REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

LEPANTO CONSOLIDATED MINING COMPANY, Petitioner,	**CTA CASE NO. 8855**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 12 2017 2:20 pm

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution is respondent Commissioner of Internal Revenue's **Motion for Partial Reconsideration (Re: Decision Promulgated 7 September 2016)**, filed on September 29, 2016, with petitioner's **Comment [On respondent's Motion for Partial Reconsideration dated 26 September 2016]**, filed through registered mail on October 14, 2016, and received by the Court on October 21, 2016.

In the Decision (assailed Decision) promulgated on September 7, 2016, the Court partially granted petitioner's Petition for Review filed on July 31, 2014 and ordered respondent to issue a tax credit certificate in favor of petitioner in the reduced amount of ₱12,611,698.60, representing its unutilized input VAT in the first and second quarters of taxable year 2012, the dispositive portion of which reads:

"**WHEREFORE,** premises considered, the instant Petition for Review is **PARTIALLY GRANTED.** Accordingly, respondent is **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of ₱12,611,698.60, representing its unutilized input VAT in the first and second quarters of taxable year 2012.

SO ORDERED."

Respondent seeks the reconsideration of the assailed Decision, and prays that another one be rendered dismissing the Petition for Review. Respondent avers that the Court erred in ordering respondent to issue a tax credit certificate in favor of petitioner because petitioner failed to present competent documents to substantiate its claim at the administrative level. Hence, according to respondent, petitioner failed to discharge the burden of proving its entitlement to such claim.

Respondent invokes the doctrine of exhaustion of administrative remedies, stating that the law requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue (BIR) before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law.

Finally, he asserts that claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation and as such, they are looked upon with disfavor.

On the other hand, petitioner maintains that respondent did not specify how the rule on exhaustion of administrative remedies was violated by petitioner. Petitioner insists that it complied with the rule on exhaustion of administrative remedies as it first filed with the BIR applications for tax refund or tax credit and exhausted the proceedings in the same, before filing a Petition for Review with the Court.

Further, petitioner asserts that respondent failed to specify which documents were purportedly not submitted by petitioner. Moreover, petitioner claims that it indeed submitted the complete documents required by the BIR and even filed additional documents requested by it as shown in the Letter of Undertaking dated February 27, 2014, which was admitted by the Court as Exhibit "P-29".

The Court finds respondent's claims unmeritorious.

Indeed, respondent failed to show how the rule on exhaustion of administrative remedies was violated by petitioner. Respondent merely averred that the law requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law.

As noted by the Court in the assailed Decision, petitioner filed its claim with the BIR on February 27, 2014, or within the two-year prescriptive period provided for under Section 112(A) of the NIRC of 1997, as amended. Furthermore, the Court already found that petitioner was able to submit the supporting documents for its administrative claim for refund for purposes of the counting of the 120 day period. Hence, as correctly pointed out by petitioner, it complied with the rule on exhaustion of administrative remedies, as it filed its application for tax refund or tax credit with the BIR within the prescriptive period before filing the Petition for Review on July 31, 2014, which is well-within the prescriptive period under Section 112 (C) of the NIRC of 1997, as amended.

To reiterate the Court's ruling in the assailed Decision:

> "Records reveal that petitioner filed its claim with the BIR on February 27, 2014, or within the 2-year prescriptive period provided for under Section 112(A) of the NIRC, as amended.
>
> The Court shall now proceed to determine whether the petitioner's judicial claim was timely filed. In this regard, Section 112(C) of the NIRC, as amended, reads:
>
> '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 Subsections (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 tax payer 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.'

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Respondent contends that it is incumbent upon the petitioner to establish compliance with the prescribed checklist of requirements under Revenue Memorandum Order (RMO) No. 53-1998 and Revenue Memorandum Circular (RMC) No. 54-2014. Failure to do so would render the administrative application for refund or tax credit insufficient and would warrant its dismissal.

However, it must be emphasized that it is not within the province of the BIR to determine what documents must be submitted by the taxpayer to support its claim. In *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*, the Supreme Court ruled:

'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 purposes 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 the administrative claim, in which case, the 120-day period is reckoned from the date of filing. xxx

xxx xxx xxx

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.

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Indeed, a taxpayer's failure with the requirements listed under RMO No. 53-98 is not fatal to its claim for tax credit or refund of excess unutilized excess VAT. This holds especially true when the application for tax credit or refund of excess unutilized excess VAT has arrived at the judicial level. After all, in the judicial level or when the case is elevated to the Court, the Rules of Court governs. Simply put, the question of whether the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court.' (*Emphasis supplied*)

In the instant case, petitioner promised to submit the following additional documents in support of its claim:

1. Letter Request for Certification received by the Board of Investment – Department of Finance (BOI-DOF);

2. VAT Return showing the amount of Tax Credit Certificate applied;

3. Schedule of Acquisition and Disposal of PPE for the subject period and schedule of Amortization of Deferred Input Tax; and

4. Form No. 1914 (3 copies).

Records show that said documents were received by the BIR on March 3, 2014. Moreover, witness Mr. Teofilo Sacpa testified that:

'xxx xxx xxx

24Q: How did LCMC respond to such requirement by the BIR?

24A: On 3 March 2014, LCMC submitted all the required documents for the 2 applications.

25Q: What is your proof that the BIR required the submission of the said documents and that LCMC complied with the same?

25A: A letter of undertaking dated 27 February 2014 with stamped date of receipt by the BIR listing the documents required to be submitted and a notation showing that the requested documents were submitted on 3 March 2014.

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28Q: There a signature appearing on the middle left side of the letter below the notation 'received 3/3/14', whose signature is that?

28A: That's the signature of the BIR personnel who received the letter and the additional documents submitted by LCMC.'

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Pursuant to Section 112(C) of the NIRC, as amended and the above-quoted cases, petitioner last submitted supporting documents on March 3, 2014. Consequently, respondent is required to act on the petitioner's administrative claim for tax credit within 120 days from March 3, 2014, or until July 1, 2014. Considering that the administrative claim remains unacted upon by respondent, petitioner had 30 days from July 1, 2014, or until July 31, 2014 within which to file a judicial claim before this Court. Here, petitioner filed the instant petition on July 31, 2014, which is well-within the prescriptive period under Section 112(C) of the NIRC, as amended." (*Citations omitted*)

In view of the foregoing, the Court finds that petitioner was able to comply with the rule on exhaustion of administrative remedies.

WHEREFORE, finding no cogent reason to reverse the ruling in the assailed Decision, respondent's **Motion for Partial Reconsideration (Re: Decision Promulgated 7 September 2016)** is hereby **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

(*TOOK NO PART*)
CATHERINE T. MANAHAN
Associate Justice