRC), as amended.[13]

On September 4, 2017, petitioner filed a Petition for Review with the Division of this Court, docketed as CTA Case No. 9677.

On September 19, 2017, the Court in Division promulgated the impugned Resolution, disposing the case in the following fashion:

> **WHEREFORE**, the instant Petition for Review is **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED.**

The Court in Division ratiocinated that under Section 112(C) of the NIRC, as amended, respondent has a period of 120 days to decide an administrative claim for VAT refund, reckoned from the date the taxpayer completed submission of its supporting documents. The taxpayer, on the other hand, has a period of 30 days from receipt of respondent's adverse decision rendered within the 120-day period, *or* from the lapse of the 120-day period to file its appeal with the Court in Division, lest the CTA has no legal competence to entertain the case. The record shows that petitioner filed its administrative claim for refund on November 29, 2016 without any indication that it submitted additional documents on a later date, thus, 120-day period commenced on November 29, 2016 allowing respondent at most until March 29, 2017 to act on the claim but did not[14]. Petitioner, in turn, had 30 days from March 29, 2017 or until April 28, 2017, to lodge an appeal before the Court in Division. With petitioner's judicial recourse belatedly filed on September 4, 2017, the Court in Division concluded that the dismissal thereof is in order.

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[13] Id. at p. 36.
[14] Respondent issued a Decision denying petitioner's refund claim on July 25, 2017, or beyond the 120-day period of until March 29, 2017.

Undeterred, petitioner moved[15], but failed[16] to secure a reconsideration of the impugned Resolution before the Court in Division. Hence, this appeal.

Petitioner maintains that its judicial claim for input tax refund was seasonably instituted saying that under Section 112 of the NIRC, as amended, respondent had 120-days to rule on its administrative claim for refund, counted from the date of submission of complete documents in support thereof, while it had 30 days from receipt of respondent's decision, or from the lapse of the 120-day period to seek judicial intervention with the CTA. Given that the submission of supporting documents was completed on May 9, 2017, respondent had until September 6, 2017 to act on its administrative claim. Since it received the letter denying its administrative claim on August 2, 2017, it had until September 4, 2017 to seek judicial recourse before the Court in Division. Thus, its petition for review was seasonably lodged with the Court in Division on September 2, 2017.

On the merits of its claim for refund, petitioner avers that its sales of computer as well as automotive parts falling under Article 23 of the Omnibus Investment Code deemed as zero-rated sales under Section 106(2) of the NIRC, as amended. Therefore, its sales in favor of NIDEC Philippines for TY 2015 must be accorded zero-rating. Thus, its alleged excess and unutilized input taxes attributable thereto could be subject of a refund or tax credit pursuant to Section 112 of the NIRC, as amended. In fine, it is entitled to a refund in the aggregate amount of ₱2,054,084.06, representing its excess and unutilized input tax attributable to zero-rated sales for TY 2015, petitioner concluded.

In his Comment dated April 23, 2018[17], respondent sides with the Court in Division in ruling that it lacks jurisdiction to entertain petitioner's case as it was filed out of time. He mimics the observation of the Court in Division that the 120-day period for him to decide petitioner's administrative claim commenced on November 29, 2016, or the date of filing of administrative claim for it was not shown

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[15] *Rollo,* pp. 146-149.
[16] Ibid. at pp. 20-22.
[17] Id. at pp. 162-166.

that additional supporting documents were filed or completed at a later date, precisely he had only until March 29, 2017 to act on such claim. There being no decision[18] rendered by him within the allowable 120-day period, petitioner had 30 days from March 29, 2017 or until April 28, 2017, to appeal with the CTA. Therefore, its judicial appeal belatedly instituted on September 4, 2017 deprived the Court in Division of jurisdiction to rule on the said refund claim.

THE RULING OF THE COURT

The instant Petition for Review is devoid of merit.

Section 112(C) of the NIRC, as amended, provides the road map in filing a claim for refund or issuance of tax credit certificate, thus:

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

Based on the foregoing provision, respondent is allowed a period of 120 days from date of submission of complete documents to act on the taxpayer's application for input tax refund. When respondent renders an adverse Decision

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[18] Respondent's Decision was rendered on July 25, 2017, or beyond the 120-day period of until March 29, 2017.

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within the 120-day period; or the administrative claim remains unacted upon within the 120-day period, only then will the taxpayer be allowed to appeal with the CTA within 30 days either, from receipt of such adverse Decision; or from lapse of the said 120-day period. The period of 120 days is a prerequisite for the commencement of the 30-day period to appeal to the CTA. In both instances, whether respondent renders a decision (which must be made within 120 days) or there was inaction, the period of 120 days is material.[19]

Relevantly, in *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue,*[20] the Supreme Court *En Banc* ruled that for administrative claims filed on or after June 11, 2014, Revenue Memorandum Circular (RMC) No. 54-2014 stringently requires that complete supporting documents must accompany the taxpayer's administrative claim for input VAT refund claim at the precise moment it was filed. The said circular does not permit, and in fact forbids the taxpayer from submitting additional supporting documents after the filing of an administrative claim, *viz*:

> xxx. As it stands, RMC 54-14 mandates that:
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>> The application for VAT refund/tax credit **must be accompanied by complete supporting documents** as enumerated in Annex "A" hereof. In addition, the taxpayer shall attach **a statement under oath** attesting to the completeness of the submitted documents (Annex B). The affidavit shall further state that the said documents are the only documents which the taxpayer will present to support the claim. If the taxpayer is a juridical person, there should be a sworn statement that the officer signing the affidavit (i.e., at the very least, the Chief Financial Officer) has been authorized by the Board of Directors of the company.
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>> Upon submission of the administrative claim and its supporting documents, the claim shall be processed and no other documents shall be accepted/required from the taxpayer in the course of its evaluation. A decision shall be rendered by the Commissioner based only on the documents submitted by the taxpayer. The application for tax refund/tax credit

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[19] See *Applied Food Ingredients Company, Inc. vs. Commissioner of Internal Revenue,* 720 Phil. 310 (2013).
[20] G.R. No. 207112, December 8, 2015.

> shall be denied where the taxpayer/claimant failed to submit the complete supporting documents. For this purpose, the concerned processing/investigating office shall prepare and issue the corresponding Denial Letter to the taxpayer/claimant.
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> Thus, under the current rule, the reckoning of the 120-day period has been withdrawn from the taxpayer by RMC 54-2014, since it requires him at the time he files his claim to complete his supporting documents and attest that he will no longer submit any other document to prove his claim. Further, the taxpayer is barred from submitting additional documents after he has filed his administrative claim.

Simply put, for administrative claims for refund/tax credit of input VAT filed on or after June 11, 2014, the 120-day period for respondent to decide an administrative claim shall always be reckoned from the taxpayer's filing of its administrative claim since it is the only instance submission of complete supporting documents is legally permitted.

As admitted, petitioner filed its administrative claim for refund on November 29, 2016. Granting that petitioner submitted additional supporting documents on May 9, 2016, the same was of no moment as it was done long before the filing of the administrative claim for refund on November 29, 2016. Under RMC No. 54-2014 and jurisprudence, such submission could not be considered for the purpose of counting the 120-day period for respondent to take action on the claim. In the instant case, the 120-day period should be reckoned from November 29, 2016, or the date when petitioner's administrative claim for refund was filed there being on showing that additional documents were separately filed on a later date. *A fortiori* respondent had at most March 29, 2017 to decide or act on the claim. With the commencement of the 30-day period on March 29, 2017[21], petitioner had until April 28, 2017 to file its appeal before the Court in Division. Clearly, the Petition for Review was belatedly instituted with the Court in Division on September 4, 2017. Note that respondent's denial of petitioner's administrative claim for refund was issued only on July 25, 2017, or clearly beyond the 120-day waiting period.

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[21] End of the 120-day period in this case.

Section 1, Rule 9[22] of the Rules of Court provides that when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action, as any act it performs without jurisdiction is null and void.[23] The *rationale* for this is not that difficult to comprehend - To inquire into the existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend the ability of its entire proceedings.[24] As earlier discussed, since petitioner's judicial claim for refund was filed out of time, we find no reversible error committed by the Court in Division in dismissing the case *ex mero motu*.

On a final note, a taxpayer must prove not only his entitlement to a refund but also his compliance with the procedural due process as non-observance of the prescriptive periods within which to file the administrative and judicial claims would result in the denial of the claim.[25] The party who intends to appeal must comply with the procedures and rules governing appeals; otherwise, the right of appeal may be lost or squandered.[26] To repeat, the 120+30 day periods are mandatory and jurisdictional. Non-adherence therewith, as occurred in the instant case, renders the petition before the CTA void.[27]

WHEREFORE, the Petition for Review dated January 4, 2018 filed by petitioner Kodec Precision, Inc. is **DENIED**. The twin Resolutions dated September 19, 2017 and November 28, 2017 respectively, both issued by the Court in Division are **AFFIRMED**.

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[22] **Section 1.** *Defenses and objections not pleaded.* — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.

[23] See *Bilag vs. Ay-Ay*, G.R. No. 189950, April 24, 2017; and *Mitsubishi Motors Philippines Corporation vs. Commissioner of Customs,* G.R. No. 209830, June 17, 2015.

[24] See *Commissioner of Internal Revenue vs. Villa,* G.R. No. L-23988, January 2, 1968.

[25] *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*, G.R. No. 184823, October 6, 2010.

[26] *Herarc Realty Corporation vs. The Provincial Treasurer of Batangas*, G.R. No. 210736, September 25, 2018.

[27] See *San Roque Power Corporation vs. Commissioner of Internal Revenue,* G.R. No. 203249, July 23, 2018. Words in brackets supplied.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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.

ROMAN G. DEL ROSARIO
Presiding Justice