REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Special Third Division

THERMAPRIME WELL SERVICES, INC.,
Petitioners,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8896

Members:
FABON-VICTORINO, *Acting Chairperson, and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

MAR 26 2019
3:50 p.m.

X---X

DECISION

RINGPIS-LIBAN, *J.*:

The Petition for Review prays for the refund or issuance of a tax credit certificate in the amount of Eleven Million Ninety-Five Thousand Nine Hundred Ninety Pesos and Fifty-Six Centavos (₱11,095,990.56) representing excess creditable input Value-Added Tax (VAT) paid attributable to petitioner's zero-rated sales for the 3rd quarter and 4th quarters of taxable period 2011.[1]

THE FACTS

Petitioner Thermaprime Well Services, Inc. is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with office address at 2nd Floor, Benpres Building, Meralco Avenue corner Exchange Road, Pasig City.[2] It is also duly registered with the Bureau of Internal Revenue (BIR) as VAT Zero Rated taxpayer per RA 9513 – Renewable

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[1] Summary of the Case, Pre-Trial Order, Docket (Vol. 1), p. 613.
[2] Paragraph 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), *ibid*, p. 595; Exhibit "P-2".

Energy Act of 2008 under Certificate of Registration No. OCN3RC0000498053.[3]

On the other hand, respondent Commissioner of Internal Revenue (CIR) is the government official charged with the administration and enforcement of national internal revenue laws, including the granting of refunds and tax credits of taxes erroneously or illegally collected. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On March 21, 2012, petitioner filed Amended Quarterly VAT Returns for the third (3rd) and fourth (4th) quarters of taxable year 2011. It claims to have unutilized input taxes of ₱5,865,732.85 and ₱5,230,257.71, respectively, totaling to ₱11,095,990.56, broken down as follows:

Amended 3rd Quarter VAT Return[4]			
Current Transactions			
21B	Purchase of Capital Goods not exceeding ₱1 Million	26,500.00	
21D	Purchase of Capital Goods exceeding ₱1 Million	526,938.45	
21F	Domestic Purchases of Goods other than Capital Goods	1,270,377.34	
21J	Domestic Purchase of Services	4,001,934.43	₱ 5,825,500.22
A) Purchases of Capital Goods This Quarter			
Date	*Description*	*Allowable Input Tax for the Period*	
Jul 2011	59 units Lenovo Thinkpad (T410 & T410i)	18,070.07	
Jul 2011	28 units Lenovo Thinkcenter desktop	5,745.60	
Jul 2011	8 units Canon Pixma Inkjet printer and 14 units HP laserjet printers	2,295.00	
Jul 2011	1 unit Canon Scanner	236.25	26,346.92
B) Purchases of Capital Goods Previous Quarters			
Mar 2011	40 unit Laptop and 1 unit Lenovo Thinkcenter	13,885.71	13,885.71
			₱ 40,232.63
		TOTAL	**₱5,865,732.85**

Amended 4th Quarter VAT Return[5]			
Current Transactions			
21B	Purchase of Capital Goods not exceeding ₱1 Million	11,266.08	
21F	Domestic Purchases of Goods other than Capital Goods	1,197,306.16	

[3] Exhibits "P-1" to "P-1-B".
[4] Exhibit "P-6".
[5] Exhibit "P-6-A".

21J	Domestic Purchase of Services	3,326,832.95	
26B	Creditable VAT Withheld	654,619.89	₱ 5,190,025.08
A) Purchases of Capital Goods This Quarter			
Date	*Description*	*Allowable Input Tax for the Period*	
Jul 2011	59 units Lenovo Thinkpad (T410 & T410i)	18,070.07	
Jul 2011	28 units Lenovo Thinkcenter desktop	5,745.60	
Jul 2011	8 units Canon Pixma Inkjet printer and 14 units HP laserjet printers	2,295.00	
Jul 2011	1 unit Canon Scanner	236.25	26,346.92
B) Purchases of Capital Goods Previous Quarters			
Mar 2011	40 unit Laptop and 1 unit Lenovo Thinkcenter	13,885.71	13,885.71
			₱ 40,232.63
		TOTAL	**₱5,230,257.71**

On September 24, 2013, petitioner filed with the Revenue District Office (RDO) No. 43A, Pasig City an application for tax credits/refund of input VAT for the 3rd and 4th quarters of 2011.[6]

Then, on February 28, 2014, petitioner received a Letter of Authority (LOA) No. LOA-43A-2014-00000072[7] dated February 24, 2014 from OIC-Regional Director Jonas DP Amora of Revenue Region No. 7. The LOA authorizes Revenue Officer Ricardo JR Cruz and Group Supervisor Chito Cabel of RDO No. 43A to examine petitioner's books of accounts for VAT for the period January 1 to December 31 of 2011 pursuant to Mandatory Audit – Claim for Refund.

A First Notice[8] dated February 24, 2014 was subsequently issued by respondent requesting presentation/production of accounting books pursuant to the LOA dated February 24, 2014.

On March 18, 2014, petitioner submitted a Letter[9] to the BIR RDO NO. 43A requesting for a list of documents required to process and review their refund application. Thus, on March 20, 2014, petitioner was furnished a Request for Presentation of Records (Per RMO 45-2010)[10] dated February 28, 2014 containing the list of documents required by the BIR.

[6] Par. 4, JSFI, Docket (Vol. 1), p.596; Exhibit "P-7".
[7] Exhibit "P-8".
[8] Exhibit "P-9".
[9] Exhibit "P-10".
[10] Exhibit "P-11".

On March 31, 2014, petitioner submitted another Letter[11], of even date, transmitting a copy of its Sale Invoice/Official Receipt covering the period July to December 2011.

On April 21, 2014, petitioner received a Second and Final Request for Presentation of Records (Per RMO 45-2010)[12] dated April 3, 2014 from Revenue District Officer Josephine S. Virtucio of RDO No. 43A stating that petitioner still have not yet presented the needed records for their examination.

As such, on April 23, 2014, petitioner sent a Letter[13] dated April 22, 2014 to the BIR RDO No. 43A, submitting additional documents in support of its refund application.

To date, respondent has not yet acted on petitioner's administrative claim for refund and/or issuance of tax credit certificate.[14]

As a result, on September 22, 2014, petitioner filed a Petition for Review[15] with this Court elevating the matter via judicial appeal.

On November 20, 2014, respondent filed his Answer[16], interposing the following special and affirmative defenses:

> "9. It is imperative that the following criteria governing claims for refund under Section 112 of the NIRC, be proved to have been complied by the petitioner, viz:
>
> 1. That the taxpayer is VAT-registered;
> 2. That taxpayer is engaged in zero-rated or effectively zero-rated sales;
> 3. The input taxes are due or paid;
> 4. The input taxes are not transitional input taxes;
> 5. The input taxes have not been applied against output taxes during and in the succeeding quarters;
> 6. The input taxes claimed are attributable to zero-rated or effectively zero-rated sales;

[11] Exhibit "P-12".
[12] Exhibit "P-15".
[13] Exhibit "P-16".
[14] Par. 5, JSFI, Docket (Vol. 1), p.596.
[15] Docket (Vol. 1), pp. 14-31.
[16] *Ibid*, pp. 276-280.

7. For zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;

8. Where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the bases of sales volume;

9. The claim is filed within two (2) years after the close of the taxable quarter when such sales were made.

10. The following documents, among others, must be presented:

a) Sales invoice or receipts with the word 'zero-rated' imprinted on it;

b) Purchase invoices or receipts from another VAT-registered taxpayer;

c) Evidence of actual receipt of goods;

d) BOI statement showing the amount and description of sales of goods, etc.;

e) Original or attested copies of invoice or receipt on capital equipment locally purchased; and

f) Photocopy of import entry document and confirmation receipt on imported capital equipment.

10. Under criteria No. 10, the taxpayer has the burden of proof in proving his claim involving claims for refund and should be able to present the foregoing documents stated therein. The burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund;

11. In Compaignie Fincanciere Sucres Et Denres vs. Commissioner of Internal Revenue, G.R. No. 133834 August 28, 2006 the Honorable Supreme Court ruled, to wit:

> 'xxx Tax refunds are a derogation of the State's taxing power. Hence, like tax exemptions, they are construed strictly against the taxpayer and liberally in favor of the State. Consequently, he who

claims a refund or exemption from taxes has the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted.'" *(Citations Omitted)*

Thereafter, on November 24, 2014, a Notice of Pre-Trial Conference[17] was issued by this Court setting the case for pre-trial conference on February 5, 2015 at 9:00 a.m.

Meanwhile, on February 4, 2015, petitioner filed an Entry of Appearance[18] stating that the law firm of Quiason Makalintal Barot Torres Ibarra and Sison with office address at 21st Floor, Robinsons-Equitable Tower, 4 ADB Avenue corner Poveda Street, 1605 Ortigas Center, Pasig City, will be its new counsel for the instant case.

As such, in a Minute Resolution[19] dated February 4, 2015, this Court noted the entry of appearance of petitioner's new counsel and, ordered that copies of all notices, affidavits, orders, resolutions and other pleadings relative to the instant case be sent directly at its given address.

On March 6, 2015, petitioner filed its Petitioner's Pre-Trial Brief[20], while respondent, filed his Respondent's Pre-Trial Brief[21] on April 30, 2015.

Simultaneously also, on March 6, 2015, petitioner submitted the Judicial Affidavit of its witness, **Mr. Erwin O. Avante**, Vice President for Finance of Energy Development Corporation (EDC), via a Manifestation (Re: Submission of Attached Judicial –Affidavit of Witnesses Erwin O. Avante)[22], to primarily testify and prove that EDC is engaged in the business of exploration of steam, generation, and sale of power, particularly renewable energy such as geothermal energy, and that it is registered as a renewable energy developer of geothermal energy; that EDC entered into service contracts with petitioner; and, that petitioner's transactions with EDC are VAT zero-rated transactions, due to the nature of the business of EDC.

In the same manner, the Judicial Affidavit of its witness, **Ms. Arlene M. Moriles**, petitioner's Assistant Accounting Manager, via a Manifestation (Re: Submission of Attached Judicial –Affidavit of Witnesses Arlene M. Moriles)[23], to primarily testify and prove that petitioner is a VAT-registered corporation engaged in the business of providing services for the drilling and workover of exploratory or development wells and other related services; that petitioner's

[17] *Id.*, p. 281.
[18] *Id.*, pp. 294-296.
[19] *Id.*, p. 297.
[20] *Id.*, pp. 304-314.
[21] *Id.*, pp. 565-569.
[22] *Id.*, pp. 315-317.
[23] *Id.*, pp. 391-393.

only client since 2011 is EDC, an entity providing energy through renewable energy sources; that petitioner provides its services to and entered into service contracts with EDC; that petitioner's transactions with EDC are VAT zero-rated transactions, and as such petitioner is entitled to a tax refund and/or credit; that petitioner has not utilized the excess or unutilized input VAT incurred from the 3rd and 4th quarter of 2011; and, that the administrative appeal and petition for review concerning petitioner's tax refund and/or credit was timely filed.

Thereafter, on September 22, 2015 the parties submitted their Joint Stipulation of Facts and Issues (JSFI)[24]. Consequently, a Pre-Trial Order[25] was issued by this Court on October 12, 2015 deeming the pre-trial as terminated and setting the case for the initial presentation of evidence for the petitioner on October 13, 2015 at 9:00 a.m.

On October 13, 2015, petitioner filed a Motion to Commission an Independent Certified Public Accountant[26] praying that Ms. Ma. Fedna B. Parallag, Tax Partner of Isla Lipana & Co., a Philippine member firm of PwC Philippines, be appointed and commissioned as the Independent Certified Public Accountant (ICPA) for the present case.

On February 16, 2016, petitioner submitted the Judicial Affidavit together with the curriculum vitae of Ms. Ma. Fedna B. Parallag, the intended ICPA for the instant case, via Compliance/Manifestation (Re: Submission of Judicial Affidavit of Witnesses Fedna B. Parallag)[27], to prove, among others, that she is qualified, competent and can perform the responsibilities of an independent certified public accountant.

Thus, in a Resolution[28] dated March 1, 2016, this Court granted petitioner's Motion, thereby, commissioning Ms. Ma. Fedna B. Parallag as the ICPA for the case. After taking her oath, the court-commissioned ICPA, Ms. Parallag, was ordered to submit her ICPA report within thirty (30) days or until March 23, 2016.

In compliance, petitioner filed, through registered mail, on March 23, 2016, the ICPA Report[29].

On July 7, 2016, petitioner submitted the Judicial Affidavit of its witness, **Ms. Ma. Fedna B. Parallag**, the court-commissioned ICPA, via Compliance/Manifestation (Re: Submission of Judicial Affidavit of Witnesses

[24] *Id.*, pp. 595-602.
[25] *Id.*, pp. 613-620.
[26] *Id.*, pp. 622-625.
[27] *Id.*, pp. 634-636.
[28] *Id.*, pp. 653-654.
[29] Docket (Vol. 2), pp. 656-693.

Fedna B. Parallag)[30], to primarily testify and prove that she conducted the audit of documents submitted by petitioner in relation to its claim for VAT refund; that she prepared and submitted her report on her findings; and, to identify various documents in support of her testimony, including the submitted ICPA Report.

There being no other witnesses to present, this Court, in the Order[31] dated September 5, 2016, gave petitioner a period of twenty (20) days or until September 25, 2016 within which to file its Formal Offer of Evidence. Also, the initial presentation of evidence for respondent was set on November 28, 2016 at 1:30 p.m.

After asking for, and being granted, an extension of time, petitioner filed on March 3, 2017 its Formal Offer of Evidence[32], offering Exhibits "P-1" to "P-1635-A", inclusive of sub-markings, as its documentary evidence. Subsequently, in a Resolution[33] dated October 2, 2017, this Court admitted petitioner's exhibits save for several exhibits for petitioner's failure to present the original copies for comparison, and for not being found in the records of the case.

On October 25, 2017, petitioner filed a Motion for Partial Reconsideration (Re: Resolution dated October 2, 2017) [34], seeking reconsideration of the denied exhibits and explaining that the documents denied forms part of the ICPA Report. Thus, in a Resolution[35] dated January 9, 2018, this Court gave due consideration and partially granted petitioner's Motion, thereby leaving only Exhibit Nos. "P-101", "P-707", "P-930", "P-1280", "P-1291", "P-1292", "P-1305", "P-1306", "P-1313", "P-1629" and "P-1630" as petitioner's denied exhibits. Thereafter, petitioner was deemed to have rested its case.

During the initial presentation of evidence for the respondent, his counsel manifested that he has no evidence to present in this case. Thus, the parties were given a period of thirty (30) days within which to submit their respective Memoranda. After which, the case shall be deemed submitted for decision.

Complying thereon, petitioner submitted its Memorandum[36] on March 26, 2018 and Supplemental Memorandum on May 3, 2018. While, respondent, on the other hand, failed to file his memorandum as per Records Verification Report[37] dated March 22, 2018.

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[30] *Ibid*, pp. 738-740.
[31] *Id.*, p. 759.
[32] *Id.*, pp. 805-827.
[33] *Id.*, pp. 986-988.
[34] Docket (Vol. 3), pp. 1129-1132.
[35] *Ibid*, pp. 1143-1144.
[36] *Id.*, pp. 1153-1172.
[37] *Id.*, p. 1150

Accordingly, in the Resolution dated April 2, 2018, the instant case was deemed submitted for decision.

THE ISSUES

The sole issue[38] to be resolved in this case is whether petitioner is entitled to a refund and/or issuance of a tax credit certificate representing its excess or unutilized input VAT payments for taxable year 2011 in the total amount of ₱11,095,990.56.

THE RULING OF THE COURT

This Court shall first determine if the administrative and judicial claim were seasonably filed.

Verily, Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides that:

> "**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 may, **within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales,** except transitional input tax, to the extent that such input tax has not been applied against output tax; Provided, *however,* That in the case of zero-rated sales under Section 106 (A)(2)(a)(1),(2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas (BSP): Provided further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *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." *(Emphasis Supplied)*

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[38] Issues to be Resolved, JSFI, Docket (Vol. 1), p. 596.

Pursuant to the afore-quoted provision, a VAT registered taxpayer whose sale is 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 a refund or the issuance of tax credit certificate of its creditable input tax due or paid attributable to such sales.

In this case, petitioner was able to establish that its administrative claim for refund filed on September 24, 2013 was well-within the two (2) year period. As shown in the table below, the two years were counted after from the close of the taxable quarter when the sales were made, pursuant to Section 112(C) NIRC of 1997, as amended, viz.:

Quarter	Close of Taxable Quarter	Last Day to File Claim	Administrative Claim for Refund
3rd	September 30, 2011	September 30, 2013	September 24, 2013
4th	December 31, 2011	December 31, 2013	

As to the judicial claim, Section 112(C) of the NIRC of 1997, as amended, further provides the period to be properly observed before a taxpayer's claim for refund of input VAT may be elevated to this Court, to wit:

> **"SEC. 112. Refunds or Tax Credits of Input Tax.**
>
> x x x
>
> (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.
>
> **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.**" *(Emphases Supplied)*

Going back to the instant case, petitioner claims that the present Petition for Review filed on September 22, 2014 was filed on time. Petitioner avers that the 120-day period mentioned in Section 112(C) of NIRC of 1997, as amended, commenced from the date of filing of complete documents in support of its application for refund. As such, counted from the filing of "complete documents" in support of its claim on April 22, 2014, the 120-day period expired on August 20, 2014. Counting thirty (30) days more from August 20, 2014, the last day within which petitioner could have timely elevated the matter to this Court was on September 22, 2014 (since September 20, 2014 fell on a Saturday).

Unfortunately, this Court does not agree with the petitioner.

Contrary to petitioner's belief, the Petition for Review was belatedly filed.

In the the case of *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*[39], the Supreme Court pronounced that:

> "Upon the filing of an administrative claim, respondent is given a period of 120 days within which to (1) grant a refund or issue the tax credit certificate for creditable input taxes; or (2) make a full or partial denial of the claim for a tax refund or tax credit. Failure on the part of respondent to act on the application within the 120-day period shall be deemed a denial.
>
> Note that the 120-day period begins to run from the date of submission of complete documents supporting the administrative claim. If there is no evidence showing that the taxpayer was required to submit – or actually submitted – additional documents after the filing of the administrative claim, it is presumed that the complete documents accompanied the claim when it was filed.
>
> x x x
>
> Aside from a specific exception to the mandatory and jurisdictional nature of the periods provided by the law, any claim filed in a period less than or beyond the 120+30 days provided by the NIRC is outside the jurisdiction of the CTA." *(Citations Omitted)*

Now, when is the submission of documents deemed "completed" for purposes of determining the running of the 120-day period?

This question has been long answered by the Supreme Court *en banc* in the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*[40], to wit:

> "From the above, it is apparent that the CIR has 120 days from the date of submission of complete documents to decide a claim for tax credit or refund of creditable input taxes. The taxpayer

[39] G.R. 182737, March 2, 2016.
[40] G.R. No. 207112, December 8, 2015.

may, within 30 days from receipt of the denial of the claim or after the expiration of the 120-day period, which is considered a 'denial due to inaction,' appeal the decision or unacted claim to the CTA.

x x x

A hypothetical situation illustrates the hazards of granting the CIR the authority to decide when complete documents have been submitted — A taxpayer files its administrative claim for VAT refund/credit with supporting documents. After 121 days, the CIR informs the taxpayer that it must submit additional documents. Considering that the CIR had determined that complete documents have not yet been submitted, the 120-day period to decide the administrative claim has not yet begun to run. In the meantime, more than 120 days have already passed since the application with the supporting documents was filed to the detriment of the taxpayer, who has no opportunity to file a judicial claim until the lapse of the 120+30 day period in Section 112 (C). With no limitation to the period for the CIR to determine when complete documents have been submitted, the taxpayer may be left in a limbo and at the mercy of the CIR, with no adequate remedy available to hasten the processing of its administrative claim.

Thus, the question must be asked: In an administrative claim for tax credit or refund of creditable input VAT, from what point does the law allow the CIR to determine when it should decide an application for refund? Or stated differently: *Under present law, when should the submission of documents be deemed 'completed' for purposes of determining the running of the 120-day period?*

x x x

Thereafter, whether these documents are *actually* complete as required by law — is for the CIR and the courts to determine. Besides, as between a taxpayer-applicant, who seeks the refund of his creditable input tax and the CIR, it cannot be denied that the former has greater interest in ensuring that the complete set of documentary evidence is provided for proper evaluation of the State.

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.

Moreover, under Section 112 (A) of the NIRC, as amended by RA 9337, a taxpayer has two (2) years, after the close of the taxable quarter when the sales were made, to apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales. <u>Thus, before the administrative claim is barred by prescription, the taxpayer must be able to submit his complete documents in support of the application filed.</u> This is because, it is upon the complete submission of his documents in support of his application that it can be said that the application was, 'officially received' as provided under RMC No. 49-2003.

<u>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.</u> 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.

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." *(Underscoring Supplied)*

Clearly then, a taxpayer has thirty (30) days from the date the administrative claim for excess unutilized VAT was filed within which to submit the documentary requirements to support his claim. In this regard, it is the taxpayer who ultimately determines what documents constitutes as "complete". Should, however, a notice, by way of a request, from the tax collection authority is issued subsequently requiring the taxpayer to produce certain additional documents, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year prescriptive period mentioned under Section 112(A) of the NIRC of 1997.

In the present case, petitioner after filing its administrative application for VAT refund on September 24, 2013, already attached therewith the VAT returns for the 3rd and 4th quarters of taxable year 2011.[41] Thereafter, petitioner no longer submitted additional documents to support its claim within the 120-day period from the submission of its administrative claim. Notably, neither did respondent require petitioner to submit the same. As earlier emphasized, should the taxpayer decide to submit only certain documents, or should the taxpayer fail or opt not to submit any document at all in support of its application for refund under Section 112, the 120-day period should be reckoned from the filing of the said application. In this case, this Court notes that petitioner already enclosed its supporting documents to its administrative claims. Absent any proof that petitioner submitted additional supporting documents, as required by respondent after the filing of the claims, the 120-day period is reckoned from the filing of the said administrative claims.[42]

More so, when respondent issued the LOA and First Notice, both dated February 24, 2014, requesting petitioner to present or produce accounting books/records, the 120-day period within which respondent could act on petitioner's claim for refund had already expired. By that time, petitioner should have deemed respondent's inaction as a denial of its administrative claim and elevated the matter to this Court. The following table eludicates the matter, thus:

Quarter	Filing of Admin Claim	End of the 120 day period	End of the 30 day period	Filing of Judicial Claim
3rd & 4th	September 24, 2013	January 22, 2014	February 21, 2014	September 19, 2014

The Court observes that it took petitioner 210 days more after the end of the 120+30 day period before elevating the matter to this Court. Again, the rule that the counting of the 120-day period is to begin from the submission of the complete documents cannot be applied in this case since it was only after the lapse of the 120-day period that the LOA was issued and when petitioner started to submit additional supporting documents. Hence, the 120-day period could not have commenced on the day that petitioner filed its last supporting document on April 22, 2014, because to allow such would give the taxpayer unlimited discretion to indefinitely extend the 120-day period by simply filing the required documents piecemeal.[43]

Accordingly, by failing to consider that the inaction of respondent after the 120-day period is, by express provision of law, deemed a denial of its claim, this Court is devoid of jurisdiction to further act on petitioner's judicial claim which was belatedly filed.

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[41] Supra No. 6.

[42] *See Commissioner of Internal Revenue vs. CE Casecnan Water and Energy Company, Inc.*, CTA EB No. 971 (CTA Case Nos. 8041 & 8111), May 27, 2014.

[43] *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 207112, December 8, 2015.

To stress, a claim for tax refund or credit is strictly construed against the taxpayer, who must prove that his claim clearly complies with all the conditions for granting the tax refund or credit.[44]

Taxes are the lifeblood of the nation. The Philippines has been struggling to improve its tax efficiency collection for the longest time with minimal success. Consequently, the Philippines has suffered the economic adversities arising from poor tax collections, forcing the government to continue borrowing to fund the budget deficits. This Court cannot turn a blind eye to this economic malaise by being unduly liberal to taxpayers who do not comply with statutory requirements for tax refunds or credits.[45]

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

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
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.

ESPERANZA R. FABON-VICTORINO
Associate Justice
Acting Chairperson

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[44] *Commissioner of Internal Revenue vs. San Roque Power Corporation, Taganito Mining Corporation vs. Commissioner of Internal Revenue, Philex Mining Corporation vs. Commissioner of Internal Revenue*, G.R. Nos. 187485, 196113, and 197156, February 12, 2013.
[45] *Ibid.*

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Acting 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